Reply To
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February 12, 2021

Via S.C. One Drive Filing & U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy
Civil Action No.: 2020CP1000472 (Charleston)
Carrier Claim No.: 170003678
MGC File No.: 21162.20001
Appeal No.: 2020-001095

Dear Ms. Kitchings:

Enclosed for filing please find the Record on Appeal along with a Proof of Service of same on Respondent Joseph Abruzzo.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Aaron E. Edwards, Esq. (via Email & U.S. Mail)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Nov 13 2023
S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

RECORD ON APPEAL

VOLUME I

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1000472

Joseph Abruzzo
PLAINTIFF(S)

Bravo Media Productions Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The Defendant's Motion for Reconsideration is DENIED. A hearing is not necessary.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/20/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Jul 22 10:13 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2020 Jul 22 10:13 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

ELECTRONICALLY FILED - 2020 Jul 22 10:13 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

Charleston Common Pleas

Case Caption: Joseph Abruzzo VS Bravo Media Productions Llc , defendant, et al

Case Number: 2020CP1000472

Type: Order/Electronic Form 4

IT IS SO ORDERED!

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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1000472

Joseph Abruzzo
PLAINTIFF(S)

Bravo Media Productions Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant Bravo Media Productions LLC.'s Motion to Dismiss and Motion for order compelling arbitration are denied.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/30/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Jul 06 9:05 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2020 Jul 06 9:05 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

ELECTRONICALLY FILED - 2020 Jul 06 9:05 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

Charleston Common Pleas

Case Caption: Joseph Abruzzo VS Bravo Media Productions Llc , defendant, et al

Case Number: 2020CP1000472

Type: Order/Electronic Form 4

IT IS SO ORDERED!

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

ELECTRONICALLY FILED - 2020 Jan 24 3:49 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-**
	)	
JOSEPH ABRUZZO,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	**SUMMONS**
	)	**(JURY TRIAL DEMANDED)**
BRAVO MEDIA PRODUCTIONS, LLC,	)	
HAYMAKER MEDIA, INC., NBC	)	
UNIVERSAL MEDIA, LLC, COMCAST	)	
CORPORATION, CRAIG CONOVER,	)	
CHELSEA MEISSNER, AND MADISON	)	
LECROY,	)	
	)	
Defendants	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

*s/ Aaron E. Edwards*_____

Aaron E. Edwards
Edwards Firm, LLC
755 Johnnie Dodds Boulevard, Ste. #100
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ATTORNEYS FOR PLAINTIFF

Mt. Pleasant, South Carolina
Dated: January 24, 2020

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STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-**
	)	
JOSEPH ABRUZZO,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	**COMPLAINT**
	)	**(JURY TRIAL DEMANDED)**
BRAVO MEDIA PRODUCTIONS, LLC, HAYMAKER MEDIA, INC., NBC UNIVERSAL MEDIA, LLC, COMCAST CORPORATION, CRAIG CONOVER, CHELSEA MEISSNER, AND MADISON LECROY,	)	
	)	
Defendants	)	
	)	

Plaintiff Joseph Abruzzo ("Plaintiff" or "Abruzzo"), complaining of the Defendants, Haymaker Media, Inc., Bravo Media Productions, LLC, NBC Universal Media, LLC, Comcast Corporation (collectively referred to herein as "Corporate Defendants"), Craig Conover ("Conover"), Chelsea Meissner ("Meissner"), and Madison LeCroy ("LeCroy") (collectively referred to herein as "individual cast members") states, respectfully alleges and shows unto the Court as follows:

1. Plaintiff Joseph Abruzzo is a resident of the State of Florida.

2. Defendants Haymaker Media, Inc. and Bravo Media Productions, LLC are production companies incorporated in the State of New York responsible for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

3. Haymaker Media and Bravo Media Productions transact business in the State of South Carolina, contract to supply services in the State of South Carolina, and perform business

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in whole or in part in the State of South Carolina through their respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

4. Defendant NBC Universal Media, LLC is a limited liability company organized and existing under the laws of Delaware; it owns Defendant Bravo Media Productions and is responsible, in whole or in part, for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

5. Defendant NBC Universal Media, LLC transacts business in the State of South Carolina, contracts to supply services in the State of South Carolina, and performs business in whole or in part in the State of South Carolina through its respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

6. Defendant Comcast Corporation is a corporation organized and existing under the laws of Pennsylvania; it owns Defendant NBC Universal and/or Defendant Bravo Media Productions and is responsible, in whole or in part, for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

7. Defendant Comcast Corporation transacts business in the State of South Carolina, contract to supply services in the State of South Carolina, and perform business in whole or in part in the State of South Carolina through its respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

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8. Defendant Craig Conover is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant Conover was a cast member of the "reality" television show Southern Charm, was not an employee of the Corporate Defendants, but was acting in coordination with the Corporate Defendants.

9. Defendant Chelsea Meissner is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant Meissner was a cast member of the "reality" television show Southern Charm, was not an employee of the Corporate Defendants, but was acting in coordination with the Corporate Defendants.

10. Defendant Madison LeCroy is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant LeCroy was a cast member of the "reality" television show Southern Charm, was not an employee of the Corporate Defendants, but was acting in coordination with the Corporate Defendants.

11. The most substantial acts and/or omissions alleged herein occurred in Charleston County, South Carolina. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants and venue is proper in the County of Charleston.

PLAINTIFF'S BACKGROUND

12. Plaintiff is currently employed as a director of government relations for a major law firm in Florida. Major corporations and individuals pay substantial sums of money for Plaintiff to lobby on their behalf on, for the time being, only federal legislative matters of interest.

13. Plaintiff has a long history of public service and accolades and review of his service and accolades is necessary to give context to the harm caused by the willful, intentional, and malicious conduct of the Defendants described herein.

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14. Plaintiff formerly served as a Democratic politician from Florida. He has served in the Florida House of Representatives from the 81st district from 2016-2018, representing part of Palm Beach County. Previously, Abruzzo served two terms in the Florida House from 2008-2012, representing District 85, and one term on the Florida Senate from 2012-2016, representing District 25, where he served as the minority whip.

15. Plaintiff moved to Florida in 1999, attended Lynn University where he was elected the university's first junior elected student body president. Upon graduation in 2003 with a B. A. in International Communications and Minor in International Business Representative Abruzzo was awarded the Count and Countess De Hoernle Humanitarian Award. Plaintiff Abruzzo also as a Port Security Specialist in the United States Coast Guard Reserve, serving for a total of eight years, receiving numerous awards and recognitions in honor of his service including the Governor Rick Scott's Veteran Services Medal.

16. Plaintiff was elected to the Florida House of Representatives at the age of 28 in 2008. In the Florida House, Plaintiff Abruzzo served on the Economic Development & Tourism Subcommittee, the Finance and Tax Council, the Economic Affairs Committee, the Federal Affairs Subcommittee, the Business and Consumer Affairs Subcommittee, and the Congressional Redistricting Subcommittee. Plaintiff Abruzzo is a past member of the Insurance, Business and Financial Affairs policy Committee, the Joint Legislative Auditing Committee, the Military and Local Affairs Committee, and the State University and Private Colleges Policy Committee, The Economic Development & Community Affairs Policy Council, the Finance and Tax Council, the Economic Development Policy Committee, the Government Operations Appropriations Committee and was the only freshman legislator that served on the Select Committee on Seminole Indian Compact Review.

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17. In Plaintiff Abruzzo's first term in office he passed a freshan record eleven bills through the House of Representatives. Plaintiff Abruzzo also worked as the Public Information Officer and Assistant Administrator for the Office of Criminal Conflict and Civil Regional Counsels fourth district.

18. Plaintiff Abruzzo is also a former member of the city of Boca Raton Education Board where he worked on establishing programs for continuing education for seniors. He is also a former member of the Palm Beach County Consumer Affairs hearing board, where he presided over cases of individuals and businesses that engaged in unfair and deceptive business practices.

19. Additionally, Plaintiff Abruzzo served as a member of numerous charitable causes and civic organizations, including being a founding member of the Martin Luther King, Jr. national memorial, a member of other organizations such as the Florida Alliance for Retired Americans, the National Center for Missing & Exploited Children, the Heroes' Circle U.S. Holocaust Memorial Museum, the National Center for Missing and Exploited Children, the Selfless Love Foundation, Autism Speaks, the Buoniconti Fund and was a founding member of the Washington, D.C. Martin Luther King, Jr. National Memorial.

20. Plaintiff Abruzzo is the recipient of many medals and awards including the 2012 National Association of Social Workers, Legislator of the Year, the 2012 Alzheimer's Community Care Award of Appreciation, the 2012 Progressive Caucus of Florida Middle Class Champion, the 2012 Fix Florida Top Dog Award, the 2011 Voices of Hope Legislator of the Year, the 2011 AIF Florida Maritime Council Legislator of the Year, the 2011 Delray Citizens for Delray Beach Police Award of Appreciation, the 2010 Palm Beach County Medical Society President's Award, the 2010 Florida Alliance for Retired Americans Legislator of the Year, the 2010 Restaurant and Lodging Association Legislative Award, the 2009 Florida Restaurant and

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Lodging Association Legislative Award, the 2008 U.S. Coast Guard Good Conduct Medal, the 2007 U.S. Coast Guard Presidential Unit Citation, the 2006 Global War on Terrorism Service Medal, the 2005 National Defense Service Medal, the 2005 U.S.C.G. Combat Veterans Association Physical Fitness Award, and the 2005 U.S.C.G. Port Security "A" School Honor Team, among other awards. [1]

21. Additionally, Plaintiff Abruzzo served as the Board Commissioner of the Health Care District Board of Palm Beach County from 2010-2013, the Chairman of the Palm Beach County Legislative Delegation from 2011-2012, and a Board Member of the Public Service Commission Nominating Council from 2010-2011, the Palm Beach County Consumer Affairs Hearing Board in 2008, as well as the City of Boca Raton, Education Advisory Board from 2002-2003.

22. From 2012 – 2016, Plaintiff Abruzzo was elected and served in the Florida Senate, serving on numerous committees including as vice chair of the Finance and Tax Committee, Community Affairs Committee, and alternating chair of the Joint Legislative Auditing Committee.[2] In 2018, after ten (10) years of service as a state legislator, Plaintiff Abruzzo announced that he would not to run for re-election, despite the fact that he was unopposed and there were no candidates running for his western Palm Beach seat at the time of his announcement. See, e.g. https://www.sun-sentinel.com/news/florida/fl-reg-joseph-abruzzo-retiring-20180228-story.html?outputType=amp

[1] From 2012-2018 Plaintiff Aburzzo accumulated dozens of other awards and honors, including two community streets named after him. In the interest of brevity, Plaintiff Abruzzo has omitted these and other awards and accolades that he has received. A full list can be provided if needed.

[2] In 2016, redistricting eliminated Plaintiff Abruzzo's Senate district. Plaintiff then was elected to the House of Representatives for a third term.

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23. During his tenure as state legislator, he passed at least 50 bills into law. Plaintiff Abruzzo brought hundreds of millions of state funds to his district and county over his time in office, securing millions in state funds for the impoverished, primarily African-American communities around the southeast side of Lake Okeechobee, including Belle Glade, South Bay and Pahokee. In Florida's 2017 budget, Abruzzo sponsored more than $4 million of water and street improvement projects for those towns, the largest of which was a $1.2 million marina improvement project in Pahokee. In a year in which the State of Florida cut almost $410 million in local projects, Abruzzo's survived.

24. One of his most significant pieces of legislation includes creating the Silver Alert system for missing adults, a grandparent's bill of rights and the termination of parental rights for rapists. He also pushed for several safety measures, including a successful helmet law for horse riders age 16 and younger — his district includes areas around Wellington's horse country. He was also a primary sponsor of legislation cracking down on pill mills in 2010, when the shady pain management clinics had become a state and national crisis. As a senator in 2016, Abruzzo sponsored the Competitive Workforce Act, which would ban workplace discrimination against LGBT workers.

25. When Plaintiff Abruzzo announced he would not run for re-election, his announcement was met with praise and fondness. (see https://thefloridachannel.org/videos/3-1-18-farewell-rep-joseph-abruzzo-d-district-81-boca-raton/).

26. Among the people Abruzzo came into contact and developed business relationships, as well as established an outstanding reputation with, was among others the chairman and owner of Chesapeake Petroleum and Supply in Gaithersburg, Maryland, the country's largest privately held petroleum company.

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27. Plaintiff met the chairman and owner in Wellington, Florida, about two years before he was elected, who educated Plaintiff on the equine issues of the State of Florida. When Plaintiff was elected, one of the first bills he worked on was the Horse Protection Act. It was one of the first laws in the nation making it a felony to abuse, neglect, or abandon an equine. It also said that if a Florida restaurant put horse meat on the menu, it would automatically be shut down. The Act passed unanimously, and it is now the law in the State of Florida.

28. Since that time, Plaintiff Abruzzo worked as the Chesapeake chairman and owner's Washington lobbyist, which paid Abruzzo a monthly fee of $15,000 per month for lobbying and consulting work on federal legislation and other matters of interest. This agreement was from 2007 until 2019, and would have continued for the foreseeable future, until the agreement was terminated shortly after the airing of the Southern Charm episodes discussing and featuring Plaintiff Abruzzo in which the Defendants' knowingly, falsely and maliciously depicted Plaintiff Abruzzo as a "disgraced" politician, and accused Plaintiff Abruzzo of being abusive, negatively comparing Plaintiff Abruzzo to a former cast member, Thomas Ravenel, who had recently been criminally charged with assault, and implying there were nude photos of Plaintiff Abruzzo in the public domain.

29. Plaintiff Abruzzo's ban on state lobbying ends in November 2020 and he is currently employed as a director of government relations for a major law firm in Florida. Major corporations and individuals pay substantial sums of money for Plaintiff to lobby on their behalf on federal legislative matters of interest. Plaintiff Abruzzo's ability lobby on state issues, which by law requires a two year waiting period after serving in office, expires in November 2020. However, as a direct and proximate result of the Defendants' intentional wrongdoing, a simple "Google" search for "Joseph Abruzzo" brings up almost nothing related to his years of public

service and the various accolades described above, but instead results in links to the Corporate Defendants' websites for false and misleading depictions of Plaintiff Abruzzo, his relationship with Dennis as depicted on Southern Charm, and/or his appearance on Southern Charm.

SOUTHERN CHARM

30. The Corporate Defendants direct, film, air, and/or otherwise produce the television show "Southern Charm."

31. Southern Charm is a "reality" television show based in Charleston, South Carolina and has been airing on national and international television, as well as streaming online, since 2014.

32. While Southern Charm is promoted as a "reality" show, it in fact consists of false conflict and scenarios that are fabricated and/or contrived by the Corporate Defendants for the express purpose of creating dramatic and licentious material for television.

33. The dialogue between cast members of Southern Charm is not scripted, but events, interactions between cast members, topics of discussion, confrontations, and activities undertaken by the cast members, including those referenced herein, are directly provoked, encouraged, instigated, and/or orchestrated by the Corporate Defendants, with the individual cast members agreement, coordination, and cooperation, to elicit drama and conflict commensurate with Southern Charm's storyline as a show that "reveals a world of exclusivity, money and scandal dating back through generations of families in Charleston, S.C." (see e.g. www.afterbuzztv.com/southern-charm/). Alcohol and/or drugs are regularly consumed by the cast members to heighten the likelihood of drama and conflict with the encouragement, toleration, dispensing, and/or condonation of the Corporate Defendants

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34. The original main character at the inception of Southern Charm was Thomas Ravenel. During the filming of Southern Charm, Ravenel met Kathryn Dennis, another Southern Charm cast member and began a romantic relationship that resulted in the birth of two children.

35. A major storyline and ongoing theme in the Southern Charm series from 2014-2018 related to Ravenel and Dennis' relationship and conflict within their relationship, including Dennis losing custody of her children to Ravenel and Dennis undergoing rehabilitation for drug and/or alcohol abuse during the 2016-2018 timeframe. Dennis was often portrayed as the victim of Ravenel's manipulation and/or abuse.

36. In the Summer of 2018, it was announced that Ravenel would not be returning to the cast of Southern Charm for its 6th season, scheduled to begin filming in the Fall of 2018.[3] Without Ravenel as a cast member, the need for a new "storyline" for Dennis became apparent.

37. After communicating with one another, Dennis and the Corporate Defendants framed her new role in Southern Charm as a rehabilitated single mother who regains custody of her children, and moves on and out from under Ravenel's abuse and/or manipulation. Upon information and belief, part of Dennis's new storyline was to include a new love interest.

38. In furtherance of this storyline, around the time filming for season 6 of Southern Charm began in the Fall of 2018, Dennis filed a modification of custody action against Ravenel in the Charleston County Family Court, basing her requested relief in large part upon the staged scenarios filmed for Southern Charm in an attempt to classify the conduct depicted therein as "real-life" events justifying the Family Court's intervention.[4]

[3] Around the same time, Ravenel was criminally charged with sexual assault of his former nanny.

[4] Plaintiff Abruzzo is informed and believes Dennis lost her custody case and now has less time with her children than she did before filing for a modification of custody.

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39. Plaintiff Abruzzo did not know at the time that Dennis initiated the custody suit with the express or implied encouragement, condonation, and/or permission of the Corporate Defendant producers of Southern Charm, for the purpose of providing dramatic material for the next season of Southern Charm.

PLAINTIFF'S RELATIONSHIP WITH KATHRYN DENNIS AND APPEARANCE ON SOUTHERN CHARM

40. Plaintiff Abruzzo met Kathryn Dennis in the fall of 2018 at a Miami Dolphins football game, shortly before filming for Southern Charm season 6 began. Thereafter, Plaintiff Abruzzo and Dennis began a romantic relationship.

41. Unbeknownst to Abruzzo at the time, but in furtherance of Dennis's storyline for season 6 and future seasons of Southern Charm, and with the express or implied encouragement, condonation, and/or permission of the Corporate Defendant producers of Southern Charm, Dennis almost immediately began imploring Plaintiff Abruzzo to be on the show, telling Abruzzo that if she were to get married, she believed the Corporate Defendants would pay big money for rights to televise her wedding, honeymoon, an exclusive, and other things of that nature.

42. The Corporate Defendants wanted Abruzzo to go on a guy's trip, go to a public and crowded restaurant on a dinner date with Dennis, and otherwise suggested group or public outings for Plaintiff Abruzzo's appearance. Plaintiff Abruzzo declined any such outing or event, and ultimately agreed to a private dinner at Dennis's residence in downtown Charleston, which was filmed by the Corporate Defendants.

43. Nothing eventful or dramatic occurred during the dinner, and there was no conflict between Plaintiff Abruzzo and Dennis.

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44. After going on only a handful of dates, Plaintiff Abruzzo ended his relationship with Dennis in early 2019. [5]

45. Southern Charm season 6 first aired during the summer of 2019. In the promotional material released leading up to the season 6 premier, Dennis's storyline regarding Ravenel and her custody suit was confirmed. Shortly thereafter, Dennis's storyline involving Plaintiff Abruzzo would be revealed.

46. In episode three (Exhibit A – filed separately), Defendant Conover, acting on behalf of and in coordination with the Corporate Defendants, when asked by Defendant Meissner about Plaintiff Abruzzo, says "Well, he's a disgraced politician in Florida" and "He's not running for re-election because of his divorce. His wife is accusing him of being physically abusive." These statements are false, and Defendant Conover and the Corporate Defendants knew they were false. (See, e.g. https://www.sun-sentinel.com/news/florida/fl-reg-joseph-abruzzo-retiring-20180228-story.html?outputType=amp). These statements were made knowingly and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise negatively portray him in a false light in order to further the storylines involved in Southern Charm.

47. Plaintiff Abruzzo is informed and believes, and on the basis of that information and belief, alleges that Defendant Meissner was prompted and/or encouraged by producers, employees, and/or agents of the Corporate Defendants, and Defendant Meissner agreed, to

[5] The Corporate Defendants would later falsely claim that Dennis ended the relationship with Plaintiff Abruzzo as a result of the concern expressed by other cast members about Plaintiff Abruzzo as depicted on the Southern Charm show. This claim is false. This false claim was designed and intended to defame, disparage, and/or portray Plaintiff Abruzzo as an unsafe, corrupt, abusive and/or otherwise unsavory individual in order to preserve and further Dennis's storyline on the show. (See https://www.bravotv.com/the-daily-dish/why-kathryn-dennis-joseph-abruzzo-politician-boyfriend-broke-up); https://realityblurb.com/2019/06/12/southern-charm-kathryn-dennis-reveals-why-she-broke-up-senator-joseph-abruzzo-plus-how-she-ended-their-relationship/)

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inquire about Plaintiff Abruzzo with Defendant Conover for the purpose of enabling Defendant Conover to disparage, defame, and otherwise negatively portray him in a false light in order to create and further the storylines involved in Southern Charm.

48. In episode six (Exhibit B - filed separately), entitled "A Salt and Battery", Plaintiff Abruzzo's dinner date with Kathryn Dennis aired. [6]

49. As previously alleged, nothing eventful or dramatic occurred during the dinner, and there was no conflict between Plaintiff Abruzzo and Dennis, nor did any of the Defendants state, suggest, or imply that Plaintiff Abruzzo would be portrayed in a negative and/or false light.

50. To the contrary, immediately prior to the filming of the dinner, while at Dennis's home, the Corporate Defendants, by and through one or more of their agents, falsely represented to Plaintiff Abruzzo that they were there to simply film and observe, and that Plaintiff Abruzzo would be portrayed accurately and fairly.

51. Immediately prior to the filming of the dinner, while at Dennis's home, the Corporate Defendants, by and through one or more of their agents, represented to Plaintiff Abruzzo that his appearance on Southern Charm would be a great thing for Kathryn Dennis, his girlfriend at the time, and her role on Southern Charm.

52. Specifically, the Corporate Defendants, by and through one or more of their agents, represented to Plaintiff how it would be good for Defendant Conover because his storyline was in jeopardy, and falsely represented that Plaintiff Abruzzo was to have "no worries in the world". Kathryn Dennis told Plaintiff Abruzzo that the Corporate Defendants were going

[6] Plaintiff Abruzzo is informed and believes the title of this episode which depicts Plaintiff's dinner date with Dennis is a reference to former cast member Thomas Ravenel's criminal assault charges.

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to make him look incredible, and would portray him as Dennis's comforting knight in shining armor.

53. Immediately prior to filming the dinner, a representative of the Corporate Defendants said to Plaintiff Abruzzo that they were ready to begin and that he had to sign something before they started. Plaintiff Abruzzo was given a three page single spaced document, turned to the third page.

54. Plaintiff Abruzzo was given no time to read the document, no time to consult with an attorney regarding the substance of the document, no time verify the accuracy of its contents, no time verify the parties to the document and given no explanation of the document or its contents by any of the producers, employees, and/or agents of the Corporate Defendants. Only the signature page was presented by the Corporate Defendants to Plaintiff Abruzzo, which he was forced to sign as he was sitting down to dinner with Dennis for filming.

55. Plaintiff Abruzzo was further under pressure from the Corporate Defendant producers to begin filming, as well as from Dennis and the Corporate Defendant Producers to participate in the filming of the dinner which would be "a great thing" for his then girlfriend Dennis.

56. Plaintiff Abruzzo's dinner date with Kathryn Dennis is depicted as follows:

(Kathryn Dennis sets out Grandmother's silver & china prepping for Plaintiff Abruzzo coming over for dinner. She orders delivery.)

(Plaintiff Abruzzo arrives with flowers.)

Dennis: "Aren't you sweet."

Abruzzo: "You look – you look great."

Dennis: "You look great."

Abruzzo: "No, you look great."

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Dennis: "I'm glad you're here."

(hugs & kisses)

Dennis: "Good to see you."

Abruzzo: "Good to see you, too."

(Dennis tries to cut flowers. Plaintiff Abruzzo steps in and assists.)

Dennis: "Thank you for helping – I'm not used to that in life."

Dennis: "When I first saw Joe, I was not attracted to him. Um…no. And it wasn't until he started to talk to me that day that I felt a sense of, like, us, being on somewhat of the same wave length."

(Plaintiff Abruzzo helps her carry food outside and pulls out her chair. She seems very surprised. He compliments her on the meal and they continue small talk.)

Dennis: "I'm not like most chicks from Charleston. I don't know how many you've dated around these parts."

Abruzzo: "You would be my first."

Dennis: "Well, lucky you."

Abruzzo: "I think so, obviously."

(Continue more small talk….Plaintiff Abruzzo compliments the outdoor setting.)

Abruzzo: "I haven't spent much time in the deep south."

Dennis: "God, I love it though. It's the best thing about you."

(Kissing.)

57. As previously alleged, nothing eventful or dramatic occurred during the dinner, and there was no conflict between Plaintiff Abruzzo and Dennis, nor did any of the Defendants state, suggest, or imply that he would be portrayed in a negative and/or false light.

58. Nevertheless, in the following episode seven (Exhibit C – filed separately), entitled "Dick Moves and Dick Pics", The Corporate Defendants, Defendant LeCroy, Defendant

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Meissner, and others knowingly and falsely state and/or imply there were nude photos of Plaintiff Abruzzo in the public domain as follows:

> (cast member Patricia Altschul is having a house party)
>
> Altschul: "I had heard she (Kathryn) had a boyfriend."
>
> Olindo: "Politician. Senator from Florida."
>
> Altschul: "No, not a politician. Oh no. Oh dear."
>
> Olindo: "I mean, I'm just going to go ahead and say it. I googled him and some, like, wild things came up like almost naked photos of him on the internet."
>
> Altschul: "Let me get my big iPad in here."
>
> Eubanks: "Does she know all this stuff?"
>
> Olindo: "She must. Ya'll Google it, it's crazy."
>
> Defendant LeCroy (looking at her phone): "Oh. His penis looks like a Ken Doll. Like, it's just a bulge."
>
> (a photo of Plaintiff Abruzzo is shown on screen with the image blurred at the bottom of his torso)
>
> Defendant LeCroy: "Look at that, it's like a 'mangina.'"
>
> (The girls take turns looking at the photos.)
>
> Defendant Meissner: "She's (Kathryn Dennis) gonna walk in and Pat's (Altschul) gonna be looking at a picture of her boyfriend's pecker."
>
> Eubanks: "She would not be happy."
>
> (Kathryn Dennis arrives.)

59. The images depicted of Plaintiff Abruzzo require no blurring. His penis cannot be seen, nor could it be described. Kathryn Dennis could not have possibly walked in with anybody "looking at a picture of her boyfriend's pecker." These statements are false, and Defendants LeCroy, Meissner, and the Corporate Defendants knew they were false. These statements were

made knowingly and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise portray him in a false light in furtherance of the storylines involved in Southern Charm.

60. Plaintiff Abruzzo is informed and believes, and on the basis of that information and belief, alleges that the entire conversation amongst Altschul, Olindo, Baird, Defendant LeCroy and Defendant Meissner was prompted and/or encouraged by producers, employees, and/or agents of the Corporate Defendants, and Defendants Meissner and LeCroy agreed to discuss Plaintiff Abbruzo and falsely depict the photo in order to falsely state or imply nude photos or photos in which Plaintiff Abruzzo's penis or "pecker" exist and are in the public domain to be viewed simply by a Google search.

61. The intentional and malicious blurring of the bottom of the photos by the Corporate Defendants was intended to suggest that Plaintiff Abruzzo's genitals were viewable in the original photos and therefore had to be blurred to be suitable for television. Moreover, the promotional materials, previews leading up to the episode, and even the title "Dick Moves and Dick Pics" episode was created by the Corporate Defendants and/or designed to explicitly state or strongly imply that photos of Plaintiff Abruzzo's genitals exist and are in the public domain to be viewed by a simple Google search.

62. Such photos do not exist and, therefore, cannot be viewed at all, much less by a Google search for Plaintiff Abruzzo. The statements otherwise are false, known to be false, and were published by the Defendants knowingly, willfully, and with actual malice and intent to defame, disparage, or otherwise harm the Plaintiff.

63. Furthermore, despite the fact that Plaintiff Abruzzo ended his relationship with Dennis in early 2019, the Corporate Defendants falsely state or imply that Dennis ended the relationship with Plaintiff Abruzzo as a result of the concerns expressed by her fellow cast

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members, as depicted on the Southern Charm show, in order to preserve and further the storylines involved in the "reality" show. (Id).[7] These statements are false, known to be false, and were published by the Defendants knowingly, willfully, and with actual malice and intent to defame, disparage, or otherwise harm the Plaintiff.

64. The statements and conduct by the Defendants otherwise are false, and Defendants LeCroy, Meissner, and the Corporate Defendants knew they were false. These false statements were made knowingly, with actual malice, and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise portray him in a false light in furtherance of the storylines involved in Southern Charm.

65. Only a small portion of Southern Charm season 6 show actually featured Plaintiff Abruzzo's dinner with Dennis. Instead, almost the entirety of reference to Abruzzo in the show was negative, false, designed to impugn Abruzzo's character, and/or portrayed Abruzzo in a false light.

66. Plaintiff Abruzzo did not and would not consent or otherwise knowingly, willfully, or voluntarily agree to the Defendants' false, misleading, deceptive, and fraudulent portrayal of him in what was a concerted and coordinated effort by the Defendants to create dramatic material for consumption by the viewers of the "reality" show Southern Charm in the United States and worldwide. Furthermore, Plaintiff Abruzzo was not involved with any other filming and was unaware of any of the statements referenced herein nor was he involved in any way with the editing or creation of the footage described herein.

[7] See https://www.bravotv.com/the-daily-dish/why-kathryn-dennis-joseph-abruzzo-politician-boyfriend-broke-up); https://realityblurb.com/2019/06/12/southern-charm-kathryn-dennis-reveals-why-she-broke-up-senator-joseph-abruzzo-plus-how-she-ended-their-relationship/

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67. Plaintiff Abruzzo is informed and believes that the Corporate Defendants have unaired footage which reveals the encouragement and/or prompting by the Corporate Defendants to the cast members named herein, along with the agreement and coordination among all Defendants, to discuss, defame and otherwise disparage Plaintiff Abruzzo for the purpose of providing false, scandalous, and/or licentious material for consumption by the public.

68. As a direct and proximate result of the Defendants' conduct described herein, Plaintiff Abruzzo's reputation has been destroyed, his actual and potential earnings severely diminished, and has otherwise suffered legally compensable damages.

FOR A FIRST CAUSE OF ACTION
OUTRAGE/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

69. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

70. The Defendants, through their words, acts, and/or willful omissions intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of the Defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable person could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, anxiety, damage to reputation, and other manifestations.

71. As a direct and proximate result of the outrageous conduct of the Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual damages to be determined by the trier of fact, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others.

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FOR A SECOND CAUSE OF ACTION
FRAUD

72. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

73. The representations made by the Corporate Defendants immediately prior to the filming of Plaintiff Abruzzo were false and material.

74. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of their truth or falsity.

75. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

76. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

77. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual damages to be determined by the trier of fact, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others.

FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE FRAUD

78. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

79. The representations made by the Corporate Defendants immediately prior to the filming of Plaintiff Abruzzo were false and material.

80. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of its truth or falsity.

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81. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

82. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

83. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual damages to be determined by the trier of fact, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others.

FOR A FOURTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

84. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

85. The representations made by the Corporate Defendants immediately prior to the filming of Plaintiff Abruzzo were false.

86. The Corporate Defendants had a pecuniary interest in making the false statements.

87. The Corporate Defendants owed a duty of care to see that they communicated truthful information to the Plaintiff.

88. The Corporate Defendants breached their duties of care by failing to exercise due care.

89. Plaintiff Abruzzo justifiably relied on the Defendants representations.

90. As a direct and proximate result of his reliance on the Corporate Defendants' misrepresentations, Plaintiff has been injured and suffered pecuniary damages. Plaintiff is entitled to a judgment against the Defendants for actual compensatory damages to be determined by the trier of fact.

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FOR A FIFTH CAUSE OF ACTION
FRAUDULENT INDUCEMENT

91. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

92. The representations made by the Corporate Defendants immediately prior to the filming, and presentation of the three page release for Plaintiff Abruzzo's signature were false and material.

93. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of its truth or falsity.

94. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

95. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

96. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual damages to be determined by the trier of fact, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others.

FOR A SIXTH CAUSE OF ACTION
CIVIL CONSPIRACY

97. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

98. The Corporate Defendants and individual cast members named herein constitute a combination of two or more people.

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99. The very nature of the acts done, the relationship of the parties, the interests of these Defendants, and other circumstances can reasonably be inferred to be the joint assent of the minds of the Defendants for the primary purpose of injuring Plaintiff Abruzzo.

100. The statements described herein, along with the public dissemination and broadcast of the Southern Charm episodes which discuss, describe, ad/or depict Plaintiff Abruzzo constitute overt acts done pursuant to, and in furtherance of, the conspiracy.

101. As a direct and proximate result of the Defendants' conspiracy and conduct in forming and perpetrating the conspiracy, Plaintiff Abruzzo has been injured and suffered damages, including special damages in the form of attorney's fees, litigation costs, and other special damages.

FOR A SEVENTH CAUSE OF ACTION
DEFAMATION

102. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

103. The statements made by the Corporate Defendants and individual cast members herein were published, non-privileged, false and defamatory per se as the statements allege criminal activity, moral turpitude, and/or unfitness for one's profession of the Plaintiff.

104. The Defendants are at fault for the statements described herein. These false statements tended to impeach the honesty, integrity, virtue or reputation of the Plaintiff and were publications of natural or alleged defects of the Plaintiff which thereby exposed him to public hatred, contempt, ridicule, caused her to be shunned or avoided, and/or otherwise injured him in her office, business, or occupation.

105. The statements described herein were known to be false and were nevertheless published with actual malice.

106. Defendants' representations and statements falsely impute to Plaintiff Abruzzo a matter, practice or course of conduct incompatible with his business, trade or profession as a legitimate and successful lobbyist and former politician. He is not a participant in deviant activities, such as assault or has he participated, offered or agreed to be portrayed in a bad light or employed or contracted by the Defendants to appear or otherwise serve as a paid participant in the activities portrayed in Southern Charm for which his image, likeness and/or identity was used.

107. These false statements by implication constitute defamation *per se*.

108. Such false and *per se* defamatory representations and statements by implication were published to innumerable people or viewers.

109. Defendants knew their conduct described herein was wrongful.

110. Defendants intended to deprive Plaintiff Abruzzo of a property interest or, at a minimum, evinced a conscious disregard for the fact that Plaintiff Abruzzo did not consent to Defendants' use, alteration or publication of his to promote, advertise, market or endorse Defendants' show or companies.

111. Defendants acted with actual or constructive knowledge of the high probability that injury or damage would result to Plaintiff Abruzzo or, at a minimum, were so reckless or wanton in care that their conduct constituted a conscious disregard of, or indifference to, Plaintiff Abruzzo's rights.

112. As a direct and proximate result of the Defendants defamatory statements, Plaintiff has damaged. Plaintiff has suffered damage to his reputation, lost income and/or earnings, been embarrassed, humiliated, and endured mental suffering as a result of the Defendants' conduct. Moreover, Plaintiff has suffered physical bodily injuries in the form of

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nausea, headaches, other physical injuries, and substantial economic damage as a direct and proximate result of the defamatory statements. Plaintiff is entitled to judgment against the Defendants for all general and special damages as well as punitive damages in an amount sufficient to deter similar conduct.

FOR AN EIGHTH CAUSE OF ACTION
VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

113. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

114. The South Carolina Unfair Trade Practices Act declares unfair or deceptive acts or practices in the conduct of trade or commerce to be unlawful.

115. The Corporate Defendants are engaged in trade or commerce within the meaning of the Act.

116. The conduct described herein by the Corporate Defendants is offensive to public policy and/or is immoral, unethical, or oppressive. The Corporate Defendants' representations to those appearing on Southern Charm who are not regular cast members, and the portrayal by the Corporate Defendants of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm as "reality" are intended to deceive and in fact have the tendency to deceive.

117. The deceptive, false, and fraudulent acts and/or practices of the Corporate Defendants have occurred in the past with other individuals who have appeared on Southern Charm, thus making it likely the Corporate Defendants' actions will continue absent some deterrence. As a result, the false and misleading representations to those appearing on Southern Charm who are not regular cast members, the false and misleading representations about those appearing on Southern Charm to others, and the portrayal by the Corporate Defendants of all

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persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm as "reality" affect the public interest.

118. Further, the Corporate Defendants' policies and procedures to lie to, and about anybody who appears on Southern Charm in its efforts to televise a "reality" show, create a potential for repetition of the unfair and deceptive acts.

119. As a direct and proximate result of the Corporate Defendants unfair trade practices, Plaintiff has suffered actual loss, injury, and/or damages. Plaintiff is entitled to judgment against the Corporate Defendants for actual compensatory damages, and three times the actual damages sustained and such other relief as the court deems necessary and proper pursuant to SC Code 39-5-140.

FOR A NINTH CAUSE OF ACTION
NEGLIGENCE

120. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth in paragraphs above as if fully alleged herein.

121. Under the circumstances stated herein, the Corporate Defendants owed a duty of care towards Plaintiff Abruzzo.

122. Among other things, that duty included the obligation to deal with Plaintiff Abruzzo and his image in a commercially reasonable and prudent manner, to not use or alter Plaintiff Abruzzo's image, appearance, portrait in derogation of his rights, and to not cause harm to Plaintiff Abruzzo

123. The Corporate Defendants breached that duty by using and altering Plaintiff Abruzzo's image, image, appearance, portrait without Plaintiff Abruzzo's authorization, permission or consent.

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124. The Corporate Defendants' conduct and breach as described above directly and proximately caused injury to Plaintiff Abruzzo's reputation, brand, goodwill and livelihood for which he has suffered damages.

125. As a direct and proximate result of the Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. Plaintiff respectfully requests that the Court issue a judgment granting actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining Defendants from engaging in further unauthorized use of the Images, and/or such further relief that is just and proper.

FOR A TENTH CAUSE OF ACTION
UNJUST ENRICHMENT

126. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth in above as if fully alleged herein.

127. Plaintiff Abruzzo has conferred a benefit upon Corporate Defendants and individual cast members by virtue of the Defendants usage and self-serving alteration of his image, portrait and appearance.

128. Corporate Defendants and individual cast members were aware that Plaintiff Abruzzo's image, portrait and appearance was valuable.

129. Corporate Defendants and individual cast members were aware of the resulting benefit from usage of Plaintiff Abruzzo's image, portrait and appearance.

130. Corporate Defendants and individual cast members have retained profits and other benefits conferred upon them by using Plaintiff Abruzzo's image, portrait and appearance to

promote and advertise Corporate Defendants' and individual cast members' show and companies.

131. It would be inequitable for any of the Defendants to retain the benefits conferred upon them by using Plaintiff Abruzzo's image, portrait and appearance without paying fair value for Plaintiff Abruzzo's image, portrait and appearance

132. Plaintiff Abruzzo respectfully requests that the Court issue a judgment granting actual, or compensatory, damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining Defendants from engaging in further unauthorized use of images of the Plaintiff, and/or such further relief that is just and proper.

WHEREFORE, the Plaintiff Abruzzo hereby requests the following relief:

A. A jury trial;

B. Actual, compensatory, consequential, special, and general damages against the Defendants, jointly and severally, in an amount not less than Ten Million Dollars ($10,000,000.00);

C. Treble damages for willful violations of the SC Unfair Trade Practice Act

D. Punitive damages in an amount sufficient to deter the same or similar conduct as determined by a jury;

E. Costs and fees taxed against the Defendants as permitted by law;

F. Such other and further relief as the Court deems just, prudent, and proper.

Respectfully submitted,

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*s/ Aaron E. Edwards*_____

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ATTORNEYS FOR PLAINTIFF

Mt. Pleasant, South Carolina
Dated: January 24, 2020

STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-472**
	)	
JOSEPH ABRUZZO,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	**EXHIBITS**
	)	
BRAVO MEDIA PRODUCTIONS, LLC, HAYMAKER MEDIA, INC., NBC UNIVERSAL MEDIA, LLC, COMCAST CORPORATION, CRAIG CONOVER, CHELSEA MEISSNER, AND MADISON LECROY,	)	
	)	
Defendants	)	
	)	

FILED
2020 JAN 28 PM 1:16
JULIE J. ARMSTRONG
CLERK OF COURT

The enclosed usb drive contains Exhibits A-C of the Complaint in the above captioned action.

s/ Aaron E. Edwards
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Mt. Pleasant, South Carolina
Dated: January 28, 2020

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND FOR ORDER COMPELLING ARBITRATION**

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, (jointly "Defendants") by and through their undersigned attorneys, will move before the Presiding Judge of the Charleston County Court of Common Pleas for an Order dismissing them from the above-captioned action and compelling binding mediation/arbitration, pursuant to Rule 12(b)(3) of the *South Carolina Rules of Civil Procedure*, as this Court is the improper venue to hear the asserted claims.

On October 30, 2018, Plaintiff Joseph Abruzzo ("Abruzzo") signed a written agreement with Defendant Haymaker Media, Inc. entitled, "Appearance Release, Voluntary Participation, and Arbitration Agreement," ("Release and Arbitration Agreement") attached hereto as Exhibit 1. Pursuant to the Release and Arbitration Agreement, Abruzzo agreed to be a voluntary participant "[i]n exchange for the opportunity to be part of the program currently titled 'Southern Charm' (the 'Program')," a popular, unscripted television show that has aired nationally since

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2014. Pursuant to the terms of the Release and Arbitration Agreement, Defendants Comcast Corporation, Bravo Media Productions LLC and NBCUniversal Media, LLC are also parties to the Release and Arbitration Agreement, and Defendants Craig Conover, Chelsea Meissner and Madison LeCroy are express intended third-party beneficiaries of the Release and Arbitration Agreement.

In his Complaint, filed January 28, 2020 and served on the various Defendants on different dates ranging from March 13, 2020 to April 13, 2020,[1] Abruzzo alleges that he is a well-educated former Florida Congressman, who has previously presided over Palm Beach County Consumer Affairs cases involving alleged unfair and deceptive business practices, and currently works at a law firm. (Complaint ¶¶ 12, 14-23). Abruzzo further alleges that he appeared on Season Six of *Southern Charm* while dating long-time *Southern Charm* cast member Kathryn Dennis ("Dennis"). Abruzzo alleges he met Dennis in the fall of 2018 at a Miami Dolphins game, after which they began a romantic relationship. (Complaint ¶ 40). Abruzzo agreed to be filmed during a dinner with Dennis at her residence in Charleston. (Complaint ¶¶ 42, 56). Abruzzo had advanced notice that the dinner would be filmed since he had prior conversations about what activities he would be comfortable participating in, and chose for his appearance on *Southern Charm* to be a private dinner with Dennis rather than a public or group event. (Complaint ¶ 42). Abruzzo asserts that, prior to filming, certain verbal representations were made to him. (Complaint ¶¶ 49-52). Abruzzo acknowledges signing a

[1] Pursuant to the April 3, 2020 Order of The Supreme Court of South Carolina addressing Operation of the Trial Courts During the Coronavirus Emergency, "the due dates for all trial court filings due on or after the effective date of this order are hereby extended for thirty (30) days." In addition, "[i]n the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default is hereby forgiven, and the required action shall be taken within thirty (30) days of the date of this order." Order, ¶ C(9)(A)&(B).

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"three page single spaced document" prior to filming. (Complaint ¶ 53-54).

Abruzzo alleges that the relationship between himself and Dennis ended in early 2019. (Complaint ¶ 44). He further asserts that false statements were made about him on *Southern Charm*, (Complaint ¶¶ 46, 64-65), including allegedly false statements implying there were nude photographs of him on the internet, (Complaint ¶¶ 58-62), comments about his divorce,[2] and that the end of his relationship with Dennis was mischaracterized. (Complaint ¶¶ 44, 63). As a result of these statements and other actions alleged to have been taken by Defendants, Abruzzo asserts claims including Outrage/Intentional Infliction of Emotional Distress, Fraud, Constructive Fraud, Negligent Misrepresentation, Fraudulent Inducement, Civil Conspiracy, Defamation, Violation of the South Carolina Unfair Trade Practices Act, Negligence, and Unjust Enrichment, all in connection with his appearance on *Southern Charm* and/or relate to the Release and Arbitration Agreement. Consequently, the clear, unambiguous, and unequivocal terms of the Release and Arbitration Agreement voluntarily signed by Abruzzo apply to this lawsuit and require dismissal of Abruzzo's claims.

In particular: Paragraph 17 of the Release and Arbitration Agreement, entitled "**RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY**," provides, in pertinent part, as follows:

> **To the maximum extent permitted by law, I … agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the "Released Parties") for any claims, actions, damages, losses, costs, expenses or**

[2] Included in the Complaint is a link to a South Florida Sun Sentinel newspaper article from February 28, 2018 which confirms that Abruzzo was going through a "messy divorce" from his wife at the time. https://www.sun-sentinel.com/news/florida/fl-reg-joseph-abruzzo-retiring-20180228-story.html?outputType-amp.

Appendix0043

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causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement."

Paragraph 19 of the Release and Arbitration Agreement, entitled "**MEDIATION & ARBITRATION**," provides, in pertinent part, as follows:

WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES," HARD COPIES PROVIDED UPON REQUEST) …. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES.

Appendix0044

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Paragraph 20 of the Release and Arbitration Agreement, entitled "Governing Law," provides as follows:

> New York law shall govern the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

Paragraph 22 of the Release and Arbitration Agreement provides, in pertinent part, as follows:

> I acknowledge and agree that … each of the Released Parties is an express intended third party beneficiary of this Agreement, including, without limitation, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto.

Immediately above the signature line is the following:

> **I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**

Abruzzo voluntarily entered into the Release and Arbitration Agreement in order to serve as a participant on *Southern Charm* and has alleged that all of his claims in this lawsuit arose in connection with his participation on the show and/or relate to the Release and Arbitration Agreement. Consequently, the Release and Arbitration Agreement requires that all of Abruzzo's

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claims be dismissed in favor of mediation and, if necessary, arbitration in New York City. Under both South Carolina and New York law, "[t]here is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013); *see also PromoFone, Inc. v. PCC Mgmt.*, 224 A.D.2d 259, 260, 637 N.Y.S.2d 405, 406 (N.Y. Ct. App. 1996) (noting New York's strong public policy in favor of arbitration). In addition, Defendants Conover, Meissner, and LeCroy are also fully entitled to enforce the arbitration provisions. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (noting that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint … because this would nullify the rule requiring arbitration"); *citing South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993) (allowing non-signatory to enforce arbitration agreement).

Even if the mediation/arbitration provisions were not enforced, the Release and Arbitration agreement would still require dismissal of Abruzzo's claims because it requires exclusive venue in the appropriate New York state or federal court only. Thus, Abruzzo has expressly waived his right to file this lawsuit in South Carolina state court. Because Abruzzo agreed to arbitrate all of his claims in this lawsuit in New York and agreed to exclusive jurisdiction of all court proceedings in the appropriate state and federal courts in New York, this Court is an improper venue for this lawsuit. Therefore, the Defendants respectfully request that the Court grant their Motion to Dismiss Plaintiff's Complaint and for an Order Compelling Mediation/Arbitration or, in the alternative, grant their Motion to Dismiss Plaintiff's Complaint for having been filed in an improper venue.

This Motion is based on the referenced Exhibit 1 and affidavits of Aaron Rothman and Samantha H. Davenport, and may be supplemented by memoranda and/or additional affidavits in support that may be served on counsel for Plaintiff Abruzzo prior to the date of the hearing on this motion.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/James D. Smith, Jr.

JAMES D. SMITH, JR. (SC Bar No. 16179)
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DANIELLE F. PAYNE (SC Bar No. 73142)
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ATTORNEYS FOR DEFENDANTS

May 12, 2020

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APPEARANCE RELEASE, VOLUNTARY PARTICIPATION, AND ARBITRATION AGREEMENT

This is an agreement between myself and Haymaker Media, Inc. (including its licensees, successors and assigns, and each of their respective parents, subsidiaries, agents and affiliates, and each of their respective officers, directors, shareholders, employees, agents, and representatives) (collectively, "Producer"). In exchange for the opportunity to be part of the program currently titled "Southern Charm" (the "Program"), I agree to the following:

1. I irrevocably grant to Producer the right to record and photograph me and to use my name, likeness, voice, information or comments about me, and any material that I contribute (collectively, the "Materials") in connection with the Program and other productions. I further grant to Producer and any programming service or other platform of NBCUniversal Media, LLC ("Network") and its advertisers the right to use the Materials throughout the universe, in perpetuity, in any and all media now known and hereafter devised, in any manner, including in connection with advertising, merchandising and publicity for the Program (the "Promotions").

2. I agree that Producer shall own all of the rights to the Materials, and that the Materials will be a "work for hire" by me for Producer. I assign and transfer any rights, including copyright, I may have in the Materials to Producer. I waive the exercise of any "moral rights," "droit moral," and any analogous rights, in any jurisdiction of the world, which I may have. I waive any right to object to any use (including any editing/dubbing/fictionalization) of the Materials by Producer or Network for any reason. I also waive my claims to any royalties relating to the use of any music performed or contributed by me (including, without limitation, any applicable copyright, public performance, mechanical and synchronization royalties).

3. I represent and warrant that I am mentally, physically, and emotionally able to participate in the Program and have the right and authority to enter into, fully perform obligations, and grant all rights in this Agreement. My participation is not restricted by nor shall it cause me to be in breach of any other agreements to which I am a party. I agree to participate in connection with the production of the Program and related materials on such dates and at such locations as Producer shall designate.

4. I represent and warrant that I have not (a) given anyone associated with the Program anything of value to arrange my appearance in the Program or the Promotions or (b) accepted anything of value to promote any product service or venture on air in the course of my participation in the Program, and I understand that such acts may be a federal offense. Furthermore, I shall not mention or "plug" any product, service, venture, or thing on the Program without approval of Producer and/or Network.

5. I am not currently, nor do I currently intend to be, a candidate for public office, and I agree that if there is any change in this representation prior to the initial exhibition of the Program in which I appear, I will immediately notify Susanna Zwerling, at susanna.zwerling@nbcuni.com. Becoming a candidate before or around the time of the initial exhibition of the Program may under certain circumstances have legal implications on the exhibitor's ability to exhibit the Program.

6. I will not be paid for any and all of the rights listed in this Agreement and waive any right I may have to any compensation. I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes the Materials in the Program or in the Promotions. I agree that I am a volunteer and not an employee of Producer and I am not entitled to any employment benefits. Producer has no obligation to me and is under no obligation to use the Materials. If I receive anything of value in connection with the Program, I shall be responsible for all taxes and other obligations that arise.

7. I shall not participate in any unscripted, "reality-based" program, from the date of this Agreement through 6 months after the date of the initial exhibition of the final episode of the last cycle in which I participated.

8. I understand that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort.

9. For dramatic or creative purposes, Producer and Network may make misrepresentations to me, related to any and all topics, prior to and during the course of my participation. I consent to, and assume all risks of, such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim.

10. If requested by Producer, I agree to execute a location agreement, which shall grant Producer and Network the right (without limitation) to enter upon and use my home for the purpose of photographing, filming and recording the Program, as further detailed in such location agreement. Further, if requested by Producer, I agree to use reasonable, good faith efforts to assist Producer in obtaining appearance releases from my family, friends, employees and any other individuals in my life, in connection with the Program.



11. I consent to Producer and Network recording my actions and statements via concealed or hidden cameras and audio devices throughout the filming locations, including in areas in which a person might have a reasonable expectation of privacy.

12. **CONFIDENTIALITY AND PUBLICITY**. All publicity in connection with the Program is under the sole control of Network and subject to the following terms and conditions of confidentiality and publicity:

(a) I shall not disclose any information or materials about Producer, the Network, this Agreement, the Program, its participants, location(s), events, and outcomes, that I learn from my Program participation (collectively, the "Confidential Information"), unless such Confidential Information is specifically disclosed in the Program exhibition, if ever. My confidentiality obligations shall continue in perpetuity or until terminated by Network in writing.

(b) Except as requested by Producer or Network, I shall not (nor shall anyone on my behalf): (i) discuss with any third party the Program, my participation in the Program, or make negative statements about or otherwise disparage any of the Released Parties (as defined in paragraph 17), except that I may make incidental, non-derogatory mention that I participated in the Program (i.e., "I was on *Southern Charm*.") only after Network has announced or exhibited my appearance in the Program or a new cycle, or (ii) advertise, promote, or make any commercial use of either my Program participation, or any of Producer's or Network's names, logos, trade names or trademarks.

(c) Any breach by me of any of these confidentiality and publicity provisions would cause Producer and Network irreparable injury and damage that cannot be reasonably or adequately compensated by damages in an action at law. I agree that Producer and Network will be entitled to injunctive and other equitable relief (without posting bond) to prevent or cure any such breach or threatened breach. I also recognize that proof of damages for any such breach will be costly, difficult, and inconvenient to ascertain. Accordingly, I agree to pay Producer and Network the sum of $500,000 per breach plus disgorgement of any income that I may receive in connection with any such breach as liquidated damages.

13. I authorize Producer and Network to investigate, access, collect, and use for any purpose whatsoever, information about me and any of the statements made by me in this Agreement or otherwise in connection with my participation in the Program. Additionally, any such information may be disclosed publicly, used, broadcast, distributed, advertised, promoted or otherwise exploited as part of the Program or otherwise.

14. I agree not to infringe upon or violate the rights of any other person or entity, not to cause or threaten injury or harm to any person or property, and that I shall abide by all applicable laws, rules, and regulations. I agree that Producer has the right, but not the obligation, to use the means it deems necessary to preserve order and the safety of myself and other participants. I acknowledge and accept all risks to my person or property arising from my participation in the Program, including those arising from my interactions with other participants in the course of my participation in the Program.

15. I understand and freely consent to participating in activities in connection with the Program that may be hazardous, dangerous, and may expose me to physical, emotional, and mental stress or injury. I accept and assume any and all risks, hazards and dangers regardless of whether they are explicitly detailed in this Agreement, and the waivers, releases and indemnities that I have executed or may execute apply to all such risks, hazards and dangers.

16. **NO REPRESENTATIONS OR WARRANTIES BY PRODUCER. Producer has made no representations or warranties of any kind regarding my or others' qualifications, ability or fitness to participate in the Program, and the waivers, releases and indemnities contained in this Agreement and any other Agreement that I have executed or may execute in the future related to the Program expressly apply to my participation in or presence around any such activities or persons.**

17. **RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY. To the maximum extent permitted by law, I (on behalf of myself and my heirs, executors, agents, successors or assigns) agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the "Released Parties") for any claims, actions, damages, losses, costs, expenses or causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including, without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the Released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement.**

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18. I acknowledge that there is a possibility that after the execution of this Agreement, I may discover facts or incur or suffer claims which were unknown or unsuspected at the time of execution, and which if known by me at that time may have materially affected my decision to execute this Agreement. I agree that by reason of this Agreement, and the releases contained in the preceding paragraphs I am assuming any risk of such unknown or unsuspected facts and claims.

19. **MEDIATION & ARBITRATION. WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES," HARD COPIES PROVIDED UPON REQUEST). THE JAMS RULES FOR SELECTION OF MEDIATORS AND ARBITRATORS WILL BE FOLLOWED, EXCEPT THAT ANY MEDIATOR WILL BE (I) LICENSED TO PRACTICE LAW IN NEW YORK, OR (II) A RETIRED JUDGE. UPON THE CONCLUSION OF ANY ARBITRATION PROCEEDINGS, THE ARBITRATOR SHALL RENDER FINDINGS OF FACT AND CONCLUSIONS OF LAW AND A WRITTEN OPINION SETTING FORTH THE BASIS AND REASONS FOR ANY DECISION REACHED. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES. I AGREE THAT GIVEN THE UNIQUE NATURE OF THE ENTERTAINMENT INDUSTRY, AND THE IRREPARABLE DAMAGE TO PRODUCER, NETWORK AND THEIR LICENSEES THAT WOULD RESULT FROM DELAYING OR PREVENTING THE EXHIBITION OF ANY PROGRAM PRODUCED HEREUNDER, I MAY NOT SEEK OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT.**

20. Governing Law. Without regard to the conflicts of law provisions, New York law shall govern the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

21. I acknowledge and agree that, regardless of any assignment of this Agreement, each of the Released Parties is an express intended third party beneficiary of this Agreement, including, without limitation, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto. Producer may license, assign, and transfer this Agreement and any or all rights granted by me to Producer under this Agreement to any person or entity.

22. This is the entire agreement between Producer and me, and it supersedes all prior oral or written communications. I am not relying on any promise or statement, express or implied, that is not contained in this Agreement. The illegality, invalidity or unenforceability of any specific provision shall in no way affect the remainder of this Agreement. This Agreement cannot be terminated, rescinded or amended, except by a written agreement signed by both Producer and me. It may be executed by original, facsimile or electronic signature. I shall execute any documents, and do any other acts that are necessary to evidence, effectuate or protect any of the rights granted by me or support any of the representations or warranties made by me.

I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.

Signature: _____ Date: 10-30-18 Phone: 561-212-1111

Print Name: Joseph Abruzzo Date of Birth: 8-14-80

Address: 301 YAMATO RD, STE 1240 BOCA RATON, FL 33431

R 10/30

· For verification purposes only pursuant to 18 U.S.C. §§ 2256 et seq.

001

If participant is under 18 years of age: If participant is under 18 years of age: The undersigned represents and warrants that they are the parent(s)/guardian(s) having sole and complete legal custody, care and control of the above-named minor and give permission for such minor to enter into this Agreement. I have read and fully understand this Agreement and expressly approve of, and consent and agree to the minor's execution of the Agreement and his/her undertakings and obligations in the Agreement and will not revoke consent during the minority of the minor. I affirm all representations and warranties made in this Agreement and guarantee the performance of this Agreement by the minor and represent and warrant that the minor will not disaffirm the Agreement at any time during or after minority. I release, discharge and indemnify the Released Parties from all liability, damages, and claims made by or on behalf of the minor arising out of or in connection with the minor's participation in the Program or relating to the subject matter of this Agreement and this parental consent (other than as may be expressly provided for in the Agreement), including but not limited to negligence and all other released claims identified in paragraph 17 of this Agreement.

Signature of Parent or Guardian: _____ Date: _____ Phone: _____

Print Name of Parent or Guardian:_____Date of Birth: _____

Address:_____

Signature of Parent or Guardian: _____ Date: _____ Phone: _____

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS, LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **AFFIDAVIT OF AARON ROTHMAN**

PERSONALLY APPEARED BEFORE ME, the undersigned, Aaron Rothman, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.

2. I have a fifty percent (50%) ownership interest in Haymaker Content, Inc. (Haymaker), and I had this same ownership interest in Haymaker when Joseph Abruzzo signed an Appearance Release, Voluntary Participation, and Arbitration Agreement ("Release and Arbitration Agreement") on or about October 30, 2018, which is referenced as Exhibit 1.

3. Exhibit 1 is a true and correct copy of the Release and Arbitration Agreement signed by Joseph Abruzzo, is kept in Haymaker's ordinary course of business, and is in the same or substantially same condition as it was in when Plaintiff Joseph Abruzzo signed it.

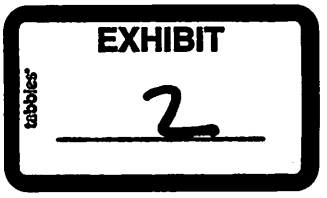
4. By defining "Released Parties" in Paragraph 17 of the Release and Arbitration Agreement to include "anyone associated with the Program," the named individual defendants who were part of the cast of *Southern Charm* during the relevant time are express intended third party beneficiaries of the Release and Arbitration Agreement.

FURTHER, AFFIANT SAYETH NAUGHT.

Aaron Rothman

Pursuant to the South Carolina Supreme Court's April 3, 2020 Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

2



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
JOSEPH ABRUZZO,	)	Civil Action No. 2020-CP-10-472
Plaintiff,	)	
vs.	)	**AFFIDAVIT OF SAMANTHA H. DAVENPORT**
BRAVO MEDIA PRODUCTIONS, LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY,	)	
Defendants.	)	

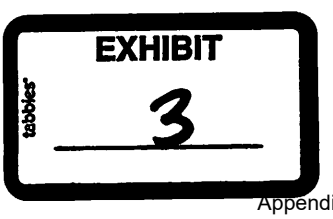
PERSONALLY APPEARED BEFORE ME, the undersigned, Samantha H. Davenport, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.

2. I am Senior Vice President, Legal Affairs, Cable Entertainment, for NBCUniversal Media, LLC. I have been employed by NBCUniversal Media, LLC for more than ten years. I am responsible for legal advice and counsel, on behalf of NBCUniversal, Media, LLC and Bravo Media Productions LLC, in connection with the development, production and exhibition of *Southern Charm*.

3. I understand that Plaintiff Joseph Abruzzo signed an Appearance Release, Voluntary Participation, and Arbitration Agreement on or about October 30, 2018, which is referenced as Exhibit 1 (the "Release and Arbitration Agreement").

3. NBCUniversal Media, LLC is expressly defined as a "Released Party" in Exhibit 1.



4. NBCUniversal Media, LLC is indirectly owned by Comcast Corporation, a publicly held corporation and a defendant in this case. Thus, as NBCUniversal Media, LLC's parent company, Comcast Corporation is also defined as a "Released Party" in Exhibit 1.

5. Bravo Media Productions LLC is a defendant in this case and is party to a production services agreement with Haymaker Media Inc., dated March 12, 2013 relating to the production of *Southern Charm*. Bravo Media Productions LLC is indirectly owned by NBCUniversal Media, LLC. Thus, as a subsidiary of NBCUniversal Media, LLC, Bravo Media Productions LLC is defined as a "Released Party" in Exhibit 1.

FURTHER, AFFIANT SAYETH NAUGHT.



Samantha H. Davenport

Pursuant to the South Carolina Supreme Court's April 3, 2020 Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

ELECTRONICALLY FILED - 2020 May 12 10:33 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND FOR ORDER COMPELLING ARBITRATION**

Defendants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, (jointly "Defendants")[1] by and through their undersigned attorneys submit the following memorandum of law in support of their Motion to Dismiss Plaintiff's Complaint and for Order Compelling Arbitration ("Motion to Dismiss"). Plaintiff Joseph Abruzzo ("Abruzzo" or "Plaintiff") filed a Complaint and Summons on January 28, 2020 in the Charleston County Court of Common Pleas.[2] Defendants filed their Motion to Dismiss on May 12, 2020.

Southern Charm (referred to herein interchangeably as "*Southern Charm*," "the show" or "the Program") is a hit unscripted reality show that features the professional and personal lives of

[1] Where necessary for clarification, Defendants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, and Comcast Corporation are referenced herein as the "Corporate Defendants," and Craig Conover, Chelsea Meissner, and Madison LeCroy are referenced herein as the "Individual Defendants."

[2] Plaintiff served the Defendants on different dates ranging from March 13, 2020 to April 13, 2020. Pursuant to the April 3, 2020 Order of The Supreme Court of South Carolina addressing Operation of the Trial Courts During the Coronavirus Emergency, "the due dates for all trial court filings due on or after the effective date of this order are hereby extended for thirty (30) days."

various Charleston residents "and reveals a world of exclusivity, money and scandal." The show has been airing nationally and internationally since 2014. Plaintiff Abruzzo—a highly educated, credentialed former Florida Congressman, who resides in Florida and currently works at a major law firm in Florida—pursued a romantic relationship with one of the main cast members on *Southern Charm* with full knowledge that the show was filming its sixth season at the time. Plaintiff agreed to be a voluntary participant on the show, and concedes that, prior to being filmed, he signed a voluntary participant agreement and release that contained a broad and enforceable arbitration agreement and also specified exclusive venue in New York. He now asks the Court to override South Carolina's and New York's strong presumption in favor of enforcing arbitration agreements based on allegations that he only signed the agreement in order to be a good boyfriend and because the agreement was allegedly handed to him flipped to the third page. Even accepting them as true solely for the purpose of this motion, Plaintiff's allegations fall far short of establishing a basis to override the express terms of the parties' agreement. Thus, for the reasons set forth in more detail below, Plaintiff's Complaint should be dismissed.

BACKGROUND

1. Plaintiff's Complaint.

The Complaint details at length Plaintiff's education, background in public office in Florida, and work in government relations. After graduating from Lynn University with a Bachelors of Arts in International Communications and a Minor in International Business, Abruzzo served in the U.S. Coast Guard Reserve and then was elected to the Florida House of Representatives. Abruzzo served in various positions and boards, including but not limited to the Finance and Tax Counsel, the Economic Affairs Committee, the Business and Consumer Affairs Subcommittee and has been a member of the Insurance, Business and Financial Affairs Policy

Committee, the Economic Development & Community Affairs Policy Counsel, the Finance and Tax Counsel and the Government Operations Appropriations Committee. Abruzzo presided over Palm Beach County Consumer Affairs cases involving alleged unfair and deceptive business practices. He alleges he received numerous awards and accolades. Abruzzo alleges that he has worked as a federal lobbyist for the Chesapeake Petroleum and Supply Company based in Gaithersburg, Maryland for multiple years, for which service he was paid $15,000 per month. Abruzzo alleges he was terminated from that lobbying position "shortly after the airing of the Southern Charm episodes discussing and featuring Plaintiff Abruzzo in which the Defendants' [sic] knowingly, falsely and maliciously depicted Plaintiff Abruzzo as a 'disgraced' politician, and accused Plaintiff Abruzzo of being abusive, negatively comparing Plaintiff Abruzzo to a former cast member, Thomas Ravenel, who had recently been criminally charged with assault, and implying there were nude photos of Plaintiff Abruzzo in the public domain." Plaintiff currently is "employed as a director of government relations for a major law firm in Florida." (Complaint ¶¶ 12-29).

Plaintiff alleges that *Southern Charm* is a "reality" television show that has aired nationally and internationally since 2014. (Complaint ¶ 31). The Complaint alleges that, although promoted as a "reality" show, *Southern Charm* "consists of false conflict and scenarios that are fabricated and/or contrived by the Corporate Defendants," and that cast members "are directly provoked, encouraged, instigated, and/or orchestrated by the Corporate Defendants, with the individual cast members agreement, coordination, and cooperation, to elicit drama and conflict," in order to promote a storyline. (Complaint ¶¶ 32-33). While earlier seasons depicted the relationship between long-time cast members Thomas Ravenel ("Ravenel") and Kathryn Dennis ("Dennis"), Abruzzo alleges the "need for a new 'storyline' for Dennis became

apparent," after it was announced that Ravenel would not return to *Southern Charm* for the sixth season. According to Abruzzo, part of that "new storyline [for Dennis] was to include a new love interest." (Complaint ¶¶ 34-37).

Abruzzo alleges he met Dennis in the fall of 2018 at a Miami Dolphins game, after which they began a romantic relationship. (Complaint ¶ 40). Abruzzo was aware that he was pursuing a romantic relationship with a current cast member on *Southern Charm* while the sixth season of the Program was being filmed and agreed to be a voluntary participant on the Program. He alleges that, although the Corporate Defendants wanted him to go on a "guy's trip," or to go on a dinner date with Dennis at a "public and crowded restaurant," he "declined any such outing or event, and ultimately agreed to a private dinner at Dennis's residence in downtown Charleston." (Complaint ¶¶ 42, 56). Abruzzo alleges that, prior to filming, certain verbal representations were made to him about how he would be portrayed on the show. (Complaint ¶¶ 49-52). Abruzzo concedes that he signed a "three page single spaced document" prior to filming. Abruzzo alleges that he was presented with the document "turned to the third page," and was given no time to read the document or consult with an attorney but, instead, "was forced to sign as he was sitting down to dinner with Dennis for filming." Abruzzo asserts that Dennis "implore[ed] him to be on the show," and that he was under pressure from both Dennis and the Corporate Defendants "to participate in the filming of the dinner" and "to begin filming" because "it would be a great thing for" Dennis. (Complaint ¶ 41, 53-55). The Complaint then sets out the purported dialog of the dinner as depicted on *Southern Charm*, asserting that there was no conflict between him and Dennis, and that the Defendants did not "state, suggest, or imply that he would be portrayed in a negative and/or false light." (Complaint ¶¶ 56-57).

Abruzzo alleges that the relationship between himself and Dennis ended in early 2019, and that the Corporate Defendants "later falsely claim[ed] that Dennis ended the relationship with Plaintiff Abruzzo as a result of the concern expressed by other cast members about Plaintiff Abruzzo," which claim Plaintiff asserts is false and was "designed and intended to defame, disparage, and/or portray Plaintiff Abruzzo as an unsafe, corrupt, abusive and/or otherwise unsavory individual in order to preserve and further Dennis's storyline on the show." (Complaint ¶¶ 44, 63).

In particular, Abruzzo asserts that false statements were made about him in episode three of *Southern Charm* "in order to further the storylines" for the Program, including a statement by Defendant Conover to the effect that Plaintiff is "'a disgraced politician in Florida' and 'He's not running for re-election because of his divorce. His wife is accusing him of being physically abusive.'" Pursuant to the Complaint, these statements were elicited by Defendant Meissner, who was "prompted and/or encouraged by" the Corporate Defendants for the purpose of disparaging, defaming and otherwise portraying him "in a false light in order to create and further the storylines involved in Southern Charm." (Complaint ¶¶ 46, 47).

Abruzzo alleges that, in an episode following his dinner date with Dennis, Defendants LeCroy and Meissner, along with other individuals, falsely stated there were nude photographs of Plaintiff in the public domain. The Complaint alleges that certain cast members discussed photographs of Plaintiff, which had been posted by third parties unrelated to Defendants, were "googled" by the cast members and were publicly available at the time of filming. The Complaint also notes that a photo of Abruzzo is shown on the screen with "the image blurred at the bottom of his torso." Plaintiff alleges the conversation was prompted and/or encouraged by the Corporate Defendants "in order to falsely state or imply nude photos or photos in which

Plaintiff Abruzzo's penis or 'pecker' exist and are in the public domain to be viewed simply by a Google Search," and that the blurring of the bottom of the photograph was malicious and was intended to imply falsely that "photos of Plaintiff Abruzzo's genitals exist and are in the public domain …" (Complaint ¶¶ 58-62).

Abruzzo alleges that all of the purportedly false statements about him were made on *Southern Charm* either in order to further a storyline and "create dramatic material for consumption by the viewers of the 'reality' show Southern Charm in the United States and worldwide," (Complaint ¶¶ 44, 46, 47, 59, 66, 67), or "to defame, disparage, or otherwise harm the Plaintiff." (Complaint ¶¶ 44, 46, 47, 59, 62-65). As a result of these statements and other actions alleged to have been taken by Defendants, Abruzzo asserts ten causes of action in the Complaint. First, in his Outrage/Intentional Infliction of Emotional Distress cause of action, and referencing the conduct "alleged above," Abruzzo alleges that the Defendants' "words, acts, and/or willful omissions intentionally inflicted severe emotional stress" on him. (Complaint ¶¶ 69-71).

Next, in his Fraud and Constructive Fraud causes of action, Abruzzo asserts that statements "made by the Corporate Defendants immediately prior to the filming of Plaintiff Abruzzo were false and material," that the statements were knowingly false, and that he had a right to rely on and did rely on the false statements. (Complaint ¶¶ 72-83). Plaintiff's Negligent Misrepresentation cause of action also alleges false representations were made to him prior to filming, on which he "justifiably relied." Abruzzo asserts that the Corporate Defendants "had a pecuniary interest in making the false statements," and that they owed him a duty of care to convey truthful information to Plaintiff, which they breached. (Complaint ¶¶ 84-90).

Plaintiff's Fraudulent Inducement cause of action alleges that the Corporate Defendants knowingly made false and material statements to him prior to the "presentation of the three page release for Plaintiff Abruzzo's signature," and that he had the right to rely on those statements. (Complaint ¶¶ 91-96).

Plaintiff's Civil Conspiracy cause of action alleges the Corporate Defendants and the Individual Defendants conspired amongst themselves "for the primary purpose of injuring Plaintiff Abruzzo," which conspiracy was furthered by the "statements described herein, along with the public dissemination and broadcast of the Southern Charm episodes which discuss, describe, a[n]d/or depict Plaintiff …" (Complaint ¶¶ 97-112).

Plaintiff's Defamation cause of action is also based on "the statements described" in the Complaint, which he alleges were "published with actual malice." (Complaint ¶¶ 102-105).

Plaintiff alleges a Violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") based on representations purportedly made to him and others who appear "on Southern Charm who are not regular cast members, and the portrayal by the Corporate Defendants of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm as 'reality,'" which Abruzzo alleges "are intended to deceive and in fact have the tendency to deceive." (Complaint ¶¶ 113-119).

Plaintiff's Negligence cause of action alleges that "[u]nder the circumstances stated herein, the Corporate Defendants owed" him a duty to, among other things, "not use or alter Plaintiff Abruzzo's image, appearance, portrait in derogation of his rights," which they breached based on the "conduct … as described above," causing him harm. (Complaint ¶¶ 120-125).

Finally, Plaintiff's Unjust Enrichment cause of action alleges that he "has conferred a benefit upon Corporate Defendants and individual cast members by virtue of the Defendants

usage and self-serving alteration of his image, portrait and appearance." Plaintiff alleges "[i]t would be inequitable for any of the Defendants to retain the benefits conferred upon them by using Plaintiff Abruzzo's image, portrait and appearance without paying fair value" for the same. (Complaint ¶¶ 126-132).

Plaintiff seeks actual or compensatory damages of at least $10,000,000.00 dollars, treble damages under the SCUTPA, punitive damages and costs and fees.

2. The Appearance Release, Voluntary Participation, and Arbitration Agreement.

In connection with his appearance on *Southern Charm*, Plaintiff concedes that he signed a written agreement with Defendant Haymaker Media, Inc. on October 30, 2018 entitled, "Appearance Release, Voluntary Participation, and Arbitration Agreement," ("Release and Arbitration Agreement"), attached hereto as Exhibit 1. Pursuant to the Release and Arbitration Agreement, Abruzzo agreed to be a voluntary participant "[i]n exchange for the opportunity to be part of the program currently titled 'Southern Charm' (the 'Program')." Pursuant to its terms, Defendant NBCUniversal Media, LLC, designated as the Network, and Defendants Comcast Corporation and Bravo Media Productions LLC are also parties to the Release and Arbitration Agreement, and the Individual Defendants are express intended third party beneficiaries of the Release and Arbitration Agreement. (Exh. 1 ¶¶ 17, 21).

In Paragraph 6 of the Release and Arbitration Agreement, Abruzzo agreed that he would "not be paid for any and all of the rights listed in this Agreement and waive any right I may have to any compensation. I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes the Materials in the Program …"

In Paragraph 8, Abruzzo agreed that he understood "that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort."[3] In addition, in Paragraph 9, Plaintiff acknowledged that, "[f]or dramatic or creative purposes, Producer and Network may make misrepresentations to me related to any and all topics, prior to and during the course of my participation. I consent to and assume all risks of such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim."

Paragraph 17 of the Release and Arbitration Agreement, entitled "**RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY**," provides, in pertinent part, as follows:

> **To the maximum extent permitted by law, I … agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the "Released Parties") for any claims, actions, damages, losses, costs, expenses or causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach**

[3] In Paragraph 2, Abruzzo "waive[d] any right to object to any use (including any editing/dubbing/fictionalization) of the Materials by Producer or Network for any reason."

by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement."

Paragraph 19 of the Release and Arbitration Agreement, is entitled "**MEDIATION & ARBITRATION**," and provides, in pertinent part, as follows:

WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES," HARD COPIES PROVIDED UPON REQUEST) …. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES.[4]

Paragraph 20 of the Release and Arbitration Agreement, entitled "Governing Law," provides as follows:

Without regard to the conflicts of law provisions, New York law shall govern the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

[4] JAMS stands for Judicial Arbitration and Mediation Services, Inc.

Paragraph 21 of the Release and Arbitration Agreement provides, in pertinent part, as follows:

> I acknowledge and agree that … each of the Released Parties is an express intended third party beneficiary of this Agreement, including, without limitation, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto.

Paragraph 22 provides, in pertinent part, that:

> This is the entire agreement between Producer and me, and it supersedes all prior oral or written communications. I am not relying on any promise or statement, express or implied, that is not contained in this Agreement."

Immediately above the signature line is the following, in bold, all capitalized and underlined:

> **I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**

3. Plaintiff's Appearance on *Southern Charm*.

Plaintiff Abruzzo appeared briefly on an episode of Season 6 of *Southern Charm*. Morgan Miller, who served as the Executive Producer for Season 6 of *Southern Charm*, attests that neither the Producers nor any of the Defendants had any discussions with Plaintiff Abruzzo prior to his arrival in Charleston, South Carolina, for his dinner date with Ms. Dennis. (Affid. of Morgan Miller, Exh. 2 ¶¶ 2, 6). Ms. Dennis was free to date whomever she chose, and Plaintiff Abruzzo could have pursued a romantic relationship with Ms. Dennis without appearing on

Southern Charm. (Exh. 2 ¶¶ 4, 5). Plaintiff Abruzzo knew, prior to traveling to Charleston, South Carolina, that he was pursuing a relationship with a reality television cast member during active filming and that his dinner date with Ms. Dennis would be filmed. Indeed, Plaintiff Abruzzo alleges he had input into the circumstances in which he was willing to be filmed and had declined to participate in two other possible outings, one being a "guy's trip" and the other a dinner date with Ms. Dennis in a busy restaurant. (Exh. 2 ¶ 7) (Complaint ¶¶ 42, 56).

Prior to filming, the Release and Arbitration Agreement was handed to Plaintiff Abruzzo turned to the first page, and he took time to review each of the three pages. In fact, he asked a question about Paragraph 5 of the Release and Arbitration Agreement—which concerns whether the voluntary participant is or will become a candidate for public office—which is located on the first page of Release and Arbitration Agreement. (Exh. 2 ¶¶ 8, 9). That question was answered to Plaintiff's satisfaction. If Plaintiff Abruzzo had raised any other issues with the Release and Arbitration Agreement, they would have been addressed prior to filming. If Plaintiff Abruzzo had declined to sign the Release and Arbitration Agreement, his dinner date with Ms. Dennis simply would not have been filmed. (Exh. 2 ¶¶ 10, 11). Instead, Mr. Abruzzo chose to sign the Release and Arbitration Agreement, which was documented with the attached photograph. (Exh. 3). Plaintiff Abruzzo seemed eager to appear on *Southern Charm*. (Exh. 2 ¶¶ 7, 12).

ARGUMENTS

This case must be dismissed for two separate and independent reasons. First, the parties' arbitration agreement should be enforced. Plaintiff Abruzzo—a highly educated, credentialed, former Florida Congressman who currently works at a major law firm in Florida—voluntarily signed an arbitration agreement agreeing that, in the event "any dispute in connection with this Agreement" arises, the parties would first "try to resolve such dispute through confidential

mediation," and, if that failed, "all disputes, including the scope or applicability of this Agreement to arbitrate, **shall be** resolved by final and binding arbitration administered by JAMS or its successor." (Exh. 1 ¶ 19) (emphasis added). Even if the Court were to decline to enforce those mandatory dispute resolution provisions, this case should still be dismissed because the parties agreed that the exclusive venue for any dispute arising from the Release and Arbitration Agreement or Abruzzo's participation on *Southern Charm* is New York.

The Release and Arbitration Agreement requires any unresolved disputes, including this lawsuit, to be mediated and, if necessary, arbitrated in New York City. Under both South Carolina and New York law, "[t]here is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013); *see also PromoFone, Inc. v. PCC Mgmt.*, 224 A.D.2d 259, 260, 637 N.Y.S.2d 405, 406 (N.Y. App. Div. 1996) (noting New York's strong public policy in favor of arbitration).

All of Plaintiff's claims fall within the scope of the parties' broad and enforceable arbitration agreement. As set forth in detail below, all ten causes of action asserted by Plaintiff arise out of and in connection with his signing the Release and Arbitration Agreement and his participation on the Program. As also is set forth below, Plaintiff has not adequately alleged—let alone established—unconscionability, duress or fraud in the inducement sufficient to override South Carolina's and New York's strong presumptions in favor of enforcing arbitration agreements. Indeed, he does not even allege that that the arbitration agreement is itself a product of fraud, which is required under the applicable law to render that provision unenforceable.

Alternatively, and in the event the arbitration agreement is not enforced, this action should still be dismissed because the Release and Arbitration Agreement requires exclusive

venue in the appropriate New York state or federal court. Specifically, the parties agreed to submit to the "in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York," waiving "any objections thereto." (Exh. 1 ¶ 20). Thus, Abruzzo has expressly and voluntarily waived his right to file this lawsuit in South Carolina state court.

Because Abruzzo agreed to arbitrate all claims in New York and agreed to exclusive jurisdiction of all proceedings in New York, and with respect to any court proceedings, in the appropriate state and federal courts in New York, this Court is an improper venue for this lawsuit. Therefore, the Defendants respectfully request that the Court grant their Motion to Dismiss Plaintiff's Complaint and issue an Order Compelling Arbitration or, in the alternative, dismiss this case for having been filed in an improper venue.

I. All of the Defendants are entitled to enforce the agreement to arbitrate.

All of the Defendants, including the Individual Defendants, are fully entitled to enforce the arbitration agreement. The Release and Arbitration Agreement is between Haymaker, as Producer, and Abruzzo. In Paragraph 1, NBCUniversal is named as the "Network." (Exh. 1 ¶ 1). The Release provision of the Release and Arbitration Agreement directly names the Producer and Network, and includes "any of their **parents**, **subsidiaries**, assignees, licensees, affiliates **or anyone associated with the Program**," as "the 'Released Parties.'" (Exh. 1 ¶ 17) (emphasis added). Comcast Corporation is NBCUniversal's parent company, Bravo Media Productions, LLC is indirectly owned by NBCUniversal and is a subsidiary thereof, (Exh. 4, Davenport Affidavit ¶¶ 4, 5), and the Individual Defendants indisputably are "associated with the Program." Consequently, all of the Defendants are included by the terms of the Release and Arbitration Agreement as Released Parties. As Released Parties, even those Defendants that are not

specifically named in the Release and Arbitration Agreement are "express intended third party beneficiar[ies] of this Agreement," and have "full standing to enforce each, every, any and all of its provisions as if it was an express party thereto." (Exh. 1 ¶ 21).

Even if the Individual Defendants were not express intended third party beneficiaries of the Release and Arbitration agreement with authority to enforce the arbitration agreement, which they are, South Carolina courts routinely allow non-contracting parties to enforce arbitration agreements in circumstances like this. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (noting that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint … because this would nullify the rule requiring arbitration"); *citing South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993) (allowing non-signatory to enforce arbitration agreement). Thus, by the terms of the Release and Arbitration Agreement and by law, each of the Defendants is fully entitled to enforce the arbitration agreement and other provisions of the Release and Arbitration Agreement.

II. The substantive law of New York applies to this case.

The Release and Arbitration Agreement provides that New York's substantive law applies to this dispute. The Release and Arbitration Agreement specifies that, "[w]ithout regard to the conflicts of law provisions, **New York law shall govern the entire relationship between the parties**, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program." (Exh. 1 ¶ 20) (emphasis added). Given the clear and unambiguous choice of law provisions in the Release and Arbitration Agreement, the internal substantive law of New York should be applied to determine whether the Defendants' Motion to Dismiss should be granted in favor of mediation/arbitration.

"Choice of law clauses are generally honored in South Carolina." *Team IA, Inc. v. Lucas*, 395 S.C. 237, 248, 717 S.E.2d 103, 108 (Ct. App. 2011). Where "the parties to a contract specify the law under which the contract shall be governed, the court will honor this choice of law." *Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 448-449, 814 S.E.2d 643, 652 (Ct. App. 2018); *see also Albermarle Corp. v. Astrazeneca UK Ltd*, 628 F.3d 643, 652 (4th Cir. 2010) ("for an action filed in South Carolina, South Carolina law would be consulted for its choice of law rules, and under those rules, South Carolina law would give effect to the parties' choice of law as specified in the contract"). The only exception to this general rule is where application of foreign law would violate South Carolina public policy. *Skywaves*, S.C. at 449, 814 S.E.2d at 652. Generally, however, "South Carolina's public policy regarding contracts focuses on holding parties to their contract provisions and the effect of those provisions." *Id.* at 450, 814 S.E.2d at 653.

The choice of law provision in the Release and Arbitration Agreement is based on substantive corporate connections to the State of New York. Affidavits filed herewith establish that the Corporate Defendants have substantial connections with the State of New York. Bravo and NBCUniversal regularly do business in and have offices, including their principal places of business, in New York. Comcast has no substantive connection with this lawsuit other than indirectly owning NBCUniversal and Bravo, both of which are headquartered in New York. (Davenport Second Affid., Exh. 5 ¶¶ 2-4) (Exh. 4 ¶¶ 4, 5). Haymaker is organized and incorporated in the State of New York, with its principle office in New York City. (Rothman Second Affid., Exh. 6 ¶ 2). On the other hand, Abruzzo is a Florida resident. (Complaint ¶ 1).

Given South Carolina's policy that parties should be held to the terms of their contracts, *e.g.*, *Skywaves*, S.C. at 450, 814 S.E.2d at 653, and its policy favoring enforcement of valid

arbitration clauses, *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013) (noting "a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration"),[5] there is no public policy violation here that would invalidate the parties' agreed-upon choice of law provisions. In fact, with respect to the enforceability of arbitration provisions and holding parties to the terms of their contracts, New York and South Carolina law is fairly consistent.

III. The parties entered into a valid, binding and broad agreement to arbitrate.

Under both New York and South Carolina law, it is for a court to determine, in the first instance, whether a binding arbitration agreement exists between the parties. "Generally, 'whether there is a clear, unequivocal and extant agreement to arbitrate the claims[] is for the court and not the arbitrator to determine.'" *Matter of Fiveco, Inc. v. Haber*, 11 N.Y.3d 140, 144, 893 N.E.2d 807, 809 (N.Y. 2008). "In determining whether an agreement to arbitrate exists, 'the court should apply "ordinary state-law principles that govern the formation of contracts."'" *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999).[6]

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[5] Given South Carolina's strong policy in favor of enforcing parties' agreements to arbitrate, a denial of a motion to arbitrate a dispute is immediately appealable. *Cape Romain*, 405 S.C. at 121 n.4, 747 S.E.2d at 464 n.4.

[6] In the context of arbitration agreements, the relevant inquiry is whether the arbitration agreement, separate and apart from the Release and Arbitration Agreement of which it is a part, is itself valid and supported by adequate consideration. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) ("Under the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole"). As to consideration, the law is clear that, "[a] mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement." *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997); *see also American Gen. Life & Accid. Ins. Co. v. Wood*, 429 F.3d 83, 91 n.5 (4th Cir. 2005) (the employer's "promise to be bound to arbitration is *a fortiori* adequate consideration because '"no consideration [is required] above and beyond the agreement to be bound by the arbitration process" for any claims brought by the employee'"). Here, in addition to other forms of consideration exchanged, as set forth in additional detail below, both parties agreed to resolve any disputes first through mediation and, if that failed, through binding arbitration in New York.

As an initial matter, Plaintiff's claims clearly involve interstate commerce as contemplated by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), in that his Complaint states as a factual matter that *Southern Charm* "has been airing on national and worldwide television, as well as streaming online, since March 2014." (Complaint ¶ 31). As recognized in *Zabinski v. Bright Acres Assocs.*, the United States Supreme Court interprets the phrase "involving commerce," as contained in the FAA as "the functional equivalent of 'affecting commerce,'" which typically indicates Congress' intent to exercise its commerce power in full." 346 S.C. 580, 591, 553 S.E.2d 110, 116 (2001).

Under South Carolina law, where interstate commerce is involved, "the United States Supreme Court [has] found that courts may invalidate arbitration provisions on general contract defenses, such as fraud, duress, and unconscionability, but courts may not invalidate arbitration agreements under state laws applicable only to arbitration provisions." *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 116; *see also Wilson v. Willis*, 426 S.C. 326, 336-337, 827 S.E.2d 167, 173 (2019) ("[a] state law that places arbitration clauses on an unequal footing with contracts generally . . . is preempted if the FAA applies"). Where a contract involves interstate commerce, "state law regarding arbitration is supplanted by federal substantive law." *Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422, 425, 434 S.E.2d 281, 283 (1993). In other words, the U.S. Congress has "precluded states from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed 'upon the same footing as other contracts.'" *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 117.

Furthermore, the "federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate

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(Exh. 1 ¶ 19).

arbitration agreements." *Zabinski*, 346 S.C. at 590, 553 S.E.2d at 116. In short, where interstate commerce is involved, as is the case here, the "FAA provisions trump conflicting requirements of South Carolina law," such as the notice of arbitration requirement set forth in S.C. Code Ann. § 15-48-10(a). *Zabinski*, 346 S.C. at 595, 553 S.E.2d at 118.

New York law, the substantive law chosen in the Release and Arbitration Agreement, provides that, "in the absence of an established ground for setting aside a contractual provision, such as fraud, duress, coercion or unconscionability, a court must enforce the parties' arbitration agreement according to its terms." *Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 85 N.Y.2d 173, 182, 647 N.E.2d 1298, 1302 (N.Y. 1995).[7]

To the extent Abruzzo's Fraud, Constructive Fraud, Negligent Misrepresentation and Fraudulent Inducement causes of action are intended to undermine the enforceability of the arbitration agreement, they fail as a matter of law for several reasons. First, in order to set aside the arbitration agreement, Abruzzo must show that he was fraudulently induced and/or that the Corporate Defendants misrepresented the terms and applicability of the arbitration agreement separate and apart from the Release and Arbitration Agreement in general. *See, e.g.*, *Matter of Monarch Consulting, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 26 N.Y.3d 659, 675, 47 N.E.3d 463, 474 (N.Y. 2016) ("[C]ourts treat an arbitration clause as severable from the contract in which it appears and enforce it according to its terms unless the party resisting arbitration specifically challenges the enforceability of the arbitration clause itself"); *see also, e.g.*, *Munoz*, 343 S.C. at 540, 542 S.E.2d 364 (the validity of an arbitration clause is evaluated separately from the validity of the contract as a whole). Plaintiff has not even alleged any fraud

[7] Similarly, in South Carolina, a contract is enforceable unless grounds exist to revoke it, such as fraud, duress, and unconscionability. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007).

or misrepresentation relating to the arbitration agreement separate and apart from the Release and Arbitration Agreement.

Second, under both New York and South Carolina law, in order to prove fraudulent inducement and/or negligent misrepresentation, Abruzzo must establish that he justifiably relied on misrepresentations and/or that the alleged misrepresentation related to a present fact or was made with a present intent to not perform. *See Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 31 N.Y.3d 569, 578-579, 106 N.E.3d 1176, 1182 (N.Y. 2018) (the "required elements of a common-law fraud claim are 'a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury); *Turner v. Milliman*, 392 S.C. 116, 122-123, 708 S.E.2d 766, 769 (2011) (setting forth the elements required to prove a claim for negligent misrepresentation and for fraud including, in both instances, justifiable reliance). Even assuming solely for the sake of argument that the statements alleged in Paragraphs 59-52 of his Complaint were conveyed to Abruzzo,[8] he cannot prove justifiable reliance for numerous reasons. Paragraph 22 of the Release and Arbitration Agreement states unequivocally that "I am **not relying** on any promise or statement, express or implied, that is not contained in this Agreement." (Exh. 1 ¶ 22) (emphasis added). Such a specific disclaimer "destroys the allegations in [a] plaintiff's complaint that the agreement was executed in reliance upon these contrary oral representations." *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 320, 157 N.E.2d 597, 599 (N.Y. 1959*); see also Rissman v. Rissman*, 213 F.3d 381, 384 (7th Cir. 2000) (rejecting fraud argument in the face of a

[8] Ms. Miller stated that she did not recall providing any assurances to Abruzzo regarding how he would or would not be portrayed on *Southern Charm* and was unaware of any other Producer giving him such assurances. Neither she nor the other Producers provide such assurances to volunteer participants. (Exh. 2 ¶ 8).

non-reliance clause, explaining that such provisions "ensure[] that both the transaction and any subsequent litigation proceed on the basis of the parties' writings, which are less subject to the vagaries of memory and the risks of fabrication"). Even assuming the Release and Arbitration Agreement was turned to the third page, Paragraph 22 appears on the third page, immediately above the bolded statement that Abruzzo had ample time to review the agreement and seek legal counsel, should he have chosen to do so, which in turn is right above the signature block where Abruzzo signed the agreement.

Any purported reliance on alleged promises about how he would be portrayed on the Program, is suspect in light of other provisions of the Release and Arbitration Agreement. These include but are not limited to: Paragraph 8, in which Abruzzo agreed that he understood "that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort"; Paragraph 9, in which Plaintiff acknowledged that, "[f]or dramatic or creative purposes, Producer and Network may make misrepresentations to me related to any and all topics, prior to and during the course of my participation. I consent to and assume all risks of such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim"; and Paragraph 2, in which Abruzzo "waive[d] any right to object to any use (including any editing/dubbing/fictionalization) of the Materials by Producer or Network for any reason." (Exh. 1 ¶¶ 2, 8, 9).

In addition, Abruzzo is a sophisticated, well-educated politician and lobbyist who works for "a major law firm in Florida." (Compliant ¶ 12). He knew Ms. Dennis was a long-time cast

member on a reality television program that features scandal and that his dinner date with her was going to be filmed. "Where there is no confidential or fiduciary relationship and an arm's length transaction between mature, educated people is involved, there is no right to rely. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Florentine Corp. v. Peda I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985).

Lastly, with respect to the alleged misrepresentation, it must be a misstatement of material fact or a promise made with a present but undisclosed intent not to perform, rather than a mere statement of future intent. *Luckow v. RBG Design-Build, Inc.*, 156 A.D. 3d 1289, 1294, 128 N.Y.S.3d 549, 554-555 (N.Y. App. Div. 2017) (it is "nonactionable [to] promise to perform a future act" where "there is no indication that [a defendant] did not intend to carry out that duty when he made the statement"). Here, the only promises identified by Abruzzo go to future actions. (Complaint ¶ 49 (none of the Defendants "state[d], suggest[ed] or impl[ied] that Plaintiff Abruzzo would be portrayed in a negative and/or false light"), ¶ 50 (alleging the Corporate Defendants "falsely represented to Plaintiff Abruzzo that they were there to simply film and observe, and that Plaintiff Abruzzo would be portrayed accurately and fairly"), ¶ 51 (alleging the Corporate Defendants "represented to Plaintiff Abruzzo that his appearance on Southern Charm would be a great thing for Kathryn Dennis, his girlfriend at the time, and her role on Southern Charm"), and ¶ 52 (the Corporate Defendants "represented to Plaintiff how it would be good for Defendant Conover because his storyline was in jeopardy, and falsely represented that Plaintiff Abruzzo was to have 'no worries in the world.' Kathryn Dennis told Plaintiff Abruzzo that the Corporate Defendants were going to make him look incredible, and would portray him as Dennis's comforting knight in shining armor"). All of these alleged

statements relate to future actions, relate to a party other than Abruzzo (Defendant Conover) or were made by non-party (Kathryn Dennis). Thus, Plaintiff cannot establish any basis sounding in fraud or misrepresentation to set aside the parties' arbitration agreement.

Nor can Plaintiff establish duress, unfair surprise and/or unconscionability with respect to the arbitration agreement or, for that matter with respect to the Release and Arbitration Agreement. Plaintiff was not required to sign the Release and Arbitration Agreement or appear in the Program in order to pursue or engage in a "romantic relationship" with Dennis. Instead, Plaintiff merely alleges that he felt pressure to be a good boyfriend to Dennis because Dennis "began imploring Plaintiff Abruzzo to be on the show" because the Corporate Defendants "would pay big money for rights to televise her wedding, honeymoon, an exclusive, and other things of that nature." (Complaint ¶ 41). He further alleges that he was "forced to sign as he was sitting down to dinner with Dennis for filming," and that he "was further under pressure from the Corporate Defendant producers to begin filming" because it "would be 'a great thing' for his then girlfriend Dennis." (Complaint ¶¶ 54-55). Even if true, Plaintiff's allegations fall far short of establishing duress or coercion sufficient to render the Release and Arbitration Agreement unenforceable, let alone the agreement to arbitrate. In any event, Plaintiff's claims of duress are belied by his own allegations. Indeed, he concedes that he had a say in whether and how he would participate in any filming for the Program. For example, Plaintiff alleges that although the Corporate Defendants wanted him to go on a "guy's trip," or to go on a dinner date with Dennis at a "public and crowded restaurant," he "declined any such outing or event, and ultimately agreed to a private dinner at Dennis's residence in downtown Charleston." (Complaint ¶ 42). In addition, none of the Defendants required Plaintiff to participate on the Program in order to date Dennis, nor could they. (Exh. 2 ¶¶ 4-6, 11). Had Plaintiff chosen not to

appear on the Program or declined to sign the Release and Arbitration Agreement, the Corporate Defendants simply would not have filmed the dinner. (Exh. 2 ¶ 11).

Plaintiff's claim that he was handed the Release and Arbitration Agreement "turned to the third page" also falls far short of establishing unconscionability. (Complaint ¶¶ 53, 54). Even if true, Plaintiff does not allege that anyone told him that he could not review each page of the agreement, that he was otherwise prevented from reviewing each page of the agreement, that he requested additional time to review it, or that he asked to consult with a lawyer, such as any of the lawyers at the major law firm at which he was employed at the time. He simply alleges, without any foundation, that he was denied adequate time or opportunity to review the document and/or consult with an attorney. However, that allegation is directly contradicted by the Release and Arbitration Agreement. On page three of that agreement—the page that Plaintiff Abruzzo alleges the agreement was turned to—right above the signature line, in boldface type, underlined and capital letters is the statement: "**I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**"

In addition, even assuming, without conceding, that he was handed the Release and Arbitration Agreement turned to the third page, the arbitration agreement is also **on the third page**, in boldface type, all capital letters and with the heading "**MEDIATION & ARBITRATION**" underlined. It was not hidden or obscured in any way. The provision is

clear, unambiguous and references the arbitration procedures issued by JAMS, which are publicly available. The arbitration provision is not tucked away in the body of other provisions and is in typeface that makes it prominent. In addition, the title of Release and Arbitration Agreement, "**APPEARANCE RELEASE, VOLUNTARY PARTICIPATION, AND ARBITRATION AGREEMENT**, clearly and conspicuously put Plaintiff on notice that it contains an arbitration agreement. Thus, Plaintiff cannot argue credibly that he was unfairly surprised by or unaware of the arbitration agreement in the Release and Arbitration Agreement.

In addition, under both New York and South Carolina law, "[a] party is under an obligation to read a document before he or she signs it, and a party cannot generally avoid the effect of a [document] on the ground that he or she did not read it or know its contents." *Anderson v. Dinkes & Schwitzer, P.C.*, 150 A.D.3d 805, 806, 56 N.Y.S.3d 127, 128 (N.Y. App. Div. 2017) (citations omitted); *see also Munoz*, 343 S.C. at 541, 542 S.E.2d at 365 ("a person who can read is bound to read an agreement before signing it"); *see also Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 399, 498 S.E.2d 898, 904 (Ct. App. 1998) (the failure of a contracting party "to read the entire contract was not a basis for setting aside the arbitration clause, particularly where "nothing in the contract prevented the [party] from consulting a lawyer"). That is especially true here, when the Plaintiff—as is alleged in the five pages of background on his education, successes and credentials in the Complaint—is a well-educated, successful, former Florida Congressman and current lobbyist who has worked a major Florida law firm for years.

Finally, it is worth noting that Ms. Miller attests that she handed Plaintiff Abruzzo the Release and Arbitration Agreement turned to the first page, noting that that is what she always does. (Exh. 2 ¶ 8). In fact, Plaintiff Abruzzo asked specific questions regarding a provision in

Paragraph 5 of the agreement, which is on the first page of the Release and Arbitration Agreement. (Exh. 2 ¶ 9).

As to unconscionability, under New York law, "[t]he doctrine of unconscionability contains both substantive and procedural aspects, and whether a contract or clause is unconscionable is to be decided by the court against the background of the contract's commercial setting, purpose and effect." *Sablosky v. Edward S. Gordon Co.*, 73 N.Y.2d 133, 138, 535 N.E.2d 643, 647 (N.Y. 1989). With regard to substantive unconscionability, "courts consider whether one or more key terms are unreasonably favorable to one party," although New York does not require mutuality of remedy in arbitration clauses or in contracts in general. *Id.*, 73 N.Y.2d 137-138, 535 N.E.2d at 646-647. A contract is substantively unconscionable where it "is so grossly unreasonable or unconscionable in the light of the mores and business practices of the time and place as to be unenforceable according to its literal terms." Procedural unconscionability results from the contract formation process, and looks at "whether the party seeking to enforce the contract has used high pressure tactics or deceptive language in the contract and whether there is inequality of bargaining power between the parties." *Id.*, 73 N.Y.2d 139, 535 N.E.2d at 647; *see also Arrowhead Golf Club, LLC v. Bryan Cave, LLP*, 59 A.D.3d 347, 348, 873 N.Y.S.2d 620, 621 (N.Y. App. Div. 2009) (finding arbitration provision not unconscionable where it was "not the product of disparate bargaining power or deceptive language in the contract, and there is no evidence that plaintiff lacked meaningful choice or was otherwise pressured into executing the engagement letters containing the provision").

Matter of Conifer Realty LLC (Envirotech Servs., Inc.), 106 A.D.3d 1251, 964 N.Y.S.2d 735 (N.Y. App. Div. 2013), is instructive on this issue. There, the New York Court of Appeals held that an arbitration agreement in a contract to remediate flooded properties was not

unconscionable. The Court explained that substantive unconscionability may be found where "contract terms … are unreasonably favorable" to one party, such as "by way of example, 'inflated prices, unfair termination clauses, unfair limitations on consequential damages and improper disclaimers of warranty.'" 106 A.D.3d at 1254, 964 N.Y.S.2d at 739. The Court concluded that there was "nothing inherent in the [agreements] … which suggests that the terms [are] *unreasonably* favorable to [EnviroTech]." *Id.* With respect to procedural unconscionability, the Court concluded that the arbitration agreement, which was on the back of a one-page agreement and not highlighted in any way was nonetheless not unconscionable in light of the fact that the contracts called "the reader's attention to those additional terms and conditions and advise[d] that such provisions are part and parcel thereof." 106 A.D.3d at 1255, 964 N.Y.S.2d at 739. The signing party had between two and four days to review the agreements and seek legal counsel if desired. The Court explained that, "[t]he unconscionability doctrine is not designed 'to redress … inequality between the parties but simply to ensure that the more powerful party cannot surprise the other party with some overly oppressive term.'" 106 A.D.3d at 1255, 964 N.Y.S.2d at 740.

South Carolina law follows the same principles. For example, in *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007), the South Carolina Supreme Court explained, "unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." 373 S.C. at 25, 644 S.E.2d at 668. Finding no South Carolina cases on point, the *Simpson* Court looked to Ohio case law which had considered "numerous cases in the very recent past specifically addressing issues of unconscionability of arbitration clauses embedded in adhesion

contracts between automobile retailers and consumers." 373 S.C. at 26, 644 S.E.2d at 669. The Court first noted that adhesion contracts "are not per se unconscionable." However, in *Simpson*, the Court held that, because the arbitration agreement was embedded in paragraph 10 out of 16 paragraphs on the back of the purchase contract for a personal vehicle, and was not highlighted or conspicuous in any other way, it was unconscionable. 373 S.C. at 27-28, 644 S.E.2d at 670. Here, in contrast, the arbitration provision is not hidden or obscured but is prominently displayed in boldface and all capital letters, under the heading, "**MEDIATION & ARBITRATION**," on the very page of the Release and Arbitration Agreement that Plaintiff acknowledges he could see and read. (Complaint ¶ 53).

Higgins v. Superior Court, 140 Cal. App.4th 1238, 45 Cal. Rptr.3d 293 (Cal. Ct. App. 2006), which considered a reality television program contract containing an arbitration agreement, is also instructive. *Higgins* involved five siblings, ranging in age from 14 to 21, and the reality show Extreme Makeover: Home Edition, which refurbishes homes for "needy and deserving" people. After the Higgins siblings lost their parents, a church family, the Leomitis, who had three children of their own, took the Higgins siblings in. The show's producers apparently contacted Charles Higgins, the eldest of the siblings, through the church and, after several months of discussions, sent the Leomitis and the Higgins siblings a 24-page, single spaced agreement that contained an arbitration clause. Nothing in the agreement called attention to the arbitration clause, which was not highlighted in any way. 140 Cal. App.4th at 1242-1243, 45 Cal. Rptr.3d at 296-297. In addition, the agreement contained a release that was in smaller print and had an arbitration provision embedded in the middle. After meeting with the producers, the Leomitis presented the agreements to the five Higgins siblings, told them to "flip through the pages and sign and initial," giving them about five minutes to review the documents.

After the Leomitis' home had been expanded and reconstructed, the Leomitis "informed petitioners that the home was theirs (the Leomitis'), and the Leomitis ultimately forced petitioners to leave." 140 Cal. App.4th at 1245, 45 Cal. Rptr.3d at 298. Although the Higgins siblings contacted the show's producers, they were told the show could not help them and, in fact, the show was rebroadcast.

When the Higgins siblings filed suit in California state court, the show's producers petitioned to compel arbitration. The Higgins siblings opposed arbitration on the grounds that the agreement was procedurally and substantively unconscionable. Explaining that arbitration clauses can be rescinded on the same grounds as other contracts in general, the Court analyzed the contract and release signed by the Higgins siblings. The Court first looked to see whether the agreement and release were contracts of adhesion, which it acknowledged "are routine in modern day commerce," and "are worthy of neither praise nor condemnation, only analysis." 140 Cal. App.4th at 1248, 45 Cal. Rptr.3d at 300. Furthermore, "adhesion is not a prerequisite for unconscionability." 140 Cal. App.4th at 1249, 45 Cal. Rptr.3d at 301.

The Court then explained that "[u]nconscionability has both a procedural and a substantive element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results. [citation omitted] The prevailing view is that **both** must be present in order for a court to refuse to enforce a contract or clause under the doctrine of unconscionability." *Higgins*, 140 Cal. App.4th at 1249, 45 Cal. Rptr.3d at 301 (emphasis added).[9] As to surprise, the Court noted that "the arbitration provision appears in one paragraph near the end of a lengthy, single-space document … The television defendants knew

[9] The Court pointed out that, "[u]nder the FAA, a court may not consider a claim that an arbitration provision is unenforceable if it is a subterfuge for a challenge that the entire agreement (in which the arbitration clause is only a part) is unconscionable. That contention must be presented to the arbitrator." *Id.*

petitioners were young and unsophisticated … [but] made no effort to highlight the presence of the arbitration provision in the Agreement. It was one of 12 numbered paragraphs in a section entitled 'MISCELLANEOUS.'" The text was neither bolded nor highlighted and, although boxes next to the other paragraphs required the siblings' initials, the arbitration clause did not. Based on these facts, the Court found the arbitration clause was procedurally unconscionable. 140 Cal. App.4th at 1253, 45 Cal. Rptr.3d at 304.

As to substantive unconscionability, the Court concluded the arbitration clause required only the siblings to submit their claims to arbitration because it repeatedly used the words "I agree" and only used the words "the parties" in connection with the parties' agreement that the producer had the right to seek injunctive or other equitable relief in court. *Higgins*, 140 Cal. App.4th at 1253, 45 Cal. Rptr.3d at 304. The Court explained, however, that "the fact that the injunction provision is one-sided does not necessarily mean that the clause is substantively unconscionable," but that any "'business realities' creating the special need, must be explained in the terms of the contract or factually established." 140 Cal. App.4th at 1254 n. 12, 45 Cal. Rptr.3d at 305 n.12. Other indicia of substantive unconscionability included that only the television producers could seek appellate review of the arbitrator's decision with regard to the statutory claims, and the requirement that costs be shared equally between the parties, even though the lower court shifted all the arbitration costs to the television defendants. 140 Cal. App.4th at 1254, 45 Cal. Rptr.3d at 305.

Unlike the *Higgins* siblings, here, as set forth in detail above, Plaintiff has not adequately alleged—let alone established—procedural unconscionability. Although Plaintiff alleges he was "forced to sign as he was sitting down to dinner with Dennis for filming," (Complaint ¶ 54), because he felt pressure to be a good boyfriend, he does not allege that he was forced to pursue a

romantic relationship with cast member of a reality show during active filming or to agree to have the dinner filmed or forced to sign the Release and Arbitration Agreement in order to engage in a romantic relationship with Dennis. Plaintiff is a highly educated professional politician and lobbyist, who worked at a major law firm at the time he voluntarily signed the agreement. (Complaint ¶¶ 12-29). The arbitration agreement is set out as a separate provision and is highlighted with boldface type and all capital letters, under the heading, "**MEDIATION & ARBITRATION**," (Exh. 1 ¶ 19), on the very page of the Release and Arbitration Agreement Plaintiff acknowledges he saw before signing. (Complaint ¶¶ 53, 54). Thus, even as alleged, Plaintiff cannot establish procedural unconscionability under either New York or South Carolina law.

Nor has Plaintiff alleged—let alone established—substantive unconscionability. The arbitration agreement applies to both parties equally. (Exh. 1 ¶ 19 ("where any dispute in connection with this agreement arises, the parties agree to first try to resolve such dispute through confidential mediation," and "if mediation is unsuccessful, the all disputes … shall be resolved by final and binding arbitration"). Thus, both sides, Plaintiff and the Defendants, agreed to resolve any dispute arising out of or in connection with the Release and Arbitration Agreement, first through mediation and, if that is unsuccessful, via binding, confidential arbitration. Furthermore, the arbitration agreement provides that it is subject to the appellate provisions of the JAMS rules, which are publicly available and apply equally to all parties. (Exh. 1 ¶ 19) (Exh. 8).

While only the Corporate Defendants have the right to seek injunctive relief, the underlying business rationale for that right is unique to them, is justified by the unique realities of the media industry, and is spelled out in detail in the arbitration agreement, which is a far

more robust explanation than the explanation provided in the *Higgins* case. In *Higgins*, the arbitration provision—which was only one of several aspects of the arbitration provision not at issue here on which the court's substantive unconscionability decision turned—merely provided that "[t]he parties hereto agree that, notwithstanding the provisions of this paragraph, Producer shall have a right to injunctive or other equitable relief as provided for in California Code of Civil Procedure [section] 1281.8 or other relevant laws." 140 Cal. App.4th at 1243, 45 Cal. Rptr.3d at 297. Here, in contrast, the 2014 arbitration agreement provides, "**I AGREE THAT GIVEN THE UNIQUE NATURE OF THE ENTERTAINMENT INDUSTRY, AND THE IRREPARABLE DAMAGE TO PRODUCER, NETWORK AND THEIR LICENSEES THAT WOULD RESULT FROM DELAYING OR PREVENTING THE EXHIBITION OF ANY PROGRAM PRODUCED HEREUNDER, I MAY NOT SEEK OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT.**" (Exh. 1 ¶ 19) (underline emphasis added). Where, like here, there is a legitimate need for a one-sided injunctive relief provision, courts have upheld similar arbitration provisions. *See, e.g., Kaufman v. Sony Pictures TV, Inc.*, Civ. No. 16-12027-LTS, 2017 U.S. Dist. LEXIS 112938, at *19 (D. Mass. July 20, 2017) (enforcing, in the reality television context, arbitration clause with a one-sided injunctive relief provision because it "spell[ed] out the 'legitimate commercial need' for the lopsided provision").[10] Thus, for the reasons set forth above, the arbitration agreement in the

[10] The arbitration agreement in *Kaufman* provided that only the Producer of the reality television show had the right to seek injunctive or other equitable relief, and provided, in pertinent part, that the participant agreed "that the business realities of reality competition television production . . . create special circumstances for which Producer must be able to maintain its ability to seek injunctive relief and/or other equitable and/or provisional remedies. For example, a participant's premature or threatened disclosure in violation of the confidentiality or publicity provisions of this Agreement could result in a reduction of audience interest or their diminution in the value of the Series … and/or [cause] Network irreparable injury and damage that could not be [recovered in an action at] law." 2017 U.S. Dist. LEXIS 112938 at *18-19. This explanation is

Release and Arbitration Agreement is not substantively or procedurally unconscionable under either New York or South Carolina law; rather, it is valid and enforceable.[11]

IV. Whether Plaintiff's claims are subject to arbitration is for the arbitrator to decide.

Once this Court has determined that the parties entered into an enforceable agreement to arbitrate their disputes, it need not resolve any other issues. Under both New York and South Carolina substantive law, the court decides the scope of the arbitration agreement unless, as is the case here, the parties have provided that the arbitrator decides whether the claims fall within the arbitration agreement. *See Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 208 n.1 (2d Cir. 2005) (the question of who determines arbitrability generally "is a question for the court unless there is 'a "clear and unmistakable" agreement to arbitrate arbitrability'"); *see also Zabinski v*, 346 S.C. at 597, 553 S.E.2d at 118 ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise").

Pursuant to clear language in the Release and Arbitration Agreement, it is for the arbitrator, not the Court, to decide whether Plaintiff's claims fall within the agreement to arbitrate this dispute. The arbitration provision provides, that "**IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION …**" (Exh. 1 ¶ 19) (underline emphasis added).

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substantively similar to the legitimate business rationale set forth in the arbitration provision at issue here.

[11] Although it does not constitute binding precedent, a recent decision by the South Carolina federal district court in *Ledwell v. Ravenel, et al.*, is also instructive. That case involved a challenge to substantially similar release and arbitration agreements as the one at issue here brought by a voluntary participant on *Southern Charm* against the Corporate Defendants. There, the court rejected Plaintiff Ledwell's—a nanny with less experience and credentials than Abruzzo—unconscionability and duress arguments, as well as her argument that the release and arbitration agreements were void for lack of consideration. (*See* Exh. 7).

Furthermore, where "parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator." *Contec Corp.*, 398 F.3d at 208. The streamlined JAMS rules, called for in the arbitration agreement, provide that the arbitrator is to decide the arbitrability of disputes. "Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or **scope of the Agreement** under which Arbitration is sought, and who are proper Parties to the Arbitration, **shall be submitted to and ruled on by the Arbitrator**. The Arbitrator has the **authority to determine jurisdiction and arbitrability issues as a preliminary matter**." *JAMS Streamlined Arbitration Rules & Procedures*, effective July 1, 2014, Rule 8(b) (emphasis added) (Exh. 8). Thus, whether each of Plaintiff's causes of action falls within the terms of the arbitration agreement is for the arbitrator, not the Court, to decide in the first instance.

In any event, all of Plaintiff's claims clearly fall within the scope of the parties' broad arbitration agreement because they all arise in connection with Abruzzo's participation with the Program and/or the Release and Arbitration Agreement. (Exh. 1 ¶ 19). All of Plaintiff's causes of action are based on his allegations that the Defendants made statements or encouraged the Individual Defendants to make statements on the Program that were false, depicted Plaintiff in a false light and/or showed misleading photographs of him, all in order to promote a "storyline" for dramatic effect and/or profit contrary to assurances purportedly made by certain Defendants in connection with Plaintiff's execution of the Release and Arbitration Agreement. Thus, all of Plaintiff's claims must be dismissed in favor of mediation/arbitration in New York.

V. Even if the arbitration agreement is not enforceable, the Amended Complaint must be dismissed based on the exclusive forum selection clause.

Even if this Court were to find that the arbitration agreement is not enforceable, Plaintiff's Complaint still must be dismissed. The Release and Arbitration Agreement contains a forum selection clause that requires exclusive venue in the appropriate New York state or federal court only. Thus, Plaintiff has expressly waived his right to file this lawsuit in South Carolina state court.

The Release and Arbitration Agreement provides, in pertinent part, that "[t]he parties **submit to the in personam jurisdiction of the Supreme Court of the State of New York** located in New York County and the United States District Court for the Southern District of New York, **and waive any objections thereto**." (Exh. 1 ¶ 20) (emphasis added). As is the case with the arbitration agreement, this forum selection provision is located on the page of the Release and Arbitration Agreement that Plaintiff concedes he saw. (Complaint ¶¶ 53, 54). Because Plaintiff agreed to *exclusive* jurisdiction of all court proceedings in the appropriate state and federal courts in New York, (Exh. 1 ¶ 20), this Court lacks in personam jurisdiction over his claims.

Based on the Release and Arbitration Agreement's clear choice of law provisions, New York law should be applied to consideration of the forum selection clause. In *Minorplanet Sys. USA Ltd. v. American Aire, Inc.*, because the contract designated that the agreement was to be "governed by and construed in accordance with the laws of the state of Texas," the South Carolina Supreme Court applied Texas law in its analysis of whether a forum selection clause requiring exclusive venue in Texas was enforceable. 368 S.C. 146, 150, 628 S.E.2d 43, 45 (2006); *see also Loyd & Ring's Wholesale Nursery, Inc. v. Long & Woodley Landscaping & Garden Ctr., Inc.*, 315 S.C. 88, 94, 431 S.E.2d 632, 636 (Ct. App. 1993) (looking to Florida law to determine whether a forum selection clause choosing Florida courts was enforceable).

Under New York law, "it is the well-settled 'policy of the courts of this State to enforce contractual provisions for choice of law and selection of a forum for litigation.'" *Sterling Nat'l Bank v. Eastern Shipping Worldwide, Inc.*, 35 A.D.3d 222, 222, 826 N.Y.S.3d 235, 237 (N.Y. App. Div. 2006). Forum selection clauses are "prima facie valid and enforceable unless shown by the resisting party to be unreasonable." *Brooke Group v. JCH Synd. 488*, 87 A.D.2d 530, 534, 663 N.Y.S.2d 635, 638 (N.Y. App. Div. 1996). "Although once disfavored by the courts, it is now recognized that parties to a contract may freely select a forum which will resolve any disputes," and such clauses are "enforced because they provide certainty and predictability in the resolution of disputes." *Id.* 87 A.D.2d at 534, 663 N.Y.S.2d at 638. Where parties agree to the jurisdiction of the courts of a specific state to resolve any controversy between them, and agree that that state's laws apply, "[t]here is no requirement for 'a more explicit expression of consent to the jurisdiction of the courts of a particular State.'" *Boss v. American Express Fin. Advisors, Inc.*, 15 A.D.3d 306, 307, 791 N.Y.S.3d 12, 14 (N.Y. App. Div. 2005). In fact, New York courts will honor the parties' choice of law and forum even where that means the plaintiff's claims are barred by the applicable statute of limitations. *Boss*, 15 A.D.3d at 308, 791 N.Y.S.3d at 14-15.

Under South Carolina law, it is well-established that a party can waive personal jurisdiction of South Carolina courts: "It has long been the law of the State of South Carolina that lack of subject matter jurisdiction cannot be waived even by consent but lack of jurisdiction of the person may be waived," where a party consents in writing thereto. *Firestone Fin. Corp. v. Owens*, 309 S.C. 73, 75-76, 419 S.E.2d 830, 832 (Ct. App. 1992); *see also Republic Leasing Co. v. Haywood*, 329 S.C. 562, 566, 495 S.E.2d 804, 806 (Ct. App. 1998) ("[a] party may always waive lack of personal jurisdiction …. It is not the function of courts to rewrite contracts between parties. Our function is limited to the contract's terms, and absent ambiguity, their plain

meaning controls our inquiry"). Here, Plaintiff, a Florida resident, consented in writing to the jurisdiction of New York state or federal courts.

To the extent Plaintiff argues that S.C. Code Ann. § 15-7-120,[12] absolves him of bringing his claims in New York, that provision does not apply in this case because the Release and Arbitration Agreement contains a choice of law provision specifying that "the entire relationship between the parties" is governed by New York substantive law. (Exh. 1 ¶ 20). For example, as noted above, in *Minorplanet*, the South Carolina Supreme Court held that the forum selection clause requiring exclusive venue in Texas was enforceable under Texas law, in a contract designating that the agreement was to be "governed by and construed in accordance with the laws of the state of Texas." 368 S.C. at 150, 628 S.E.2d at 45. This ruling is consistent with the well accepted principle under South Carolina law that forum selection clauses are enforceable in general where they are not unreasonable or unjust. *Haywood*, 329 S.C. at 566, 495 S.E.2d at 806 (noting also that forum selection clauses "made at arms' length by sophisticated business entities" enjoy *prima facie* validity and enforceability).

Even if Section 15-7-120 applied in this case (which it does not since the Release and Arbitration Agreement requires application of New York substantive law) the enforceability of that statutory provision is in serious doubt. In *The Bremen v. Zapata Off-Shore Co.*, the United States Supreme Court rejected state and federal courts' historical reluctance to enforce forum selection clauses. 407 U.S. 1 (1972). The Supreme Court explained that reluctance to enforce valid forum selection clauses is "hardly more than a vestigial legal fiction," reflecting

[12] That section provides, in pertinent part, that a "[n]otwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action." S.C. Code Ann. § 15-7-120(A).

"something of a provincial attitude regarding the fairness of other tribunals." *Id.* at 12. Thus, they have "little place" in the current era. *Id.*

While the parties in *The Bremen* both were sophisticated business entities, the United States Supreme Court expanded its holding in *The Bremen* to individual purchasers of cruise line tickets in *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991). The Supreme Court explained that, "a clause establishing *ex ante* the forum for dispute resolution has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions." 499 U.S. at 593-594. The Court also noted the business purpose behind the cruise line's "special interest in limiting the fora in which it potentially could be subject to suit." *Id.* As to whether the forum selection clauses were fundamentally unfair, the Court noted that there was no indication the forum had been chosen as a means to dissuade passengers from bringing claims but, rather had a legitimate basis, namely, the cruise line had its principle place of business in the forum. 499 U.S. at 595. Furthermore, there was no evidence the defendants obtained the agreement to the forum clause, which was not hidden, by fraud or overreaching, and the plaintiffs had "the option of rejecting the contract with impunity." *Id.*

The same is true here. The forum selection clause in the Release and Arbitration Agreement is conspicuously set out under the heading "Governing Law" on the page of the agreement that Plaintiff concedes he saw. Plaintiff has not adequately alleged—let alone established—that the Release and Arbitration Agreement was obtained by "fraud or overreaching." Moreover, he has not even alleged that the governing law and exclusive venue provisions themselves were a product of fraud. As set forth in detail above, none of the

Defendants coerced Plaintiff into signing the Release and Arbitration Agreement. (Exh. 2 ¶¶ 6, 8) Plaintiff voluntarily chose to pursue a romantic relationship with a cast member on a reality television show during active filming. He was not required to sign the Release and Arbitration Agreement or appear on the Program in order to pursue a romantic relationship with Dennis. (Exh. 2 ¶¶ 4, 5, 11). Had Plaintiff chosen not to participate in the Program, Defendants simply would not have filmed the dinner. (Exh. 2 ¶¶ 5, 11). There is no evidence—just an unsubstantiated allegation—that Plaintiff did not have ample time to review and, if he had chosen to do so, seek legal counsel in connection with the Release and Arbitration Agreement, (Exh. 2 ¶¶ 8, 9), including the forum selection clause. That unsubstantiated allegation is contradicted by the express terms of the agreement he voluntarily signed. The Corporate Defendants have a legitimate, business reason for choosing New York as the forum to resolve disputes with Program participants. As noted in the attached affidavits, Corporate Defendants have substantial connections with the State of New York, including because Haymaker, Bravo and NBCUniversal regularly do business in and have offices, including their principal places of business, in New York. (Exh. 5 ¶¶ 2-4) (Exh. 4 ¶¶ 4, 5) (Exh. 6 ¶ 2). Having disputes arising out of its television programs resolved in a central location where their businesses and witnesses are headquartered is reasonable and based on legitimate business considerations. On the other hand, Plaintiff—a Florida resident—has not alleged any substantive connection to South Carolina other than a short trip to visit Dennis at her home.

The Fourth Circuit likewise has questioned the continued viability of Section 15-7-120. In *Albemarle Corp. v. Astrazeneca UK Ltd*, 628 F.3d 643 (4th Cir. 2010), the Fourth Circuit considered a forum selection clause in a contract between a South Carolina corporation and a British corporation. The Fourth Circuit noted that it saw no evidence that S.C. Code Ann. § 15-

7-120(A) "manifests a strong public policy of South Carolina," noting that South Carolina courts "have enforced forum selection clauses in contracts, notwithstanding the existence of 15-7-120(A)." 628 F.3d at 652. In addition, the Fourth Circuit concluded that "it can hardly be a strong public policy to countermand the very policy that the [U.S.] Supreme Court adopted in *The Bremen*," which "would have little effect if states could effectively override the decision by expressing disagreement with the decision's rationale." *Id.*; *see also T.R. Helicopters, LLC v. Bell Helicopter Textron, Inc.*, No. 3:10-2250-JFA, 2010 U.S. Dist. LEXIS 21923 *12 (D.S.C. Nov. 17, 2010) (enforcing forum selection clause and concluding that "no South Carolina court has explicitly stated whether South Carolina has a strong public policy against forum selection clauses that would deprive a citizen of his choice"). Thus, even if the Court were to find the arbitration agreement unenforceable, the exclusive choice of forum provision, which is valid and enforceable, requires that the Complaint be dismissed as having been filed in an improper forum.

CONCLUSION

For all of the reasons stated herein, this Court should dismiss Plaintiff's Complaint in favor of mediation, and if necessary, arbitration in New York. Alternatively, even if the court were to find the parties' arbitration agreement unenforceable, it should dismiss Plaintiff's Complaint based on improper venue pursuant to the valid, binding exclusive forum selection clause in the Release and Arbitration Agreement.

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ATTORNEYS FOR DEFENDANTS

June 19, 2020

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STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-1000472**
	)	
JOSEPH ABRUZZO,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	
	)	
BRAVO MEDIA PRODUCTIONS, LLC, HAYMAKER MEDIA, INC., NBC UNIVERSAL MEDIA, LLC, COMCAST CORPORATION, CRAIG CONOVER, CHELSEA MEISSNER, AND MADISON LECROY,	)	
	)	
Defendants	)	
_____	)	

PLAINTIFF'S RESPONSE
TO DEFENDANTS' MOTION TO DISMISS

Defendants collectively filed a motion to dismiss Plaintiff's complaint on May 12, 2020. On June 19, 2020, Plaintiff filed an Amended Complaint. Accordingly, the Defendants' motion to dismiss the original Complaint is now moot. For the reasons set forth herein, the Defendants' motion must be denied.

Respectfully submitted,

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Mt. Pleasant, South Carolina
Dated: June 19, 2020

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STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-00472**
	)	
JOSEPH ABRUZZO,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	**AMENDED COMPLAINT**
	)	**(JURY TRIAL DEMANDED)**
BRAVO MEDIA PRODUCTIONS, LLC, HAYMAKER MEDIA, INC., NBC UNIVERSAL MEDIA, LLC, COMCAST CORPORATION, CRAIG CONOVER, CHELSEA MEISSNER, AND MADISON LECROY,	)	
	)	
Defendants	)	

Plaintiff Joseph Abruzzo ("Plaintiff" or "Abruzzo"), complaining of the Defendants, Haymaker Media, Inc., Bravo Media Productions, LLC, NBC Universal Media, LLC, Comcast Corporation (collectively referred to herein as "Corporate Defendants"), Craig Conover ("Conover"), Chelsea Meissner ("Meissner"), and Madison LeCroy ("LeCroy") (collectively referred to herein as "individual cast members") states, respectfully alleges and shows unto the Court as follows:

1. Plaintiff Joseph Abruzzo is a resident of the State of Florida.

2. Defendants Haymaker Media, Inc. and Bravo Media Productions, LLC are production companies incorporated in the State of New York responsible for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

3. Haymaker Media and Bravo Media Productions transact business in the State of South Carolina, contract to supply services in the State of South Carolina, and perform business in

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whole or in part in the State of South Carolina through their respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

4. Defendant NBC Universal Media, LLC is a limited liability company organized and existing under the laws of Delaware; it owns Defendant Bravo Media Productions and is responsible, in whole or in part, for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

5. Defendant NBC Universal Media, LLC transacts business in the State of South Carolina, contracts to supply services in the State of South Carolina, and performs business in whole or in part in the State of South Carolina through its respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

6. Defendant Comcast Corporation is a corporation organized and existing under the laws of Pennsylvania; it owns Defendant NBC Universal and/or Defendant Bravo Media Productions and is responsible, in whole or in part, for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

7. Defendant Comcast Corporation transacts business in the State of South Carolina, contract to supply services in the State of South Carolina, and perform business in whole or in part in the State of South Carolina through its respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

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8. Defendant Craig Conover is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant Conover was a cast member of the "reality" television show Southern Charm but was not an employee, agent, or representative of the Corporate Defendants.

9. Defendant Chelsea Meissner is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant Meissner was a cast member of the "reality" television show Southern Charm but was not an employee, agent, or representative of the Corporate Defendants.

10. Defendant Madison LeCroy is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant LeCroy was a cast member of the "reality" television show Southern Charm but was not an employee, agent, or representative of the Corporate Defendants.

11. The most substantial acts and/or omissions alleged herein occurred in Charleston County, South Carolina. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants and venue is proper in the County of Charleston.

PLAINTIFF'S BACKGROUND

12. Plaintiff is currently employed as a director of government relations for a major law firm in Florida. Major corporations and individuals pay substantial sums of money for Plaintiff to lobby on their behalf on, for the time being, only federal legislative matters of interest.

13. Plaintiff has a long history of public service and accolades and review of his service and accolades is necessary to give context to the harm caused by the willful, intentional, and malicious conduct of the Defendants described herein.

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14. Plaintiff formerly served as a Democratic politician from Florida. He has served in the Florida House of Representatives from the 81st district from 2016-2018, representing part of Palm Beach County. Previously, Abruzzo served two terms in the Florida House from 2008-2012, representing District 85, and one term on the Florida Senate from 2012-2016, representing District 25, where he served as the minority whip.

15. Plaintiff moved to Florida in 1999, attended Lynn University where he was elected the university's first junior elected student body president. Upon graduation in 2003 with a B. A. in International Communications and Minor in International Business Representative Abruzzo was awarded the Count and Countess De Hoernle Humanitarian Award. Plaintiff Abruzzo also as a Port Security Specialist in the United States Coast Guard Reserve, serving for a total of eight years, receiving numerous awards and recognitions in honor of his service including the Governor Rick Scott's Veteran Services Medal.

16. Plaintiff was elected to the Florida House of Representatives at the age of 28 in 2008. In the Florida House, Plaintiff Abruzzo served on the Economic Development & Tourism Subcommittee, the Finance and Tax Council, the Economic Affairs Committee, the Federal Affairs Subcommittee, the Business and Consumer Affairs Subcommittee, and the Congressional Redistricting Subcommittee. Plaintiff Abruzzo is a past member of the Insurance, Business and Financial Affairs policy Committee, the Joint Legislative Auditing Committee, the Military and Local Affairs Committee, and the State University and Private Colleges Policy Committee, The Economic Development & Community Affairs Policy Council, the Finance and Tax Council, the Economic Development Policy Committee, the Government Operations Appropriations Committee and was the only freshman legislator that served on the Select Committee on Seminole Indian Compact Review.

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17. In Plaintiff Abruzzo's first term in office he passed a freshman record eleven bills through the House of Representatives. Plaintiff Abruzzo also worked as the Public Information Officer and Assistant Administrator for the Office of Criminal Conflict and Civil Regional Counsels fourth district.

18. Plaintiff Abruzzo is also a former member of the city of Boca Raton Education Board where he worked on establishing programs for continuing education for seniors. He is also a former member of the Palm Beach County Consumer Affairs hearing board, where he presided over cases of individuals and businesses that engaged in unfair and deceptive business practices.

19. Additionally, Plaintiff Abruzzo served as a member of numerous charitable causes and civic organizations, including being a founding member of the Martin Luther King, Jr. national memorial, a member of other organizations such as the Florida Alliance for Retired Americans, the National Center for Missing & Exploited Children, the Heroes' Circle U.S. Holocaust Memorial Museum, the National Center for Missing and Exploited Children, the Selfless Love Foundation, Autism Speaks, the Buoniconti Fund and was a founding member of the Washington, D.C. Martin Luther King, Jr. National Memorial.

20. Plaintiff Abruzzo is the recipient of many medals and awards including the 2012 National Association of Social Workers, Legislator of the Year, the 2012 Alzheimer's Community Care Award of Appreciation, the 2012 Progressive Caucus of Florida Middle Class Champion, the 2012 Fix Florida Top Dog Award, the 2011 Voices of Hope Legislator of the Year, the 2011 AIF Florida Maritime Council Legislator of the Year, the 2011 Delray Citizens for Delray Beach Police Award of Appreciation, the 2010 Palm Beach County Medical Society President's Award, the 2010 Florida Alliance for Retired Americans Legislator of the Year, the 2010 Restaurant and Lodging Association Legislative Award, the 2009 Florida Restaurant and Lodging Association Legislative

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Award, the 2008 U.S. Coast Guard Good Conduct Medal, the 2007 U.S. Coast Guard Presidential Unit Citation, the 2006 Global War on Terrorism Service Medal, the 2005 National Defense Service Medal, the 2005 U.S.C.G. Combat Veterans Association Physical Fitness Award, and the 2005 U.S.C.G. Port Security "A" School Honor Team, among other awards. [1]

21. Additionally, Plaintiff Abruzzo served as the Board Commissioner of the Health Care District Board of Palm Beach County from 2010-2013, the Chairman of the Palm Beach County Legislative Delegation from 2011-2012, and a Board Member of the Public Service Commission Nominating Council from 2010-2011, the Palm Beach County Consumer Affairs Hearing Board in 2008, as well as the City of Boca Raton, Education Advisory Board from 2002-2003.

22. From 2012 – 2016, Plaintiff Abruzzo was elected and served in the Florida Senate, serving on numerous committees including as vice chair of the Finance and Tax Committee, Community Affairs Committee, and alternating chair of the Joint Legislative Auditing Committee.[2] In 2018, after ten (10) years of service as a state legislator, Plaintiff Abruzzo announced that he would not to run for re-election, despite the fact that he was unopposed and there were no candidates running for his western Palm Beach seat at the time of his announcement. See, e.g. https://www.sun-sentinel.com/news/florida/fl-reg-joseph-abruzzo-retiring-20180228-story.html?outputType=amp

[1] From 2012-2018 Plaintiff Abruzzo accumulated dozens of other awards and honors, including two community streets named after him. In the interest of brevity, Plaintiff Abruzzo has omitted these and other awards and accolades that he has received. A full list can be provided if needed.

[2] In 2016, redistricting eliminated Plaintiff Abruzzo's Senate district. Plaintiff then was elected to the House of Representatives for a third term.

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23. During his tenure as state legislator, he passed at least 50 bills into law. Plaintiff Abruzzo brought hundreds of millions of state funds to his district and county over his time in office, securing millions in state funds for the impoverished, primarily African-American communities around the southeast side of Lake Okeechobee, including Belle Glade, South Bay and Pahokee. In Florida's 2017 budget, Abruzzo sponsored more than $4 million of water and street improvement projects for those towns, the largest of which was a $1.2 million marina improvement project in Pahokee. In a year in which the State of Florida cut almost $410 million in local projects, Abruzzo's survived.

24. One of his most significant pieces of legislation includes creating the Silver Alert system for missing adults, a grandparent's bill of rights and the termination of parental rights for rapists. He also pushed for several safety measures, including a successful helmet law for horse riders age 16 and younger — his district includes areas around Wellington's horse country. He was also a primary sponsor of legislation cracking down on pill mills in 2010, when the shady pain management clinics had become a state and national crisis. As a senator in 2016, Abruzzo sponsored the Competitive Workforce Act, which would ban workplace discrimination against LGBT workers.

25. When Plaintiff Abruzzo announced he would not run for re-election, his announcement was met with praise for his service and fondness for his character and reputation. (see https://thefloridachannel.org/videos/3-1-18-farewell-rep-joseph-abruzzo-d-district-81-boca-raton/).

26. Among the people Abruzzo came into contact and developed business relationships, as well as established an outstanding reputation with, was among others the chairman

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and owner of Chesapeake Petroleum and Supply in Gaithersburg, Maryland, the country's largest privately held petroleum company.

27. Plaintiff met the chairman and owner in Wellington, Florida, about two years before he was elected, who educated Plaintiff on the equine issues of the State of Florida. When Plaintiff was elected, one of the first bills he worked on was the Horse Protection Act. It was one of the first laws in the nation making it a felony to abuse, neglect, or abandon an equine. It also said that if a Florida restaurant put horse meat on the menu, it would automatically be shut down. The Act passed unanimously, and it is now the law in the State of Florida.

28. Since that time, Plaintiff Abruzzo worked as the Chesapeake chairman and owner's Washington lobbyist, which paid Abruzzo a monthly fee of $15,000 per month for lobbying and consulting work on federal legislation and other matters of interest. This agreement was from 2007 until 2019, and would have continued for the foreseeable future, until the agreement was terminated shortly after the airing of the Southern Charm episodes discussing and featuring Plaintiff Abruzzo in which the Defendants' knowingly, falsely and maliciously depicted Plaintiff Abruzzo as a "disgraced" politician, and accused Plaintiff Abruzzo of being abusive, negatively comparing Plaintiff Abruzzo to a former cast member, Thomas Ravenel, who had recently been criminally charged with assault, and implying there were nude photos of Plaintiff Abruzzo in the public domain.

29. Plaintiff Abruzzo's ban on state lobbying ends in November 2020 and he is currently employed as a director of government relations for a major law firm in Florida. Major corporations and individuals pay substantial sums of money for Plaintiff to lobby on their behalf on federal legislative matters of interest. Plaintiff Abruzzo's ability lobby on state issues, which by law requires a two year waiting period after serving in office, expires in November 2020.

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However, as a direct and proximate result of the Defendants' intentional wrongdoing, a simple "Google" search for "Joseph Abruzzo" brings up almost nothing related to his years of public service and the various accolades described above, but instead results in links to the Corporate Defendants' websites for false and misleading depictions of Plaintiff Abruzzo, his relationship with Dennis as depicted on Southern Charm, and/or his appearance on Southern Charm.

SOUTHERN CHARM

30. The Corporate Defendants direct, film, air, and/or otherwise produce the television show "Southern Charm."

31. The individual Defendants Conover, Meissner, and LeCroy appeared regularly on Southern Charm but are not employees, agents, or representatives of the Corporate Defendants.

32. Southern Charm is a "reality" television show based in Charleston, South Carolina and has been airing on national and international television, as well as streaming online, since 2014.

33. While Southern Charm is promoted as a "reality" show, it in fact consists of false conflict and scenarios that are fabricated and/or contrived by the Corporate Defendants for the express purpose of creating dramatic and licentious material for television.

34. The dialogue between cast members of Southern Charm is not scripted, but events, interactions between cast members, topics of discussion, confrontations, and activities undertaken by the cast members, including those referenced herein, are directly provoked, encouraged, instigated, and/or orchestrated by the Corporate Defendants with the individual cast members knowledge, agreement, coordination, and cooperation, to elicit drama and conflict commensurate with Southern Charm's storyline as a show that "reveals a world of exclusivity, money and scandal dating back through generations of families in Charleston, S.C." (see e.g.

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www.afterbuzztv.com/southern-charm/). Alcohol and/or drugs are regularly consumed by the cast members to heighten the likelihood of drama and conflict with the encouragement, toleration, dispensing, and/or condonation of the Corporate Defendants.

35. The original main character at the inception of Southern Charm was Thomas Ravenel. During the filming of Southern Charm, Ravenel met Kathryn Dennis, another Southern Charm cast member and began a romantic relationship that resulted in the birth of two children.

36. A major storyline and ongoing theme in the Southern Charm series from 2014-2018 related to Ravenel and Dennis' relationship and conflict within their relationship, including Dennis losing custody of her children to Ravenel and Dennis undergoing rehabilitation for drug and/or alcohol abuse during the 2016-2018 timeframe. Dennis was often falsely portrayed as the victim of Ravenel's manipulation and/or abuse.

37. In the Summer of 2018, it was announced that Ravenel would not be returning to the cast of Southern Charm for its 6th season, scheduled to begin filming in the Fall of 2018.[3] Without Ravenel as a cast member, the need for a new "storyline" for Dennis became apparent.

38. After communicating with one another, Dennis and the Corporate Defendants framed her new role in Southern Charm as a rehabilitated single mother who regains custody of her children, and moves on and out from under Ravenel's abuse and/or manipulation. Upon information and belief, part of Dennis's new storyline was to include a new love interest.

39. In furtherance of this storyline, around the time filming for season 6 of Southern Charm began in the Fall of 2018, Dennis filed a modification of custody action against Ravenel in the Charleston County Family Court, basing her requested relief in large part upon the staged

[3] Around the same time, Ravenel was criminally charged with allegedly sexually assaulting his former nanny.

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scenarios filmed for Southern Charm in an attempt to classify the conduct depicted therein as "real-life" events justifying the Family Court's intervention.[4]

40. Plaintiff Abruzzo did not know at the time that Dennis initiated the custody suit with the express or implied encouragement, condonation, and/or permission of the Corporate Defendant producers of Southern Charm, for the purpose of providing dramatic material for the next season of Southern Charm.

PLAINTIFF'S RELATIONSHIP WITH KATHRYN DENNIS AND APPEARANCE ON SOUTHERN CHARM

41. Plaintiff Abruzzo met Kathryn Dennis in the fall of 2018 at a Miami Dolphins football game, shortly before filming for Southern Charm season 6 began. Thereafter, Plaintiff Abruzzo and Dennis began a romantic relationship.

42. Unbeknownst to Abruzzo at the time, but in furtherance of Dennis's storyline for season 6 and future seasons of Southern Charm, and with the express or implied encouragement, condonation, and/or permission of the Corporate Defendant producers of Southern Charm, Dennis almost immediately began imploring Plaintiff Abruzzo to be on the show, telling Abruzzo that if she were to get married, she believed the Corporate Defendants would pay big money for rights to televise her wedding, honeymoon, an exclusive, and other things of that nature.

43. The Corporate Defendants wanted Abruzzo to go on a guy's trip, go to a public and crowded restaurant on a dinner date with Dennis, and otherwise suggested group or public outings for Plaintiff Abruzzo's appearance. Plaintiff Abruzzo declined participation in any such outing or event.

[4] Plaintiff Abruzzo is informed and believes Dennis lost her custody case and now has less time with her children than she did before filing for a modification of custody, illustrating the fact that the narrative published by the Corporate Defendants on Southern Charm is based upon false and staged scenarios.

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44. Ultimately, after repeated requests and persistence from the Corporate Defendants and Dennis, Plaintiff decided he would allow a private dinner at Dennis's residence in downtown Charleston to be filmed by the Corporate Defendants.

45. Plaintiff Abruzzo flew to Charleston at his own expense from Florida to spend time with Dennis and have their private dinner filmed.

46. Upon arriving at Dennis's residence for the private dinner, Plaintiff Abruzzo was ushered into hair and makeup while bright lights were being set up and film crews were preparing to film.

47. After finishing Plaintiff Abruzzo's preparation for filming, declaring that they were set to begin the dinner, and as Plaintiff Abruzzo and Dennis were actually sitting down for dinner, the Corporate Defendants, by and through one or more of their employees, producers, and/or agents represented to Plaintiff Abruzzo that they were ready to begin but could not do so.

48. Plaintiff Abruzzo, with the film crews in place and bright lines shining on him, was then presented a piece of paper with only the signature portion of the page visible. At the time the partial piece of paper was presented, the Corporate Defendants, by and through one or more of their employees, producers, and/or agents falsely represented to Plaintiff Abruzzo that it was merely a formality and simply authorized the Corporate Defendants to film the dinner.

49. Despite interactions with multiple employees, producers, and/or agents of the Corporate Defendants, at no time did anyone state, suggest, or imply to Plaintiff Abruzzo that he would be disparaged, defamed or otherwise portrayed in a negative and/or false light.

50. To the contrary, at the time the piece of paper was presented, as well as after filming while wrapping up, the Corporate Defendants, by and through one or more of their employees,

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producers, and/or agents, falsely represented to Plaintiff that he should have "no worries in the world" because Plaintiff was Dennis's savior and "knight in shining armor."

51. At the time the partial piece of paper was presented, as well as after filming while wrapping up, the Corporate Defendants, by and through one or more of their agents, falsely represented to Plaintiff Abruzzo that his portrayal on Southern Charm would do great things for him.

52. At the time the partial piece of paper was presented, as well as after filming while wrapping up, the Corporate Defendants, by and through one or more of their employees, producers, and/or agents, further represented that not only would the filming be good for Plaintiff, but that it would also be helpful for Dennis and also for Defendant Conover because his storyline was in jeopardy.

53. Based upon the false representations made by the Corporate Defendants, Plaintiff Abruzzo, who does not watch reality television and had no reason to suspect otherwise, while sitting under blinding spot lights and in the presence of multiple employees, producers, and/or agents of the Corporate Defendants ready to begin filming, signed the partial piece of paper, believing only that doing so would enable the dinner to be filmed and be "a great thing" for his then girlfriend Dennis.

54. Plaintiff Abruzzo was presented only the signature portion of the document, given no time to read it, no time to consult with an attorney regarding its substance, no time verify the accuracy of its contents, no time verify the parties and no explanation of its contents by any of the producers, employees, and/or agents of the Corporate Defendants other than the false representation that it simply authorized filming of their dinner.

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55. Nothing eventful or dramatic occurred during the dinner, and there was no conflict between Plaintiff Abruzzo and Dennis.

56. Plaintiff Abruzzo had no further contact with the Corporate Defendants and no knowledge of, or input on, the storylines, marketing, advertising or portrayals depicted on season 6 of Southern Charm.

57. Southern Charm season 6 first aired during the summer of 2019. In the promotional material released leading up to the season 6 premier, Dennis's storyline regarding Ravenel and her custody suit described previously herein was confirmed. Shortly thereafter, Dennis's storyline involving Plaintiff Abruzzo would be revealed.

58. In episode three (Exhibit A – filed separately), Defendant Conover, acting individually and as a co-conspirator with the Corporate Defendants, when asked by Defendant Meissner about Plaintiff Abruzzo, says "Well, he's a disgraced politician in Florida" and "He's not running for re-election because of his divorce. His wife is accusing him of being physically abusive." These statements are false, and Defendant Conover and the Corporate Defendants knew they were false at the time they were made and when they were published on national television. (See, e.g. https://www.sun-sentinel.com/news/florida/fl-reg-joseph-abruzzo-retiring-20180228-story.html?outputType=amp). These false statements were made knowingly and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise negatively portray him in a false light in order to further the individual and collective storylines involved in Southern Charm.

59. Defendant Meissner, acting individually and as a co-conspirator with the Corporate Defendants, was prompted and/or encouraged by producers, employees, and/or agents of the Corporate Defendants, and Defendant Meissner individually agreed to inquire about Plaintiff Abruzzo with Defendant Conover for the purpose of enabling Defendant Conover to disparage,

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defame, and otherwise negatively portray him in a false light in order to create and further the storylines involved in Southern Charm.

60. In episode six (Exhibit B - filed separately), entitled "A Salt and Battery", Plaintiff Abruzzo's dinner date with Kathryn Dennis aired. [5]

61. Plaintiff Abruzzo's dinner date with Kathryn Dennis is depicted as follows:

(Kathryn Dennis sets out Grandmother's silver & china prepping for Plaintiff Abruzzo coming over for dinner. She orders delivery.)

(Plaintiff Abruzzo arrives with flowers.)

Dennis: "Aren't you sweet."

Abruzzo: "You look – you look great."

Dennis: "You look great."

Abruzzo: "No, you look great."

Dennis: "I'm glad you're here."

(hugs & kisses)

Dennis: "Good to see you."

Abruzzo: "Good to see you, too."

(Dennis tries to cut flowers. Plaintiff Abruzzo steps in and assists.)

Dennis: "Thank you for helping – I'm not used to that in life."

Dennis: "When I first saw Joe, I was not attracted to him. Um…no. And it wasn't until he started to talk to me that day that I felt a sense of, like, us, being on somewhat of the same wave length."

(Plaintiff Abruzzo helps her carry food outside and pulls out her chair. She seems very surprised. He compliments her on the meal and they continue small talk.)

Dennis: "I'm not like most chicks from Charleston. I don't know how many you've dated

[5] Plaintiff Abruzzo is informed and believes the title of this episode which depicts Plaintiff's dinner date with Dennis is a reference to former cast member Thomas Ravenel's criminal assault charges.

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around these parts."

Abruzzo: "You would be my first."

Dennis: "Well, lucky you."

Abruzzo: "I think so, obviously."

(Continue more small talk….Plaintiff Abruzzo compliments the outdoor setting.)

Abruzzo: "I haven't spent much time in the deep south."

Dennis: "God, I love it though. It's the best thing about you."

(Kissing.)

62. As previously alleged, nothing eventful or dramatic occurred during the dinner, and there was no conflict between Plaintiff Abruzzo and Dennis, nor did any of the Defendants state, suggest, or imply that he would be portrayed in a negative and/or false light.

63. Nevertheless, in the following episode seven (Exhibit C – filed separately), entitled "Dick Moves and Dick Pics", The Corporate Defendants, Defendant LeCroy, Defendant Meissner, and others knowingly and falsely state and/or imply there were nude photos of Plaintiff Abruzzo in the public domain as follows:

(cast member Patricia Altschul is having a house party)

Altschul: "I had heard she (Kathryn) had a boyfriend."

Olindo: "Politician. Senator from Florida."

Altschul: "No, not a politician. Oh no. Oh dear."

Olindo: "I mean, I'm just going to go ahead and say it. I googled him and some, like, wild things came up like almost naked photos of him on the internet."

Altschul: "Let me get my big iPad in here."

Eubanks: "Does she know all this stuff?"

Olindo: "She must. Ya'll Google it, it's crazy."

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Defendant LeCroy (looking at her phone): "Oh. His penis looks like a Ken Doll. Like, it's just a bulge."

(a photo of Plaintiff Abruzzo is shown on screen with the image blurred at the bottom of his torso)

Defendant LeCroy: "Look at that, it's like a 'mangina.'"

(The girls take turns looking at the photos.)

Defendant Meissner: "She's (Kathryn Dennis) gonna walk in and Pat's (Altschul) gonna be looking at a picture of her boyfriend's pecker."

Eubanks: "She would not be happy."

(Kathryn Dennis arrives.)

64. Plaintiff Abruzzo provided the Corporate Defendants no photographs, videos, or depictions of his name, likeness, or voice at any time, nor did he authorize them to utilize any such thing other than the private dinner described previously.

65. Moreover, the images depicted of Plaintiff Abruzzo by the Corporate Defendants during the television broadcast require no blurring. His penis cannot be seen, nor could it be described. Kathryn Dennis could not have possibly walked in with anybody "looking at a picture of her boyfriend's pecker." These statements are false, and Defendants LeCroy, Meissner, and the Corporate Defendants knew they were false at the time they were made and when they were aired on national television. These statements were made knowingly and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise portray him in a false light to create false drama and in furtherance of the storylines involved in Southern Charm.

66. The statements and conduct by the Defendants otherwise are false, and Defendants LeCroy, Meissner, and the Corporate Defendants knew they were false at the time they were made and at the time they were published on national television. These false statements were made

knowingly, with actual malice, and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise portray him in a false light in furtherance of the storylines involved in Southern Charm.

67. The entire conversation amongst Altschul, Olindo, Baird, Defendant LeCroy and Defendant Meissner was prompted and/or encouraged by producers, employees, and/or agents of the Corporate Defendants, and Defendants Meissner and LeCroy individually and as co-conspirators with the Corporate Defendants agreed to falsely state, depict, or imply they were viewing a photo in which they could see Plaintiff Abruzzo's penis or "pecker." Such photos do not exist, nor are they in the public domain or viewable simply by a Google search.

68. The intentional and malicious blurring of the bottom of the photos by the Corporate Defendants falsely suggests that Plaintiff Abruzzo's genitals were viewable in the original photos and therefore had to be blurred to be suitable for television. Moreover, the promotional materials, previews leading up to the episode, and even the title "Dick Moves and Dick Pics" episode was created by the Corporate Defendants and/or designed to explicitly and falsely state or strongly imply that photos of Plaintiff Abruzzo's genitals exist, were viewed by the individual Defendants and/or Corporate Defendants.

69. Such photos do not exist and, therefore, cannot be viewed at all, much less by the individual Defendants during the concocted scene published by the Corporate Defendants. The statements otherwise are false, known to be false, and were published by the Defendants knowingly, willfully, and with actual malice and intent to defame, disparage, or otherwise harm the Plaintiff.

70. After going on only a handful of dates, Plaintiff Abruzzo ended his relationship with Dennis in early 2019 prior to season 6 of Southern Charm airing on television.

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71. The Corporate Defendants would later falsely claim that Dennis ended the relationship with Plaintiff Abruzzo as a result of the concern expressed by other cast members about Plaintiff Abruzzo as depicted on the Southern Charm show.[6] This claim is also false and illustrative of the Corporate Defendants pattern and practice of depicting false narratives as "reality."

72. This false claim was designed and intended to give credence to the false claims of "concern" from other cast members, including the individual Defendants Conover, Meissner, and LeCroy, which falsely portrayed Plaintiff Abruzzo as an unsafe, corrupt, abusive and/or otherwise unsavory individual in order to protect Dennis's storyline and reputation at Plaintiff's expense.

73. Only a small portion of Southern Charm season 6 show actually featured Plaintiff Abruzzo's dinner with Dennis. None of the depictions or discussions of Plaintiff Abruzzo portrayed him as the Corporate Defendants represented to Plaintiff. Instead, almost the entirety of reference to Abruzzo in the show was negative, false, designed to impugn Abruzzo's character, and/or portrayed Abruzzo in a false light.

74. Plaintiff Abruzzo did not and would not consent or otherwise knowingly, willfully, or voluntarily agree to the Defendants' false, misleading, deceptive, and fraudulent portrayal of him in what was a concerted and coordinated effort by the Defendants simply to create dramatic material for consumption by the viewers of the "reality" show Southern Charm in the United States and worldwide. Furthermore, Plaintiff Abruzzo was not involved with any other filming and was

[6] See https://www.bravotv.com/the-daily-dish/why-kathryn-dennis-joseph-abruzzo-politician-boyfriend-broke-up); https://realityblurb.com/2019/06/12/southern-charm-kathryn-dennis-reveals-why-she-broke-up-senator-joseph-abruzzo-plus-how-she-ended-their-relationship/

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unaware of any of the statements referenced herein nor was he involved in any way with the editing or creation of the footage described herein.

75. Plaintiff Abruzzo is informed and believes that the Corporate Defendants have unaired footage which reveals the encouragement and/or prompting by the Corporate Defendants to the cast members named herein, along with the agreement and coordination among all Defendants, to discuss, defame and otherwise disparage Plaintiff Abruzzo for the purpose of providing false, scandalous, and/or licentious material for consumption by the public.

76. As a direct and proximate result of the Defendants' conduct described herein, Plaintiff Abruzzo's reputation has been destroyed, his actual and potential earnings severely diminished, lucrative contracts have been ended, future earnings have been diminished, and has otherwise suffered legally compensable damages.

FOR A FIRST CAUSE OF ACTION
OUTRAGE/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Individual Defendants and Corporate Defendants)

77. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

78. The Defendants, through their words, acts, and/or willful omissions intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of the Defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable person could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, anxiety, damage to reputation, and other manifestations.

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79. As a direct and proximate result of the outrageous conduct of the Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
FRAUD
(Corporate Defendants)

80. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

81. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as after filming while wrapping up, were false and material.

82. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of their truth or falsity.

83. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

84. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

85. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

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FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE FRAUD
(Corporate Defendants)

86. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

87. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as after filming while wrapping up, were false and material.

88. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of its truth or falsity.

89. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

90. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

91. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION
(Corporate Defendants)

92. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

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93. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as after filming while wrapping up, were false and material.

94. The Corporate Defendants had a pecuniary interest in making the false statements.

95. The Corporate Defendants owed a duty of care to see that they communicated truthful information to the Plaintiff.

96. The Corporate Defendants breached their duties of care by failing to exercise due care.

97. Plaintiff Abruzzo justifiably relied on the Defendants representations.

98. As a direct and proximate result of his reliance on the Corporate Defendants' misrepresentations, Plaintiff has been injured and suffered pecuniary damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION
FRAUDULENT INDUCEMENT
(Corporate Defendants)

99. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

100. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as when the partial piece of paper was presented for signing and after filming while wrapping up, were false and material.

101. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of its truth or falsity.

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102. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

103. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

104. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION
CIVIL CONSPIRACY
(Individual Defendants and Corporate Defendants)

105. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

106. The Corporate Defendants and individual cast members named herein constitute a combination of two or more people.

107. The very nature of the acts done, the relationship of the parties, the interests of these Defendants, and other circumstances can reasonably be inferred to be the joint assent of the minds of the Defendants for the primary purpose of injuring Plaintiff Abruzzo.

108. The statements described herein, along with the public dissemination and broadcast of the Southern Charm episodes which discuss, describe, ad/or depict Plaintiff Abruzzo constitute overt acts done pursuant to, and in furtherance of, the conspiracy.

109. As a direct and proximate result of the Defendants' conspiracy and conduct in forming and perpetrating the conspiracy, Plaintiff Abruzzo has been injured and suffered damages.

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Plaintiff is entitled to judgment against the individual and Corporate Defendants, jointly and severally, for actual, general, compensatory, incidental, and/or consequential damages, punitive damages, and special damages in the form of attorney's fees, litigation costs, and other special damages; all of which to be determined by a jury.

FOR A SEVENTH CAUSE OF ACTION
DEFAMATION
(Individual Defendants and Corporate Defendants)

110. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

111. The statements made by the Corporate Defendants and individual cast members herein were published, non-privileged, false and defamatory per se as the statements allege criminal activity, moral turpitude, and/or unfitness for one's profession of the Plaintiff.

112. The individual and Corporate Defendants are at fault for the statements described herein. These false statements tended to impeach the honesty, integrity, virtue or reputation of the Plaintiff and were publications of natural or alleged defects of the Plaintiff which thereby exposed him to public hatred, contempt, ridicule, caused her to be shunned or avoided, and/or otherwise injured him in her office, business, or occupation.

113. The statements described herein were known to be false and were nevertheless published with actual malice.

114. The individual and Corporate Defendants' representations and statements falsely impute to Plaintiff Abruzzo a matter, practice or course of conduct incompatible with his business, trade or profession as a legitimate and successful lobbyist and former politician. He is not a participant in deviant activities such as assault nor has he participated, offered or agreed to be portrayed in a bad light or employed or contracted by the Defendants to appear or otherwise serve

as a paid participant in the activities portrayed in Southern Charm for which his image, likeness and/or identity was used.

115. These false statements by implication constitute defamation *per se*.

116. Such false and *per se* defamatory representations and statements by implication were published to innumerable people or viewers.

117. The individual and Corporate Defendants knew their conduct described herein was wrongful.

118. The individual and Corporate Defendants intended to deprive Plaintiff Abruzzo of a property interest or, at a minimum, evinced a conscious disregard for the fact that Plaintiff Abruzzo did not consent to Defendants' use, alteration or publication of his name, likeness, reputation, or identity to promote, advertise, market or endorse Defendants' show or companies.

119. The individual and Corporate Defendants acted with actual or constructive knowledge of the high probability that injury or damage would result to Plaintiff Abruzzo or, at a minimum, were so reckless or wanton in care that their conduct constituted a conscious disregard of, or indifference to, Plaintiff Abruzzo's rights.

120. As a direct and proximate result of the individual and Corporate Defendants defamatory statements, Plaintiff has damaged. Plaintiff has suffered damage to his reputation, lost income and/or earnings, been embarrassed, humiliated, and endured mental suffering as a result of the Defendants' conduct. Moreover, Plaintiff has suffered physical bodily injuries in the form of nausea, headaches, other physical injuries, special damages in the form of attorney's fees and litigation expenses incurred in having to assert his rights and defend his reputation, and substantial economic damage as a direct and proximate result of the defamatory statements. Plaintiff is

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entitled to judgment against the individual and Defendants, jointly and severally, for all general and special damages as well as punitive damages in an amount sufficient to deter similar conduct.

FOR AN EIGHTH CAUSE OF ACTION
VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT
(Corporate Defendants)

121. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

122. The South Carolina Unfair Trade Practices Act declares unfair or deceptive acts or practices in the conduct of trade or commerce to be unlawful.

123. The Corporate Defendants are engaged in trade or commerce within the meaning of the Act.

124. The conduct described herein by the Corporate Defendants is offensive to public policy and/or is immoral, unethical, or oppressive. The Corporate Defendants' representations to those appearing on Southern Charm who are not regular cast members, including the Plaintiff herein, along with the portrayal by the Corporate Defendants of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm as "reality" or as somehow based in actual fact are intended to deceive and in fact have the tendency to deceive.

125. The deceptive, false, and fraudulent acts and/or practices of the Corporate Defendants have occurred with the Plaintiff and with other individuals who have appeared on Southern Charm, thus making it likely the Corporate Defendants' actions will continue absent some deterrence. As a result, the false and misleading representations to those appearing on Southern Charm, including the Plaintiff, as well as the false and misleading representations to others about those appearing on Southern Charm and the portrayal by the Corporate Defendants of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm,

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including the Plaintiff, as "reality" or somehow based upon some actual fact about those individuals and/or Charleston and its residents, negatively affect the public interest.

126. Further, the Corporate Defendants' policies and procedures to lie to, and about, anybody who appears on Southern Charm in its efforts to televise a "reality" show, create a potential for repetition of the unfair and deceptive acts.

127. As a direct and proximate result of the Corporate Defendants unfair trade practices, Plaintiff has suffered actual loss, injury, and/or damages. Plaintiff is entitled to judgment against the Corporate Defendants for actual, compensatory, general, incidental, and/or consequential damages, punitive damages, attorney's fees, and three times the actual damages sustained and such other relief as the court deems necessary and proper pursuant to SC Code 39-5-140.

FOR A NINTH CAUSE OF ACTION
NEGLIGENCE
(Individual and Corporate Defendants)

128. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth in paragraphs above as if fully alleged herein.

129. Under the circumstances stated herein, the individual and Corporate Defendants owed a duty of care towards Plaintiff Abruzzo.

130. Among other things, that duty included the obligation to deal with Plaintiff Abruzzo and his image in a commercially reasonable and prudent manner, to not use or alter Plaintiff Abruzzo's image, appearance, portrait in derogation of his rights, to refrain from making false and defamatory assertions of fact about Plaintiff Abruzzo, and to otherwise refrain from causing harm to Plaintiff Abruzzo.

131. The individual and Corporate Defendants breached those duties by using and/or altering Plaintiff Abruzzo's name, likeness, image, appearance, and/or portrait without Plaintiff

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Abruzzo's authorization, permission or consent and/or by making false and defamatory statements about Plaintiff.

132. The individual and Corporate Defendants' conduct and breach as described above directly and proximately caused injury to Plaintiff Abruzzo's person, reputation, brand, goodwill and livelihood for which he has suffered damages.

133. As a direct and proximate result of the individual and Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. Plaintiff is entitled to a judgment granting actual, compensatory, incidental and/or consequential damages against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury, lost profits, disgorgement of profits earned directly or indirectly by individual and/or Defendants' unlawful use, punitive damages against the individual and Corporate Defendants, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining all Defendants from engaging in further unauthorized use of Plaintiff's name, likeness, image, portrait and/or appearance and such further relief that is just and proper.

FOR A TENTH CAUSE OF ACTION
QUANTUM MERUIT/UNJUST ENRICHMENT
(Individual and Corporate Defendants)

134. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth in above as if fully alleged herein.

135. Plaintiff Abruzzo has conferred a benefit upon the individual and Corporate Defendants and by virtue of their usage and self-serving alteration of his name, likeness, image, portrait and/or appearance and the false and defamatory statements about, and portrayal of, Plaintiff.

136. Corporate Defendants and individual Defendants were aware that Plaintiff Abruzzo's name, likeness, image, portrait and/or appearance was valuable.

137. Corporate Defendants and individual Defendants were aware of the resulting benefit from usage of Plaintiff Abruzzo's name, likeness, image, portrait and/or appearance.

138. Corporate Defendants and individual Defendants have retained money, profits and other benefits conferred upon them by using Plaintiff Abruzzo's name, likeness, image, portrait and/or appearance as well as the false and defamatory statements about, and portrayal of, Plaintiff to promote and advertise Corporate Defendants' and individual Defendants show, companies, brands, or themselves personally.

139. It would be inequitable for any of the individual or Corporate Defendants to retain the benefits conferred upon them by using Plaintiff Abruzzo's name, likeness, image, portrait and/or appearance as well as the false and defamatory statements about, and portrayal of, Plaintiff without paying fair value to Plaintiff Abruzzo.

140. As a direct and proximate result of the individual Defendants and Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. Plaintiff is entitled to a judgment granting actual, general, compensatory, incidental, and/or consequential damages including lost profits and income, in an amount to be determined at trial by a jury; disgorgement by the individual and Corporate Defendants of money and/or profits earned directly or indirectly by the unlawful use of Plaintiff's name, likeness, image, portrait and/or appearance; punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining the individual and Corporate Defendants from engaging in further unauthorized use of the name, likeness, image, portrait, and/or appearance by the Plaintiff, and/or such further relief that is just and proper.

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FOR AN ELEVENTH CAUSE OF ACTION
WRONGFUL APPROPRIATION OF PERSONALITY/INFRINGEMENT ON THE RIGHT OF PUBLICITY
(Individual and Corporate Defendants)

141. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

142. The right of publicity is the inherent right of every human being to control the commercial use of his identity.

143. Plaintiff's right of publicity is a recognized property right that entitles him to the right to control the commercial use, to be free from unwarranted and/or unconsented use of his identity, and to be compensated monetarily for such commercial use.

144. The conduct alleged herein involves the intentional, unconsented use of the Plaintiff's name, likeness, and/or identity by the individual and Corporate Defendants for their own benefit which violates the Plaintiff's exclusive right to publicize and profit from his name, likeness, and/or other aspects of his personal identity.

145. As a direct and proximate result of the individual and Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. The individual and Corporate Defendants wrongful appropriation of Plaintiff's personality/infringement on Plaintiff's right of publicity carries with it a presumption of damages. Plaintiff is entitled to a judgment granting actual, compensatory, incidental, and/or consequential damages, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful conduct, punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining further unlawful use or publicization of the name, likeness, image, portrait, and/or appearance by the Plaintiff, and/or such further relief that is just and proper against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury.

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FOR A TWELFTH CAUSE OF ACTION
WRONGFUL PUBLICIZING OF PRIVATE AFFAIRS
(Individual and Corporate Defendants)

146. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

147. The "facts" publicized about the Plaintiff by the individual and Corporate Defendants described herein, to the extent any factual assertion published by the Defendants about the Plaintiff is even remotely true, which Plaintiff denies, constitutes an intentional disclosure of facts in which there is no legitimate public interest.

148. The disclosures and characterizations of the Plaintiff by the individual and Corporate Defendants described herein are such that would be, and are, highly offensive to a person of reasonable sensibilities, including the Plaintiff, which has caused serious injury.

149. The disclosures and characterizations of the Plaintiff by the individual and Corporate Defendants described herein were procured by fraudulent representations, misrepresentations, falsehoods, and other conduct that was willful, intentional, malicious, and designed to harm Plaintiff.

150. As a direct and proximate result of the individual Defendants and Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. Plaintiff is entitled to a judgment granting actual, general, compensatory, incidental, and/or consequential damages including lost profits and income against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury; disgorgement by the individual and Corporate Defendants of money and/or profits earned directly or indirectly by the unlawful use of Plaintiff's name, likeness, image, portrait and/or appearance; punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief

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enjoining the individual and Corporate Defendants from engaging in further unauthorized use or publicization of the name, likeness, image, portrait, appearance or any disclosure of any purported fact about the Plaintiff, and/or such further relief that is just and proper.

FOR A THIRTEENTH CAUSE OF ACTION
PUBLIC NUISANCE
(Individual and Corporate Defendants)

151. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

152. Nuisance law is based on the premise that every citizen holds his property subject to the implied obligation that he will use it in such a way as not to prevent others from enjoying the use of their property.

153. A nuisance is anything that works hurt, inconvenience, or damages; anything that essentially interferes with the enjoyment of life or property.

154. A public nuisance exists wherever acts or conditions are subversive of public order, decency, or morals, or constitute an obstruction of public rights.

155. Here, the individual and Corporate Defendants' conduct, course of conduct, portrayals, patterns, policies and practices are, at their very core, the distribution of hurt, inconvenience, damage, falsehoods about individuals appearing on Southern Charm who are not paid cast members, including the Plaintiff. It consists of the systematic deprivation and/or interference with the rights of those individuals to not be defamed and profit from the use of their name, likeness, or image, as well as the rights of the public in the accurate portrayal of the City of Charleston, surrounding locations, and their residents.

156. These deceptive, false, fraudulent, and otherwise damaging acts and/or practices engaged in by the individual and Corporate Defendants' culminate in the false and harmful

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portrayal of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm, including the Plaintiff, as "reality" or somehow based upon some actual fact about those individuals and/or Charleston and its residents.

157. These deceptive, false, fraudulent, and otherwise damaging acts and/or practices engaged in by the individual and Corporate Defendants' are subversive of public order, decency, morals, and/or constitute an obstruction of public rights thereby constituting a public nuisance

158. Plaintiff's right of publicity is a recognized property right that entitles him to the right to control the commercial use, to be free from unwarranted, unconsented, and/or fraudulent use of his identity, and to be compensated monetarily for such commercial use.

159. As a direct and proximate result of the individual and Corporate Defendants' nuisance activities, Plaintiff property right of publicity has been injured, causing Plaintiff to incur special damages different in kind from what the public may sustain as a result of the false portrayal of the individuals and residents of Charleston by the television show Southern Charm. Plaintiff is entitled to a judgment granting actual, general, compensatory, incidental, and/or consequential damages including lost profits and income against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury; disgorgement by the individual and Corporate Defendants of money and/or profits earned directly or indirectly by the unlawful use of Plaintiff's name, likeness, image, portrait and/or appearance; punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining the individual and Corporate Defendants from engaging in further unauthorized or fraudulent use or publicization of the name, likeness, image, portrait, appearance or any disclosure of any purported fact about the Plaintiff, and/or such further relief that is just and proper.

FOR A FOURTEENTH CAUSE OF ACTION
PRIVATE NUISANCE

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(Individual and Corporate Defendants)

160. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

161. A private nuisance is that class of wrongs that arises from the unreasonable, unwarrantable, or unlawful use by a person of his own property, personal or real.

162. Here, the individual and Corporate Defendants' conduct, course of conduct, portrayals, patterns, policies and practices demonstrate their use of their own personal, intellectual, and/or publicity rights is designed and in fact distributes hurt, inconvenience, falsehoods and damage to individuals appearing on Southern Charm who are not paid cast members, including the Plaintiff.

163. These deceptive, false, fraudulent, and otherwise damaging acts and/or practices engaged in by the individual and Corporate Defendants' culminate in the false and harmful portrayal of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm, including the Plaintiff, as "reality" or somehow based upon some actual fact about those individuals and/or Charleston and its residents. It consists of the systematic deprivation and/or interference with the rights of those individual, including the Plaintiff, to their reputations and to profit from the use of their name, likeness, or image.

164. Plaintiff's right of publicity is a recognized property right that entitles him to the right to control the commercial use, and to be free from unwarranted, unconsented, and/or fraudulent use of his name, likeness, and/or identity, and to be compensated monetarily for such commercial use.

165. The individual and Corporate Defendants' continuing dissemination and false portrayal of the Plaintiff and his name, likeness, and/or identity through re-runs, internet streams,

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and sales of episodes containing or referencing Plaintiff constitutes an ongoing and unreasonable, unwarrantable, and/or unlawful use by the individual and Corporate Defendants' own property at the expense of Plaintiff's property rights thereby constituting a private nuisance.

166. As a direct and proximate result of the individual and Corporate Defendants' nuisance activities, Plaintiff property right of publicity has been injured, causing Plaintiff to incur damages and special damages. Plaintiff is entitled to a judgment granting actual, general, compensatory, incidental, and/or consequential damages including lost profits and income against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury; disgorgement by the individual and Corporate Defendants of money and/or profits earned directly or indirectly by the unlawful use of Plaintiff's name, likeness, image, portrait and/or appearance; punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining the individual and Corporate Defendants from engaging in further unauthorized or fraudulent use or publicization of the name, likeness, image, portrait, appearance or any disclosure of any purported fact about the Plaintiff, and/or such further relief that is just and proper.

FOR A FIFTEENTH CAUSE OF ACTION
FRAUDULENT INDUCEMENT OF ARBITRATION
AGREEMENT/UNCONSCIONABILITY OF ARBITRATION AGREEMENT
(Individual and Corporate Defendants)

167. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

168. Upon the filing of Plaintiff's initial complaint, the Defendants collectively filed a motion to dismiss and for order compelling arbitration, which seeks to enforce a purported "Release and Arbitration Agreement."

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169. The "Arbitration Agreement" is not signed by the individual Defendants, not signed by the Corporate Defendants, does not cover the torts alleged herein by the Plaintiff against either the individual or Corporate Defendants, nor is it enforceable as a matter of law by the Corporate Defendants against the Plaintiff or with respect to the individual Defendants.

170. As described herein, the contents of this "Arbitration Agreement" was never provided to Plaintiff; only bottom half of a single piece of paper containing a signature block was provided.

171. Plaintiff was induced to sign by the fraudulent representations made by the same Corporate Defendants who now seek to enforce this purported "Arbitration Agreement."

172. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as at the time the partial piece of paper was presented for signature and after filming while wrapping up, were false and material.

173. Moreover, given the substance and actual language of the "Arbitration Agreement" relied upon by the Defendants, the omission of representations at the time the signature block was presented and/or after filming regarding any purported waiver of the fundamental right to a jury trial or the release of rights or claims arising out of conduct, including intentional and illegal conduct, that no reasonable person would contemplate under the circumstances, Plaintiff Abruzzo included, constitutes fraud by omission.

174. The Corporate Defendants knew of the falsity of the statements/omissions or acted with reckless disregard of its truth or falsity.

175. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these false representations/omissions.

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176. Plaintiff Abruzzo was ignorant of the falsity of the representations/omissions, relied on the truth of the representations, and had the right to so rely.

177. The purported "Arbitration Agreement" is an adhesion contract that was only partially presented on a take it or leave it basis with terms that were not known or negotiable. Plaintiff, who does not watch reality television, had no reason to suspect the Defendants would purport to grant themselves the illegal and outrageous rights contained therein and, based upon the representations/omissions by the Corporate Defendants, understood the document to authorize the Defendants only to film the dinner with his then girlfriend, did not have counsel, nor could he have reasonably contemplated the need for counsel to allow the Corporate Defendants to simply film the dinner, and had no business concern with the filming of the dinner because he was not paid.

178. The terms of the "Arbitration Agreement" are intertwined with the remainder of the document and are unconscionable, illegal, unenforceable and void *ab initio* as against public policy and cannot be enforced by the court. It purports to grant the Corporate Defendants (not the individual Defendants) the right to defame, disparage, portray Plaintiff in a false light, make misrepresentations to Plaintiff and about Plaintiff to others, and to conceal or hide cameras and audio devices in areas which a person would have a reasonable expectation of privacy, among other things no person would reasonably expect to be found in any agreement, much less one that authorizes filming of a single dinner.

179. The purported "release" clause is so intertwined with the purported "arbitration" clause that they cannot be separated. The "release" language purports to release the Corporate Defendants from the aforementioned intentional torts as well as other intentional torts such as defamation, intentional infliction of emotional distress, and the rights of privacy and publicity

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"regardless of whether caused by the negligence *or willful misconduct*" of the Corporate Defendants.

180. Yet, the agreement purports to require Plaintiff to maintain confidentiality regarding any information learned about the Corporate Defendants, including the agreement itself, in perpetuity and throughout the universe, and to refrain from making negative statements about the Corporate Defendant or otherwise infringing upon or violating the rights of any other person.

181. It further attempts to hold Plaintiff liable for the Corporate Defendants attorney fees and costs incurred in connection with a claim or lawsuit brought against them, even for intentional or willful misconduct, and purports to grant the Corporate Defendants the right to obtain injunctive relief from a court of competent jurisdiction (without posting bond) against Plaintiff if he were to disclose information about the Defendants, the agreement, or their tortious conduct or if he were to seek redress for any harm caused whatsoever by the Defendants, along with a liquidated damages payment of $500,000 per alleged breach, plus disgorgement of any income received by Plaintiff connection with such alleged breach. Despite specifically granting the Corporate Defendants the right to injunctive relief, the "Arbitration Agreement" specifically purports to prohibit Plaintiff from seeking or obtaining injunctive relief, again while authorizing the Corporate Defendants to simultaneously engage in never ending and ongoing intentional torts, and at the same time attempting to bar Plaintiff from any legal redress for those torts.

182. The "arbitration" clause purports to require arbitration to be held in New York City when Plaintiff resides in Florida and Southern Charm is based in Charleston. The agreement further falsely represents that Plaintiff has had ample opportunity to read it (he did not, nor was he even presented the entire agreement much less the "arbitration agreement"), that he had the opportunity to review the agreement with an attorney (he did not, nor could he reasonably have

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contemplated the need to do so based upon the representations to him and the circumstances then and there existing), and that he has in fact read the agreement (he did not as he was not even presented the entire agreement, much less the "arbitration agreement").

183. Taken as a whole and individually, the "Release" clause and "Arbitration Agreement" are so intertwined that they cannot be separated. in essence purports to allow the Corporate Defendants to engage in any type of conduct whatsoever, including lying to and about the Plaintiff and committing illegal acts or intentional torts against the Plaintiff, while purporting to prohibit Plaintiff from taking any action whatsoever to prevent or repair the harm caused and even from discussing the "agreement" with anybody, at any place, at any time, in perpetuity, and "throughout the universe." The terms are so one-sided and oppressive that no reasonable person would make them, Plaintiff included, and no fair and honest person would accept them.

184. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, Plaintiff has been injured and suffered damages. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, as well as the oppressive, unconscionable, illegal, unenforceable, and void as against public policy terms of the "Arbitration Agreement," Plaintiff is entitled to an order declaring the "Arbitration Agreement" void *ab initio* and/or unenforceable, for judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A SIXTEENTH CAUSE OF ACTION
FRAUDULENT INDUCEMENT OF RELEASE/UNCONSCIONABILITY OF RELEASE
(Individual and Corporate Defendants)

185. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

186. Upon the filing of Plaintiff's initial complaint, the Defendants collectively filed a motion to dismiss and for order compelling arbitration, which seeks to enforce a purported "Release and Arbitration Agreement."

187. The "Arbitration Agreement" is not signed by the individual Defendants, not signed by the Corporate Defendants, does not cover the torts alleged herein by the Plaintiff against either the individual or Corporate Defendants, nor is it enforceable as a matter of law by the Corporate Defendants against the Plaintiff or with respect to the individual Defendants.

188. As described herein, the contents of this "release" was never provided to Plaintiff; only bottom half of a single piece of paper containing a signature block was provided.

189. Plaintiff was induced to sign by the fraudulent representations made by the same Corporate Defendants who now seek to enforce this purported "release."

190. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as at the time the partial piece of paper was presented for signature and after filming while wrapping up, were false and material.

191. Moreover, given the substance and actual language of the "release" relied upon by the Defendants, the omission of representations at the time the signature block was presented and/or after filming regarding any purported waiver of the fundamental right to a jury trial or the release of rights or claims arising out of conduct, including intentional and illegal conduct, that no reasonable person would contemplate under the circumstances, Plaintiff Abruzzo included, constitutes fraud by omission.

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192. The Corporate Defendants knew of the falsity of the statements/omissions or acted with reckless disregard of its truth or falsity.

193. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these false representations/omissions.

194. Plaintiff Abruzzo was ignorant of the falsity of the representations/omissions, relied on the truth of the representations, and had the right to so rely.

195. The purported "release" is an adhesion contract that was only partially presented on a take it or leave it basis with terms that were not known or negotiable. Plaintiff, who does not watch reality television, had no reason to suspect the Defendants would purport to grant themselves the illegal and outrageous rights contained therein and, based upon the representations/omissions by the Corporate Defendants, understood the document to authorize the Defendants only to film the dinner with his then girlfriend, did not have counsel, nor could he have reasonably contemplated the need for counsel to allow the Corporate Defendants to simply film the dinner, and had no business concern with the filming of the dinner because he was not paid.

196. The terms of the "release" are intertwined with the remainder of the document and are unconscionable, illegal, unenforceable and void *ab initio* as against public policy and therefore cannot be enforced by the court. It purports to grant the Corporate Defendants (not the individual Defendants) the right to defame, disparage, portray Plaintiff in a false light, make misrepresentations to Plaintiff and about Plaintiff to others, and to conceal or hide cameras and audio devices in areas which a person would have a reasonable expectation of privacy, among other things no person would reasonably expect to be found in any agreement, much less one that authorizes filming of a single dinner.

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197. The "release" language purports to release the Corporate Defendants from the aforementioned intentional torts as well as other intentional torts such as defamation, intentional infliction of emotional distress, and the rights of privacy and publicity "regardless of whether caused by the negligence *or willful misconduct*" of the Corporate Defendants.

198. Yet, the agreement purports to require Plaintiff to maintain confidentiality regarding any information learned about the Corporate Defendants, including the agreement itself, in perpetuity and throughout the universe, and to refrain from making negative statements about the Corporate Defendant or otherwise infringing upon or violating the rights of any other person.

199. It further attempts to hold Plaintiff liable for the Corporate Defendants attorney fees and costs incurred in connection with a claim or lawsuit brought against them, even for intentional or willful misconduct, and purports to grant the Corporate Defendants the right to obtain injunctive relief from a court of competent jurisdiction (without posting bond) against Plaintiff if he were to disclose information about the Defendants, the agreement, or their tortious conduct or if he were to seek any redress whatsoever for any harm caused by the Defendants, along with a liquidated damages payment of $500,000 per alleged breach, plus disgorgement of any income received by Plaintiff connection with such alleged breach. Despite specifically granting the Corporate Defendants the right to injunctive relief, the "release" specifically purports to prohibit Plaintiff from seeking or obtaining injunctive relief, again while authorizing the Corporate Defendants to simultaneously engage in never ending and ongoing intentional torts, and at the same time attempting to bar Plaintiff from any legal redress for those torts.

200. The "release" further falsely represents that Plaintiff has had ample opportunity to read it (he did not, nor was he even presented the entire agreement much less the "arbitration agreement"), that he had the opportunity to review the agreement with an attorney (he did not, nor

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could he reasonably have contemplated the need to do so based upon the representations to him and the circumstances then and there existing), and that he has in fact read the agreement (he did not as he was not even presented the entire agreement, much less the "arbitration agreement").

201. Taken as a whole and individually, the "release" in essence purports to allow the Corporate Defendants to engage in any type of conduct whatsoever, including lying to and about the Plaintiff and committing illegal acts or intentional torts against the Plaintiff, while purporting to prohibit Plaintiff from taking any action whatsoever to prevent or repair the harm caused and even from discussing the "release" with anybody, at any place, at any time, in perpetuity, and "throughout the universe." The terms are so one-sided and oppressive that no reasonable person would make them, Plaintiff included, and no fair and honest person would accept them.

202. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, Plaintiff has been injured and suffered damages. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, as well as the oppressive, unconscionable, illegal, unenforceable, and void as against public policy terms of the "release," Plaintiff is entitled to an order declaring the "release" void *ab initio* and/or unenforceable, for judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A SEVENTEENTH CAUSE OF ACTION
RESCISSION OF "RELEASE AND ARBITRATION AGREEMENT"
(Individual and Corporate Defendants)

203. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

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204. Upon the filing of Plaintiff's initial complaint, the Defendants collectively filed a motion to dismiss and for order compelling arbitration, which seeks to enforce a purported "Release and Arbitration Agreement."

205. The "Release and Arbitration Agreement" is not signed by the individual Defendants, not signed by the Corporate Defendants, does not cover the torts alleged herein by the Plaintiff against either the individual or Corporate Defendants, nor is it enforceable as a matter of law by the Corporate Defendants against the Plaintiff or with respect to the individual Defendants.

206. South Carolina law refuses to enforce contracts based on fraudulent conduct because a party should not retain the benefits of an agreement that he knowingly and intentionally entered into though deceptive means. Beyond the patent unfairness inherent in enforcing a contract induced through intentional fraud, giving legal effect to such a contract violates a fundamental principle of contract law: there must be a meeting of the minds. By its very nature, there can be no union of purpose where one party is intentionally deceiving the other through fraud.

207. It is well settled that if the party who signs a written contract in ignorance of its contents without reading it or having it read is induced to sign by conduct of the other party which amounts to actionable fraud, this gives the signer the right to avoid the contract as against him on the ground of fraud.

208. South Carolina law allows for a contract to be rescinded for a unilateral mistake when that mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement. Further, a rescission of a contract is allowed when there is evidence of misrepresentation or concealment.

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209. As described herein, the contents of this "Release and Arbitration Agreement" were never provided to Plaintiff; only bottom half of a single piece of paper containing a signature block was provided.

210. Plaintiff was induced to sign by the fraudulent representations made by the same Corporate Defendants who now seek to enforce this purported "Release and Arbitration Agreement."

211. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as at the time the partial piece of paper was presented for signature and after filming while wrapping up, were false and material.

212. Moreover, given the substance and actual language of the "Release and Arbitration Agreement" relied upon by the Defendants, the omission of representations at the time the signature block was presented and/or after filming regarding any purported waiver of the fundamental right to a jury trial or the release of rights or claims arising out of conduct, including intentional and illegal conduct, that no reasonable person would contemplate under the circumstances, Plaintiff Abruzzo included, constitutes fraud by omission.

213. The Corporate Defendants knew of the falsity of the statements/omissions or acted with reckless disregard of its truth or falsity.

214. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these false representations/omissions.

215. Plaintiff Abruzzo was ignorant of the falsity of the representations/omissions, relied on the truth of the representations, and had the right to so rely.

216. The purported "Release and Arbitration Agreement" is an adhesion contract that was only partially presented on a take it or leave it basis with terms that were not known or

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negotiable. Plaintiff, who does not watch reality television, had no reason to suspect the Defendants would purport to grant themselves the illegal and outrageous rights contained therein and, based upon the representations/omissions by the Corporate Defendants, understood the document to authorize the Defendants only to film the dinner with his then girlfriend, did not have counsel, nor could he have reasonably contemplated the need for counsel to allow the Corporate Defendants to simply film the dinner, and had no business concern with the filming of the dinner because he was not paid.

217. The terms of the "Release and Arbitration Agreement" are intertwined with one another so as to be inseparable and are unconscionable, illegal, unenforceable and void *ab initio* as against public policy and therefore cannot be enforced by the court. It purports to grant the Corporate Defendants (not the individual Defendants) the right to defame, disparage, portray Plaintiff in a false light, make misrepresentations to Plaintiff and about Plaintiff to others, and to conceal or hide cameras and audio devices in areas which a person would have a reasonable expectation of privacy, among other things no person would reasonably expect to be found in any agreement, much less one that authorizes filming of a single dinner.

218. The "Release and Arbitration Agreement" purports to release the Corporate Defendants from the aforementioned intentional torts as well as other intentional torts such as defamation, intentional infliction of emotional distress, and the rights of privacy and publicity "regardless of whether caused by the negligence *or willful misconduct*" of the Corporate Defendants.

219. Yet, the "Release and Arbitration Agreement" purports to require Plaintiff to maintain confidentiality regarding any information learned about the Corporate Defendants, including the agreement itself, in perpetuity and throughout the universe, and to refrain from

making negative statements about the Corporate Defendant or otherwise infringing upon or violating the rights of any other person.

220. It further attempts to hold Plaintiff liable for the Corporate Defendants attorney fees and costs incurred in connection with a claim or lawsuit brought against them, even for intentional or willful misconduct, and purports to grant the Corporate Defendants the right to obtain injunctive relief from a court of competent jurisdiction (without posting bond) against Plaintiff if he were to disclose information about the Defendants, the agreement, or their tortious conduct or if he were to seek any redress whatsoever for any harm caused by the Defendants, along with a liquidated damages payment of $500,000 per alleged breach, plus disgorgement of any income received by Plaintiff connection with such alleged breach. Despite specifically granting the Corporate Defendants the right to injunctive relief, the "Release and Arbitration Agreement" specifically purports to prohibit Plaintiff from seeking or obtaining injunctive relief, again while authorizing the Corporate Defendants to simultaneously engage in never ending and ongoing intentional torts, and at the same time attempting to bar Plaintiff from any legal redress for those torts.

221. The "Release and Arbitration Agreement" further falsely represents that Plaintiff has had ample opportunity to read it (he did not, nor was he even presented the entire agreement much less the "arbitration agreement"), that he had the opportunity to review the agreement with an attorney (he did not, nor could he reasonably have contemplated the need to do so based upon the representations to him and the circumstances then and there existing), and that he has in fact read the agreement (he did not as he was not even presented the entire agreement, much less the "arbitration agreement").

222. Taken as a whole and individually, the "Release and Arbitration Agreement" in essence purports to allow the Corporate Defendants to engage in any type of conduct whatsoever,

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including lying to and about the Plaintiff and committing illegal acts or intentional torts against the Plaintiff, while purporting to prohibit Plaintiff from taking any action whatsoever to prevent or repair the harm caused and even from discussing the "Release and Arbitration Agreement" with anybody, at any place, at any time, in perpetuity, and "throughout the universe." The terms are so one-sided and oppressive that no reasonable person would make them, Plaintiff included, and no fair and honest person would accept them.

223. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, Plaintiff has been injured and suffered damages. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, as well as the oppressive, unconscionable, illegal, unenforceable, and void as against public policy terms of the "Release and Arbitration Agreement," Plaintiff is entitled to a rescission of the "Release and Arbitration Agreement," for judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

WHEREFORE, the Plaintiff Abruzzo hereby requests the following relief:

A. A jury trial;

B. Actual, compensatory, consequential, special, and general damages against the Defendants, jointly and severally, in an amount not less than Ten Million Dollars ($10,000,000.00);

C. Treble damages for willful violations of the SC Unfair Trade Practice Act;

D. Attorney's fees as provided by law;

E. Punitive damages in an amount sufficient to deter the same or similar conduct as determined by a jury;

F. Costs and fees taxed against the Defendants as permitted by law;

G. Such other and further relief as the Court deems just, prudent, and proper.

Respectfully submitted,

*s/ Aaron E. Edwards*_____
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ATTORNEYS FOR PLAINTIFF

Mt. Pleasant, South Carolina
Dated: June 19, 2020

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AND FOR ORDER COMPELLING ARBITRATION**

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, (jointly "Defendants") by and through their undersigned attorneys, will move before the Presiding Judge of the Charleston County Court of Common Pleas for an Order dismissing them from the above-captioned action and compelling binding mediation/arbitration, pursuant to Rule 12(b)(3) of the *South Carolina Rules of Civil Procedure*, as this Court is the improper venue to hear the asserted claims.

On October 30, 2018, Plaintiff Joseph Abruzzo ("Abruzzo") signed a written agreement with Defendant Haymaker Media, Inc. entitled, "Appearance Release, Voluntary Participation, and Arbitration Agreement," ("Release and Arbitration Agreement") attached hereto as Exhibit 1. Pursuant to the Release and Arbitration Agreement, Abruzzo agreed to be a voluntary participant "[i]n exchange for the opportunity to be part of the program currently titled 'Southern Charm' (the 'Program')," a popular, unscripted television show that has aired nationally since

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2014. Pursuant to the terms of the Release and Arbitration Agreement, Defendants Comcast Corporation, Bravo Media Productions LLC and NBCUniversal Media, LLC are also parties to the Release and Arbitration Agreement, and Defendants Craig Conover, Chelsea Meissner and Madison LeCroy are express intended third-party beneficiaries of the Release and Arbitration Agreement.

In his Amended Complaint, filed June 19, 2020,[1] Abruzzo alleges that he is a well-educated former Florida Congressman, who has previously presided over Palm Beach County Consumer Affairs cases involving alleged unfair and deceptive business practices, and currently works at a major law firm in Florida. (Amended Complaint ¶¶ 12, 14-29). Abruzzo further alleges that he appeared on Season Six of *Southern Charm* while dating long-time *Southern Charm* cast member Kathryn Dennis ("Dennis"). Abruzzo alleges he met Dennis in the fall of 2018 at a Miami Dolphins game, after which they began a romantic relationship. (Amended Complaint ¶ 41). Abruzzo knew that he was pursuing a romantic relationship with a cast member of well-known reality series during active filming for the next season of the show and agreed to be filmed during a dinner with Dennis at her residence in Charleston. (Amended Complaint ¶¶ 43-44). Abruzzo had advanced notice that the dinner would be filmed since he alleges he had prior conversations about what activities he would be comfortable participating in,

[1] Abruzzo initially filed a complaint on January 24, 2020, which he then served on the Defendants on different dates ranging from March 13, 2020 to April 13, 2020. Pursuant to the April 3, 2020 Order of The Supreme Court of South Carolina addressing Operation of the Trial Courts During the Coronavirus Emergency, "the due dates for all trial court filings due on or after the effective date of this order are hereby extended for thirty (30) days." In addition, "[i]n the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default is hereby forgiven, and the required action shall be taken within thirty (30) days of the date of this order." Order, ¶ C(9)(A)&(B).

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and chose for his appearance on *Southern Charm* to be a private dinner with Dennis rather than a public or group event. (Amended Complaint ¶ 43).

Although in his initial Complaint, Abruzzo alleged that he had been presented with the Release and Arbitration Agreement "turned to the third page," (Complaint ¶ 53), he now alleges that he was "presented a piece of paper with only the signature portion of the page visible." (Amended Complaint ¶ 48; *see also* ¶¶ 50, 52, 53, 54, 100, 170, 182, 188, 191, 209, 212). Abruzzo acknowledges signing the "partial piece of paper" that was presented to him prior to filming. (Amended Complaint ¶¶ 53-54). Abruzzo alleges that, prior to and following filming, certain verbal representations were made to him. (Amended Complaint ¶¶ 47-53).

Abruzzo alleges that the relationship between himself and Dennis ended in early 2019. (Amended Complaint ¶ 70). He further alleges that false statements were made about him on *Southern Charm*, (Amended Complaint ¶¶ 58-59, 63, 65-69), including allegedly false statements implying there were nude photographs of him on the internet, (Amended Complaint ¶¶ 63-69), comments about his divorce,[2] and that the end of his relationship with Dennis was mischaracterized. (Amended Complaint ¶¶ 58-59, 71-72). As a result of these statements and other actions alleged to have been taken by Defendants, Abruzzo asserts 17 separate causes of action, including 1) Outrage/Intentional Infliction of Emotional Distress, 2) Fraud, 3) Constructive Fraud, 4) Negligent Misrepresentation, 5) Fraudulent Inducement, 6) Civil Conspiracy, 7) Defamation, 8) Violation of the South Carolina Unfair Trade Practices Act, 9) Negligence, 10) Quantum Meruit/Unjust Enrichment, 11) Wrongful Appropriation of Personality/Infringement on the Right of Publicity, 12) Wrongful Publicizing of Private Affairs,

[2] Included in the Amended Complaint is a link to a South Florida Sun Sentinel newspaper article from February 28, 2018 which confirms that Abruzzo was going through a "messy divorce" from his wife at the time. https://www.sun-sentinel.com/news/florida/fl-reg-joseph-abruzzo-retiring-

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13) Public Nuisance, 14) Private Nuisance, 15) Fraudulent Inducement of Arbitration Agreement/Unconscionability of Arbitration Agreement, 16) Fraudulent Inducement of Release/Unconscionability of Release, and 17) Rescission of 'Release and Arbitration Agreement,'" all in connection with his appearance on *Southern Charm* and/or the Release and Arbitration Agreement itself.[3] Consequently, the clear, unambiguous, and unequivocal terms of the Release and Arbitration Agreement voluntarily signed by Abruzzo apply to this lawsuit and require dismissal of Abruzzo's claims.

In particular: Paragraph 17 of the Release and Arbitration Agreement, entitled "**RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY**," provides, in pertinent part, as follows:

> **To the maximum extent permitted by law, I … agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the "Released Parties") for any claims, actions, damages, losses, costs, expenses or causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the**

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[3] Causes of Action Nos. 11-17 were added for the first time in Abruzzo's Amended Complaint.

released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement."

Paragraph 19 of the Release and Arbitration Agreement, entitled "**MEDIATION & ARBITRATION**," provides, in pertinent part, as follows:

WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES," HARD COPIES PROVIDED UPON REQUEST) …. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES.

Paragraph 20 of the Release and Arbitration Agreement, entitled "Governing Law," provides as follows:

New York law shall govern the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

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Paragraph 21 of the Release and Arbitration Agreement provides, in pertinent part, as follows:

> I acknowledge and agree that … each of the Released Parties is an express intended third party beneficiary of this Agreement, including, without limitation, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto.

Paragraph 22 of the Release and Arbitration Agreement provides, in pertinent part, as follows:

> This is the entire agreement between Producer and me, and it supersedes all prior oral or written communications. I am not relying on any promise or statement, express or implied, that is not contained in this Agreement.

Immediately above the signature line, in enlarged capital letters and underlined, is the following:

> **I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**

Abruzzo voluntarily entered into the Release and Arbitration Agreement in connection with his knowing and deliberate decision to appear on *Southern Charm* and has alleged that all of his claims in this lawsuit arose in connection with his participation on the show and/or relate to the Release and Arbitration Agreement. Consequently, the Release and Arbitration Agreement requires that all of Abruzzo's claims be dismissed in favor of mediation and, if necessary,

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arbitration in New York City. Under both South Carolina and New York law, "[t]here is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013); *see also PromoFone, Inc. v. PCC Mgmt.*, 224 A.D.2d 259, 260, 637 N.Y.S.2d 405, 406 (N.Y. Ct. App. 1996) (noting New York's strong public policy in favor of arbitration). In addition, Defendants Conover, Meissner, and LeCroy are also fully entitled to enforce the arbitration provisions. First, they are express intended third party beneficiaries of the Release and Arbitration Agreement. (Exh. 1 ¶¶ 17, 21). Second, even if there are not, South Carolina courts hold that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint … because this would nullify the rule requiring arbitration" *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012); *citing South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993) (allowing non-signatory to enforce arbitration agreement).

Abruzzo's new and internally contradictory allegation that he was presented with only the signature line of the Release and Arbitration Agreement is false. (Exh. 2 ¶¶ 8, 9) (Exh. 3). Even if that allegation were not false, it would not justify rescinding or refusing to enforce the parties' arbitration agreement. It is well-established under both New York and South Carolina law that, "[a] party is under an obligation to read a document before he or she signs it, and a party cannot generally avoid the effect of a [document] on the ground that he or she did not read it or know its contents." *Anderson v. Dinkes & Schwitzer, P.C.*, 150 A.D.3d 805, 806, 56 N.Y.S.3d 127, 128 (N.Y. App. Div. 2017) (citations omitted); *see also Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 399, 498 S.E.2d 898, 904 (Ct. App. 1998) (the failure of a contracting party "to read the entire contract was not a basis for setting aside the arbitration clause, particularly where "nothing

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in the contract prevented the [party] from consulting a lawyer"). In fact, South Carolina has long held that, "every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. [citation omitted] One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it. [citation omitted] This rule is subject to the exception that if the party is ignorant and unwary, his failure to read the document may be excused. [citation omitted] This exception is, however, very strictly interpreted by our Court. In determining whether a party can be classified as ignorant and unwary, an individual's education, business experience and intelligence are all considered." *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 39-40, 340 S.E.2d 786, 789-790 (1986). Given the five and a half pages setting forth Abruzzo's alleged extensive education, professional and business experience, accolades and accomplishments, including his current employment at a major law firm, he can hardly claim he is uneducated or unwary. Although he states repeatedly that the document was presented with only the signature line showing, which is demonstrably false, he does not assert either that he ever asked to read the rest of the document and/or that anyone associated with *Southern Charm* refused to allow him to read the entire agreement before signing. Any undesired outcome that results from Abruzzo's purported failure to carefully read the three-page document he was signing is of his own making and does not constitute grounds either for not enforcing or for rescinding the arbitration agreement. Nor does he adequately allege any other basis, such as fraud, duress or unconscionability, to set aside the parties' arbitration agreement.

Even if the arbitration agreement was not enforced, the Release and Arbitration Agreement still requires dismissal of Abruzzo's claims because it requires exclusive venue in New York, and with respect to any court proceedings, in the appropriate New York state or

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federal court only. Thus, Abruzzo has expressly waived his right to file this lawsuit in South Carolina state court. Because Abruzzo agreed to arbitrate all of his claims in this lawsuit in New York and agreed to exclusive jurisdiction of all court proceedings in the appropriate state and federal courts in New York, this Court is an improper venue for this lawsuit. Therefore, the Defendants respectfully request that the Court grant their Motion to Dismiss Abruzzo's Amended Complaint and for an Order Compelling Arbitration or, in the alternative, grant their Motion to Dismiss Abruzzo's Amended Complaint for having been filed in an improper venue.

This Motion is based on the referenced Exhibit 1 and affidavits of Aaron Rothman (Exh. 4) and Samantha H. Davenport (Exh. 5), and may be supplemented by memoranda and/or additional affidavits in support that may be served on counsel for Abruzzo prior to the date of the hearing on this motion.

MCANGUS GOUDELOCK & COURIE, L.L.C.

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ATTORNEYS FOR DEFENDANTS

June 22, 2020

EXHIBIT 1

APPEARANCE RELEASE, VOLUNTARY PARTICIPATION, AND ARBITRATION AGREEMENT

This is an agreement between myself and Haymaker Media, Inc. (including its licensees, successors and assigns, and each of their respective parents, subsidiaries, agents and affiliates, and each of their respective officers, directors, shareholders, employees, agents, and representatives) (collectively, "Producer"). In exchange for the opportunity to be part of the program currently titled "Southern Charm" (the "Program"), I agree to the following:

1. I irrevocably grant to Producer the right to record and photograph me and to use my name, likeness, voice, information or comments about me, and any material that I contribute (collectively, the "Materials") in connection with the Program and other productions. I further grant to Producer and any programming service or other platform of NBCUniversal Media, LLC ("Network") and its advertisers the right to use the Materials throughout the universe, in perpetuity, in any and all media now known and hereafter devised, in any manner, including in connection with advertising, merchandising and publicity for the Program (the "Promotions").

2. I agree that Producer shall own all of the rights to the Materials, and that the Materials will be a "work for hire" by me for Producer. I assign and transfer any rights, including copyright, I may have in the Materials to Producer. I waive the exercise of any "moral rights," "droit moral," and any analogous rights, in any jurisdiction of the world, which I may have. I waive any right to object to any use (including any editing/dubbing/fictionalization) of the Materials by Producer or Network for any reason. I also waive my claims to any royalties relating to the use of any music performed or contributed by me (including, without limitation, any applicable copyright, public performance, mechanical and synchronization royalties).

3. I represent and warrant that I am mentally, physically, and emotionally able to participate in the Program and have the right and authority to enter into, fully perform obligations, and grant all rights in this Agreement. My participation is not restricted by nor shall it cause me to be in breach of any other agreements to which I am a party. I agree to participate in connection with the production of the Program and related materials on such dates and at such locations as Producer shall designate.

4. I represent and warrant that I have not (a) given anyone associated with the Program anything of value to arrange my appearance in the Program or the Promotions or (b) accepted anything of value to promote any product service or venture on air in the course of my participation in the Program, and I understand that such acts may be a federal offense. Furthermore, I shall not mention or "plug" any product, service, venture, or thing on the Program without approval of Producer and/or Network.

5. I am not currently, nor do I currently intend to be, a candidate for public office, and I agree that if there is any change in this representation prior to the initial exhibition of the Program in which I appear, I will immediately notify Susanna Zwerling, at susanna.zwerling@nbcuni.com. Becoming a candidate before or around the time of the initial exhibition of the Program may under certain circumstances have legal implications on the exhibitor's ability to exhibit the Program.

6. I will not be paid for any and all of the rights listed in this Agreement and waive any right I may have to any compensation. I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes the Materials in the Program or in the Promotions. I agree that I am a volunteer and not an employee of Producer and I am not entitled to any employment benefits. Producer has no obligation to me and is under no obligation to use the Materials. If I receive anything of value in connection with the Program, I shall be responsible for all taxes and other obligations that arise.

7. I shall not participate in any unscripted, "reality-based" program, from the date of this Agreement through 6 months after the date of the initial exhibition of the final episode of the last cycle in which I participated.

8. I understand that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort.

9. For dramatic or creative purposes, Producer and Network may make misrepresentations to me, related to any and all topics, prior to and during the course of my participation. I consent to, and assume all risks of, such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim.

10. If requested by Producer, I agree to execute a location agreement, which shall grant Producer and Network the right (without limitation) to enter upon and use my home for the purpose of photographing, filming and recording the Program, as further detailed in such location agreement. Further, if requested by Producer, I agree to use reasonable, good faith efforts to assist Producer in obtaining appearance releases from my family, friends, employees and any other individuals in my life, in connection with the Program.

11. I consent to Producer and Network recording my actions and statements via concealed or hidden cameras and audio devices throughout the filming locations, including in areas in which a person might have a reasonable expectation of privacy.

12. **CONFIDENTIALITY AND PUBLICITY**. All publicity in connection with the Program is under the sole control of Network and subject to the following terms and conditions of confidentiality and publicity:

(a) I shall not disclose any information or materials about Producer, the Network, this Agreement, the Program, its participants, location(s), events, and outcomes, that I learn from my Program participation (collectively, the "Confidential Information"), unless such Confidential Information is specifically disclosed in the Program exhibition, if ever. My confidentiality obligations shall continue in perpetuity or until terminated by Network in writing.

(b) Except as requested by Producer or Network, I shall not (nor shall anyone on my behalf): (i) discuss with any third party the Program, my participation in the Program, or make negative statements about or otherwise disparage any of the Released Parties (as defined in paragraph 17), except that I may make incidental, non-derogatory mention that I participated in the Program (i.e., "I was on *Southern Charm*.") only after Network has announced or exhibited my appearance in the Program or a new cycle, or (ii) advertise, promote, or make any commercial use of either my Program participation, or any of Producer's or Network's names, logos, trade names or trademarks.

(c) Any breach by me of any of these confidentiality and publicity provisions would cause Producer and Network irreparable injury and damage that cannot be reasonably or adequately compensated by damages in an action at law. I agree that Producer and Network will be entitled to injunctive and other equitable relief (without posting bond) to prevent or cure any such breach or threatened breach. I also recognize that proof of damages for any such breach will be costly, difficult, and inconvenient to ascertain. Accordingly, I agree to pay Producer and Network the sum of $500,000 per breach plus disgorgement of any income that I may receive in connection with any such breach as liquidated damages.

13. I authorize Producer and Network to investigate, access, collect, and use for any purpose whatsoever, information about me and any of the statements made by me in this Agreement or otherwise in connection with my participation in the Program. Additionally, any such information may be disclosed publicly, used, broadcast, distributed, advertised, promoted or otherwise exploited as part of the Program or otherwise.

14. I agree not to infringe upon or violate the rights of any other person or entity, not to cause or threaten injury or harm to any person or property, and that I shall abide by all applicable laws, rules, and regulations. I agree that Producer has the right, but not the obligation, to use the means it deems necessary to preserve order and the safety of myself and other participants. I acknowledge and accept all risks to my person or property arising from my participation in the Program, including those arising from my interactions with other participants in the course of my participation in the Program.

15. I understand and freely consent to participating in activities in connection with the Program that may be hazardous, dangerous, and may expose me to physical, emotional, and mental stress or injury. I accept and assume any and all risks, hazards and dangers regardless of whether they are explicitly detailed in this Agreement, and the waivers, releases and indemnities that I have executed or may execute apply to all such risks, hazards and dangers.

16. NO REPRESENTATIONS OR WARRANTIES BY PRODUCER. Producer has made no representations or warranties of any kind regarding my or others' qualifications, ability or fitness to participate in the Program, and the waivers, releases and indemnities contained in this Agreement and any other Agreement that I have executed or may execute in the future related to the Program expressly apply to my participation in or presence around any such activities or persons.

17. RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY. To the maximum extent permitted by law, I (on behalf of myself and my heirs, executors, agents, successors or assigns) agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the "Released Parties") for any claims, actions, damages, losses, costs, expenses or causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including, without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the Released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement.

18. I acknowledge that there is a possibility that after the execution of this Agreement, I may discover facts or incur or suffer claims which were unknown or unsuspected at the time of execution, and which if known by me at that time may have materially affected my decision to execute this Agreement. I agree that by reason of this Agreement, and the releases contained in the preceding paragraphs I am assuming any risk of such unknown or unsuspected facts and claims.

19. **MEDIATION & ARBITRATION. WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES," HARD COPIES PROVIDED UPON REQUEST). THE JAMS RULES FOR SELECTION OF MEDIATORS AND ARBITRATORS WILL BE FOLLOWED, EXCEPT THAT ANY MEDIATOR WILL BE (I) LICENSED TO PRACTICE LAW IN NEW YORK, OR (II) A RETIRED JUDGE. UPON THE CONCLUSION OF ANY ARBITRATION PROCEEDINGS, THE ARBITRATOR SHALL RENDER FINDINGS OF FACT AND CONCLUSIONS OF LAW AND A WRITTEN OPINION SETTING FORTH THE BASIS AND REASONS FOR ANY DECISION REACHED. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES. I AGREE THAT GIVEN THE UNIQUE NATURE OF THE ENTERTAINMENT INDUSTRY, AND THE IRREPARABLE DAMAGE TO PRODUCER, NETWORK AND THEIR LICENSEES THAT WOULD RESULT FROM DELAYING OR PREVENTING THE EXHIBITION OF ANY PROGRAM PRODUCED HEREUNDER, I MAY NOT SEEK OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT.**

20. Governing Law. Without regard to the conflicts of law provisions, New York law shall govern the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

21. I acknowledge and agree that, regardless of any assignment of this Agreement, each of the Released Parties is an express intended third party beneficiary of this Agreement, including, without limitation, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto. Producer may license, assign, and transfer this Agreement and any or all rights granted by me to Producer under this Agreement to any person or entity.

22. This is the entire agreement between Producer and me, and it supersedes all prior oral or written communications. I am not relying on any promise or statement, express or implied, that is not contained in this Agreement. The illegality, invalidity or unenforceability of any specific provision shall in no way affect the remainder of this Agreement. This Agreement cannot be terminated, rescinded or amended, except by a written agreement signed by both Producer and me. It may be executed by original, facsimile or electronic signature. I shall execute any documents, and do any other acts that are necessary to evidence, effectuate or protect any of the rights granted by me or support any of the representations or warranties made by me.

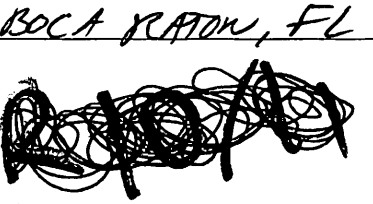
I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.

Signature:  Date: 10-30-18 Phone: 561-212-1111

Print Name: Joseph Abruzzo Date of Birth: [redacted]

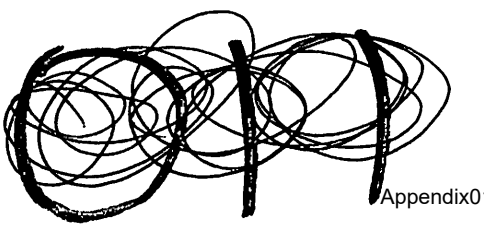
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For verification purposes only pursuant to 18 U.S.C. §§ 2256 et seq.

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If participant is under 18 years of age: If participant is under 18 years of age: The undersigned represents and warrants that they are the parent(s)/guardian(s) having sole and complete legal custody, care and control of the above-named minor and give permission for such minor to enter into this Agreement. I have read and fully understand this Agreement and expressly approve of, and consent and agree to the minor's execution of the Agreement and his/her undertakings and obligations in the Agreement and will not revoke consent during the minority of the minor. I affirm all representations and warranties made in this Agreement and guarantee the performance of this Agreement by the minor and represent and warrant that the minor will not disaffirm the Agreement at any time during or after minority. I release, discharge and indemnify the Released Parties from all liability, damages, and claims made by or on behalf of the minor arising out of or in connection with the minor's participation in the Program or relating to the subject matter of this Agreement and this parental consent (other than as may be expressly provided for in the Agreement), including but not limited to negligence and all other released claims identified in paragraph 17 of this Agreement.

Signature of Parent or Guardian: _____ Date: _____ Phone: _____

Print Name of Parent or Guardian:_____Date of Birth: _____

Address:_____

Signature of Parent or Guardian: _____ Date: _____ Phone: _____

EXHIBIT 2

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **AFFIDAVIT OF MORGAN MILLER**

PERSONALLY APPEARED BEFORE ME, the undersigned, Morgan Miller, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.
2. I served as the Executive Producer for Season 6 of the television show *Southern Charm,* set in Charleston, South Carolina.
3. In my role as Executive Producer for Season 6 of *Southern Charm*, I was in contact with cast member Kathryn Dennis regularly.
4. Kathryn Dennis was free to date whomever she chose. When Kathryn Dennis began dating Plaintiff Joseph Abruzzo, he was not required or pressured by any of the Defendants or, to my knowledge, anyone else to appear on the show *Southern Charm*.
5. Plaintiff Joseph Abruzzo could have pursued a romantic relationship with Ms. Dennis without appearing on the show *Southern Charm*.
6. Neither I nor any of the other Producers of the show *Southern Charm* had any discussions with Plaintiff Joseph Abruzzo prior to his dinner date with Kathryn Dennis; instead, all discussions about appearing on the show were between him and Ms. Dennis.
7. Plaintiff Joseph Abruzzo knew prior to coming to Charleston, South Carolina for the dinner with Kathryn Dennis that it would be filmed, and he appeared eager to participate in the filming.
8. On October 30, 2018, Plaintiff Joseph Abruzzo signed the Appearance Release, Voluntary Participation, and Arbitration Agreement without incident or any pressure from any of the Defendants or anyone else. I do not recall providing any assurances to Plaintiff Joseph Abruzzo about how he would or would not be portrayed on *Southern Charm* and I am unaware of any Producer giving him any such assurances. The Producers of *Southern Charm* do not typically provide such assurances to volunteer participants. The Appearance Release, Voluntary Participation, and Arbitration Agreement was handed to Plaintiff Joseph Abruzzo turned to the first page; it would have been highly unusual to hand such an agreement to a potential participant turned to any other page, and I do not recall ever having done so.
9. Plaintiff Joseph Abruzzo had adequate time to review the Appearance Release, Voluntary Participation, and Arbitration Agreement, and took time to review each page before he signed it. He asked about the provision in Paragraph 5 of the

Appearance Release, Voluntary Participation, and Arbitration Agreement that concerns whether he is or will become a candidate for public office, which appears on page 1 of the Agreement. His concern was addressed at the time.

10. Plaintiff Joseph Abruzzo did not question any other provisions in the Appearance Release, Voluntary Participation, and Arbitration Agreement. Had Plaintiff Joseph Abruzzo raised any other issue with the Appearance Release, Voluntary Participation, and Arbitration Agreement, it would have been flagged and addressed prior to filming.
11. If Plaintiff Joseph Abruzzo had declined to sign the Appearance Release, Voluntary Participation, and Arbitration Agreement, his dinner date with Kathryn Dennis simply would not have been filmed.
12. Attached to this Affidavit as Exhibit A is a photograph taken of Plaintiff Joseph Abruzzo immediately after signing the Appearance Release, Voluntary Participation, and Arbitration Agreement. The Producers of *Southern Charm* routinely photograph participants immediately after they sign an appearance agreement so that they can readily identify participants later if needed.

FURTHER, AFFIANT SAYETH NAUGHT.

_____

Morgan Miller

Pursuant to the South Carolina Supreme Court's April 22, 2020 amended Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

EXHIBIT 3

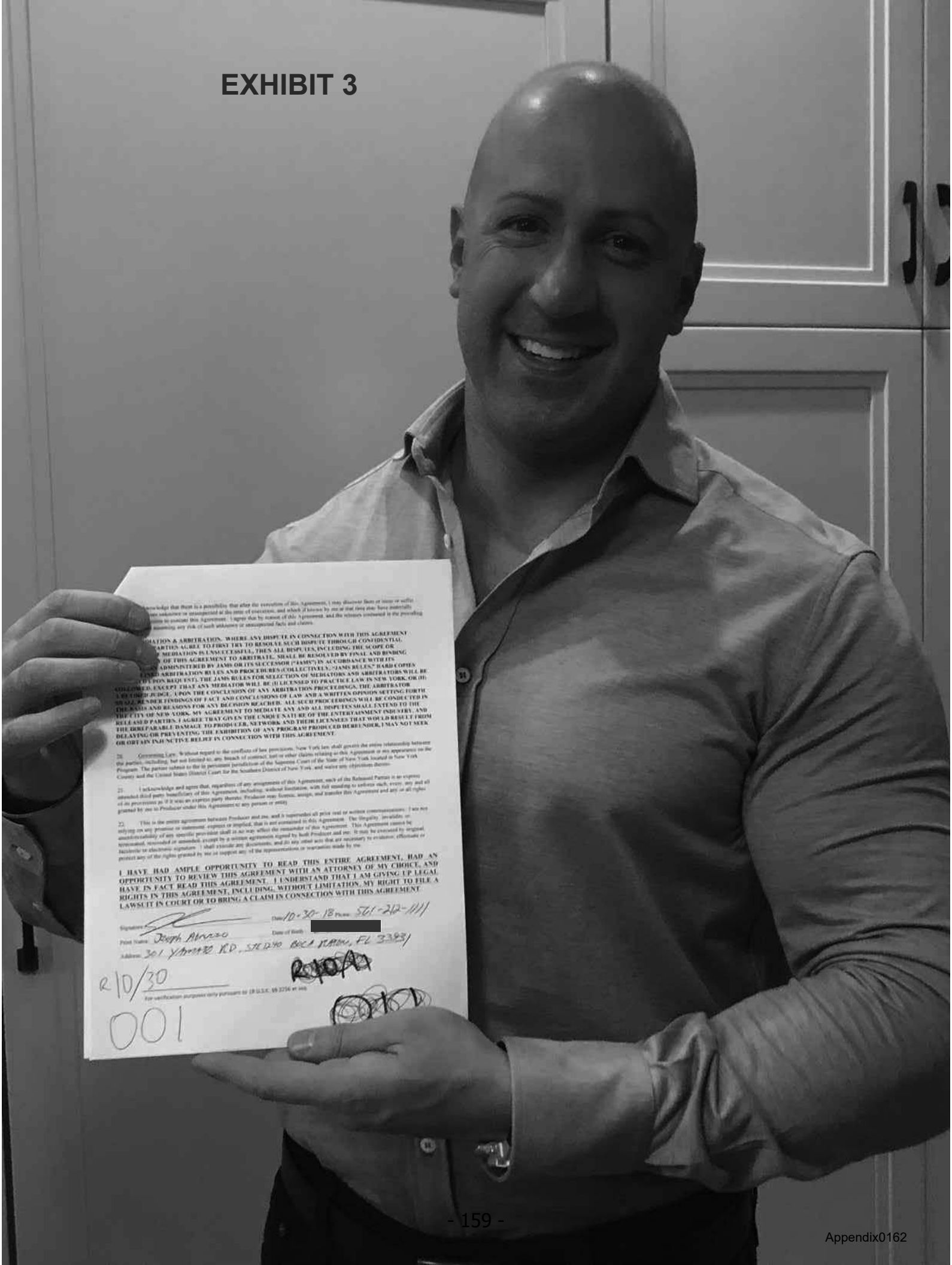

ATION & ARBITRATION. WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT
ARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL
MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR
OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING
ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS
INED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES." HARD COPIES
ON REQUEST). THE JAMS RULES FOR SELECTION OF MEDIATORS AND ARBITRATORS WILL BE
FOLLOWED. EXCEPT THAT ANY MEDIATOR WILL BE (I) LICENSED TO PRACTICE LAW IN NEW YORK OR (II)
A RETIRED JUDGE. UPON THE CONCLUSION OF ANY ARBITRATION PROCEEDINGS, THE ARBITRATOR
SHALL RENDER FINDINGS OF FACT AND CONCLUSIONS OF LAW AND A WRITTEN OPINION SETTING FORTH
THE BASIS AND REASONS FOR ANY DECISION REACHED. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN
THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE
RELEASED PARTIES. I AGREE THAT GIVEN THE UNIQUE NATURE OF THE ENTERTAINMENT INDUSTRY, AND
THE IRREPARABLE DAMAGE TO PRODUCER, NETWORK AND THEIR LICENSEES THAT WOULD RESULT FROM
DELAYING OR PREVENTING THE EXHIBITION OF ANY PROGRAM PRODUCED HEREUNDER, I MAY NOT SEEK
OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT.
I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN
OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND
HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL
RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A
LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.
Signature
Date 10-30-18 Phone 561-212-1111
Print Name Joseph Abruzzo
Date of Birth
Address 301 Yamato Rd, Ste 2190 Boca Raton, FL 33431
R10/30
001

EXHIBIT 4

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS, LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **AFFIDAVIT OF AARON ROTHMAN**

PERSONALLY APPEARED BEFORE ME, the undersigned, Aaron Rothman, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.

2. I have a fifty percent (50%) ownership interest in Haymaker Content, Inc. (Haymaker), and I had this same ownership interest in Haymaker when Joseph Abruzzo signed an Appearance Release, Voluntary Participation, and Arbitration Agreement ("Release and Arbitration Agreement") on or about October 30, 2018, which is referenced as Exhibit 1.

3. Exhibit 1 is a true and correct copy of the Release and Arbitration Agreement signed by Joseph Abruzzo, is kept in Haymaker's ordinary course of business, and is in the same or substantially same condition as it was in when Plaintiff Joseph Abruzzo signed it.

4. By defining "Released Parties" in Paragraph 17 of the Release and Arbitration Agreement to include "anyone associated with the Program," the named individual defendants who were part of the cast of *Southern Charm* during the relevant time are express intended third party beneficiaries of the Release and Arbitration Agreement.

FURTHER, AFFIANT SAYETH NAUGHT.

Aaron Rothman

Pursuant to the South Carolina Supreme Court's April 3, 2020 Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

2

EXHIBIT 5

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS, LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **AFFIDAVIT OF SAMANTHA H. DAVENPORT**

PERSONALLY APPEARED BEFORE ME, the undersigned, Samantha H. Davenport, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.

2. I am Senior Vice President, Legal Affairs, Cable Entertainment, for NBCUniversal Media, LLC. I have been employed by NBCUniversal Media, LLC for more than ten years. I am responsible for legal advice and counsel, on behalf of NBCUniversal, Media, LLC and Bravo Media Productions LLC, in connection with the development, production and exhibition of *Southern Charm*.

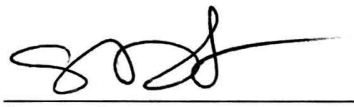
3. I understand that Plaintiff Joseph Abruzzo signed an Appearance Release, Voluntary Participation, and Arbitration Agreement on or about October 30, 2018, which is referenced as Exhibit 1 (the "Release and Arbitration Agreement").

3. NBCUniversal Media, LLC is expressly defined as a "Released Party" in Exhibit 1.

4. NBCUniversal Media, LLC is indirectly owned by Comcast Corporation, a publicly held corporation and a defendant in this case. Thus, as NBCUniversal Media, LLC's parent company, Comcast Corporation is also defined as a "Released Party" in Exhibit 1.

5. Bravo Media Productions LLC is a defendant in this case and is party to a production services agreement with Haymaker Media Inc., dated March 12, 2013 relating to the production of *Southern Charm*. Bravo Media Productions LLC is indirectly owned by NBCUniversal Media, LLC. Thus, as a subsidiary of NBCUniversal Media, LLC, Bravo Media Productions LLC is defined as a "Released Party" in Exhibit 1.

FURTHER, AFFIANT SAYETH NAUGHT.



Samantha H. Davenport

Pursuant to the South Carolina Supreme Court's April 3, 2020 Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND FOR ORDER COMPELLING ARBITRATION**

Defendants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, (jointly "Defendants")[1] by and through their undersigned attorneys submit the following memorandum of law in support of their Motion to Dismiss Plaintiff's Complaint and for Order Compelling Arbitration ("Motion to Dismiss"). Plaintiff Joseph Abruzzo ("Abruzzo" or "Plaintiff") filed a Complaint and Summons on January 28, 2020 in the Charleston County Court of Common Pleas.[2] Defendants filed their Motion to Dismiss on May 12, 2020.

Southern Charm (referred to herein interchangeably as "*Southern Charm*," "the show" or "the Program") is a hit unscripted reality show that features the professional and personal lives of

[1] Where necessary for clarification, Defendants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, and Comcast Corporation are referenced herein as the "Corporate Defendants," and Craig Conover, Chelsea Meissner, and Madison LeCroy are referenced herein as the "Individual Defendants."

[2] Plaintiff served the Defendants on different dates ranging from March 13, 2020 to April 13, 2020. Pursuant to the April 3, 2020 Order of The Supreme Court of South Carolina addressing Operation of the Trial Courts During the Coronavirus Emergency, "the due dates for all trial court filings due on or after the effective date of this order are hereby extended for thirty (30) days."

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various Charleston residents "and reveals a world of exclusivity, money and scandal." The show has been airing nationally and internationally since 2014. Plaintiff Abruzzo—a highly educated, credentialed former Florida Congressman, who resides in Florida and currently works at a major law firm in Florida—pursued a romantic relationship with one of the main cast members on *Southern Charm* with full knowledge that the show was filming its sixth season at the time. Plaintiff agreed to be a voluntary participant on the show, and concedes that, prior to being filmed, he signed a voluntary participant agreement and release that contained a broad and enforceable arbitration agreement and also specified exclusive venue in New York. He now asks the Court to override South Carolina's and New York's strong presumption in favor of enforcing arbitration agreements based on allegations that he only signed the agreement in order to be a good boyfriend and because the agreement was allegedly handed to him flipped to the third page. Even accepting them as true solely for the purpose of this motion, Plaintiff's allegations fall far short of establishing a basis to override the express terms of the parties' agreement. Thus, for the reasons set forth in more detail below, Plaintiff's Complaint should be dismissed.

BACKGROUND

1. Plaintiff's Complaint.

The Complaint details at length Plaintiff's education, background in public office in Florida, and work in government relations. After graduating from Lynn University with a Bachelors of Arts in International Communications and a Minor in International Business, Abruzzo served in the U.S. Coast Guard Reserve and then was elected to the Florida House of Representatives. Abruzzo served in various positions and boards, including but not limited to the Finance and Tax Counsel, the Economic Affairs Committee, the Business and Consumer Affairs Subcommittee and has been a member of the Insurance, Business and Financial Affairs Policy

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Committee, the Economic Development & Community Affairs Policy Counsel, the Finance and Tax Counsel and the Government Operations Appropriations Committee. Abruzzo presided over Palm Beach County Consumer Affairs cases involving alleged unfair and deceptive business practices. He alleges he received numerous awards and accolades. Abruzzo alleges that he has worked as a federal lobbyist for the Chesapeake Petroleum and Supply Company based in Gaithersburg, Maryland for multiple years, for which service he was paid $15,000 per month. Abruzzo alleges he was terminated from that lobbying position "shortly after the airing of the Southern Charm episodes discussing and featuring Plaintiff Abruzzo in which the Defendants' [sic] knowingly, falsely and maliciously depicted Plaintiff Abruzzo as a 'disgraced' politician, and accused Plaintiff Abruzzo of being abusive, negatively comparing Plaintiff Abruzzo to a former cast member, Thomas Ravenel, who had recently been criminally charged with assault, and implying there were nude photos of Plaintiff Abruzzo in the public domain." Plaintiff currently is "employed as a director of government relations for a major law firm in Florida." (Complaint ¶¶ 12-29).

Plaintiff alleges that *Southern Charm* is a "reality" television show that has aired nationally and internationally since 2014. (Complaint ¶ 31). The Complaint alleges that, although promoted as a "reality" show, *Southern Charm* "consists of false conflict and scenarios that are fabricated and/or contrived by the Corporate Defendants," and that cast members "are directly provoked, encouraged, instigated, and/or orchestrated by the Corporate Defendants, with the individual cast members agreement, coordination, and cooperation, to elicit drama and conflict," in order to promote a storyline. (Complaint ¶¶ 32-33). While earlier seasons depicted the relationship between long-time cast members Thomas Ravenel ("Ravenel") and Kathryn Dennis ("Dennis"), Abruzzo alleges the "need for a new 'storyline' for Dennis became

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apparent," after it was announced that Ravenel would not return to *Southern Charm* for the sixth season. According to Abruzzo, part of that "new storyline [for Dennis] was to include a new love interest." (Complaint ¶¶ 34-37).

Abruzzo alleges he met Dennis in the fall of 2018 at a Miami Dolphins game, after which they began a romantic relationship. (Complaint ¶ 40). Abruzzo was aware that he was pursuing a romantic relationship with a current cast member on *Southern Charm* while the sixth season of the Program was being filmed and agreed to be a voluntary participant on the Program. He alleges that, although the Corporate Defendants wanted him to go on a "guy's trip," or to go on a dinner date with Dennis at a "public and crowded restaurant," he "declined any such outing or event, and ultimately agreed to a private dinner at Dennis's residence in downtown Charleston." (Complaint ¶¶ 42, 56). Abruzzo alleges that, prior to filming, certain verbal representations were made to him about how he would be portrayed on the show. (Complaint ¶¶ 49-52). Abruzzo concedes that he signed a "three page single spaced document" prior to filming. Abruzzo alleges that he was presented with the document "turned to the third page," and was given no time to read the document or consult with an attorney but, instead, "was forced to sign as he was sitting down to dinner with Dennis for filming." Abruzzo asserts that Dennis "implore[ed] him to be on the show," and that he was under pressure from both Dennis and the Corporate Defendants "to participate in the filming of the dinner" and "to begin filming" because "it would be a great thing for" Dennis. (Complaint ¶ 41, 53-55). The Complaint then sets out the purported dialog of the dinner as depicted on *Southern Charm*, asserting that there was no conflict between him and Dennis, and that the Defendants did not "state, suggest, or imply that he would be portrayed in a negative and/or false light." (Complaint ¶¶ 56-57).

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Abruzzo alleges that the relationship between himself and Dennis ended in early 2019, and that the Corporate Defendants "later falsely claim[ed] that Dennis ended the relationship with Plaintiff Abruzzo as a result of the concern expressed by other cast members about Plaintiff Abruzzo," which claim Plaintiff asserts is false and was "designed and intended to defame, disparage, and/or portray Plaintiff Abruzzo as an unsafe, corrupt, abusive and/or otherwise unsavory individual in order to preserve and further Dennis's storyline on the show." (Complaint ¶¶ 44, 63).

In particular, Abruzzo asserts that false statements were made about him in episode three of *Southern Charm* "in order to further the storylines" for the Program, including a statement by Defendant Conover to the effect that Plaintiff is "'a disgraced politician in Florida' and 'He's not running for re-election because of his divorce. His wife is accusing him of being physically abusive.'" Pursuant to the Complaint, these statements were elicited by Defendant Meissner, who was "prompted and/or encouraged by" the Corporate Defendants for the purpose of disparaging, defaming and otherwise portraying him "in a false light in order to create and further the storylines involved in Southern Charm." (Complaint ¶¶ 46, 47).

Abruzzo alleges that, in an episode following his dinner date with Dennis, Defendants LeCroy and Meissner, along with other individuals, falsely stated there were nude photographs of Plaintiff in the public domain. The Complaint alleges that certain cast members discussed photographs of Plaintiff, which had been posted by third parties unrelated to Defendants, were "googled" by the cast members and were publicly available at the time of filming. The Complaint also notes that a photo of Abruzzo is shown on the screen with "the image blurred at the bottom of his torso." Plaintiff alleges the conversation was prompted and/or encouraged by the Corporate Defendants "in order to falsely state or imply nude photos or photos in which

Plaintiff Abruzzo's penis or 'pecker' exist and are in the public domain to be viewed simply by a Google Search," and that the blurring of the bottom of the photograph was malicious and was intended to imply falsely that "photos of Plaintiff Abruzzo's genitals exist and are in the public domain …" (Complaint ¶¶ 58-62).

Abruzzo alleges that all of the purportedly false statements about him were made on *Southern Charm* either in order to further a storyline and "create dramatic material for consumption by the viewers of the 'reality' show Southern Charm in the United States and worldwide," (Complaint ¶¶ 44, 46, 47, 59, 66, 67), or "to defame, disparage, or otherwise harm the Plaintiff." (Complaint ¶¶ 44, 46, 47, 59, 62-65). As a result of these statements and other actions alleged to have been taken by Defendants, Abruzzo asserts ten causes of action in the Complaint. First, in his Outrage/Intentional Infliction of Emotional Distress cause of action, and referencing the conduct "alleged above," Abruzzo alleges that the Defendants' "words, acts, and/or willful omissions intentionally inflicted severe emotional stress" on him. (Complaint ¶¶ 69-71).

Next, in his Fraud and Constructive Fraud causes of action, Abruzzo asserts that statements "made by the Corporate Defendants immediately prior to the filming of Plaintiff Abruzzo were false and material," that the statements were knowingly false, and that he had a right to rely on and did rely on the false statements. (Complaint ¶¶ 72-83). Plaintiff's Negligent Misrepresentation cause of action also alleges false representations were made to him prior to filming, on which he "justifiably relied." Abruzzo asserts that the Corporate Defendants "had a pecuniary interest in making the false statements," and that they owed him a duty of care to convey truthful information to Plaintiff, which they breached. (Complaint ¶¶ 84-90).

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Plaintiff's Fraudulent Inducement cause of action alleges that the Corporate Defendants knowingly made false and material statements to him prior to the "presentation of the three page release for Plaintiff Abruzzo's signature," and that he had the right to rely on those statements. (Complaint ¶¶ 91-96).

Plaintiff's Civil Conspiracy cause of action alleges the Corporate Defendants and the Individual Defendants conspired amongst themselves "for the primary purpose of injuring Plaintiff Abruzzo," which conspiracy was furthered by the "statements described herein, along with the public dissemination and broadcast of the Southern Charm episodes which discuss, describe, a[n]d/or depict Plaintiff …" (Complaint ¶¶ 97-112).

Plaintiff's Defamation cause of action is also based on "the statements described" in the Complaint, which he alleges were "published with actual malice." (Complaint ¶¶ 102-105).

Plaintiff alleges a Violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") based on representations purportedly made to him and others who appear "on Southern Charm who are not regular cast members, and the portrayal by the Corporate Defendants of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm as 'reality,'" which Abruzzo alleges "are intended to deceive and in fact have the tendency to deceive." (Complaint ¶¶ 113-119).

Plaintiff's Negligence cause of action alleges that "[u]nder the circumstances stated herein, the Corporate Defendants owed" him a duty to, among other things, "not use or alter Plaintiff Abruzzo's image, appearance, portrait in derogation of his rights," which they breached based on the "conduct … as described above," causing him harm. (Complaint ¶¶ 120-125).

Finally, Plaintiff's Unjust Enrichment cause of action alleges that he "has conferred a benefit upon Corporate Defendants and individual cast members by virtue of the Defendants

usage and self-serving alteration of his image, portrait and appearance." Plaintiff alleges "[i]t would be inequitable for any of the Defendants to retain the benefits conferred upon them by using Plaintiff Abruzzo's image, portrait and appearance without paying fair value" for the same. (Complaint ¶¶ 126-132).

Plaintiff seeks actual or compensatory damages of at least $10,000,000.00 dollars, treble damages under the SCUTPA, punitive damages and costs and fees.

2. The Appearance Release, Voluntary Participation, and Arbitration Agreement.

In connection with his appearance on *Southern Charm*, Plaintiff concedes that he signed a written agreement with Defendant Haymaker Media, Inc. on October 30, 2018 entitled, "Appearance Release, Voluntary Participation, and Arbitration Agreement," ("Release and Arbitration Agreement"), attached hereto as Exhibit 1. Pursuant to the Release and Arbitration Agreement, Abruzzo agreed to be a voluntary participant "[i]n exchange for the opportunity to be part of the program currently titled 'Southern Charm' (the 'Program')." Pursuant to its terms, Defendant NBCUniversal Media, LLC, designated as the Network, and Defendants Comcast Corporation and Bravo Media Productions LLC are also parties to the Release and Arbitration Agreement, and the Individual Defendants are express intended third party beneficiaries of the Release and Arbitration Agreement. (Exh. 1 ¶¶ 17, 21).

In Paragraph 6 of the Release and Arbitration Agreement, Abruzzo agreed that he would "not be paid for any and all of the rights listed in this Agreement and waive any right I may have to any compensation. I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes the Materials in the Program …"

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In Paragraph 8, Abruzzo agreed that he understood "that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort."[3] In addition, in Paragraph 9, Plaintiff acknowledged that, "[f]or dramatic or creative purposes, Producer and Network may make misrepresentations to me related to any and all topics, prior to and during the course of my participation. I consent to and assume all risks of such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim."

Paragraph 17 of the Release and Arbitration Agreement, entitled "**RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY**," provides, in pertinent part, as follows:

> **To the maximum extent permitted by law, I … agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the "Released Parties") for any claims, actions, damages, losses, costs, expenses or causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach**

[3] In Paragraph 2, Abruzzo "waive[d] any right to object to any use (including any editing/dubbing/fictionalization) of the Materials by Producer or Network for any reason."

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by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement."

Paragraph 19 of the Release and Arbitration Agreement, is entitled "**MEDIATION & ARBITRATION**," and provides, in pertinent part, as follows:

WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES," HARD COPIES PROVIDED UPON REQUEST) …. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES.[4]

Paragraph 20 of the Release and Arbitration Agreement, entitled "Governing Law," provides as follows:

Without regard to the conflicts of law provisions, New York law shall govern the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

[4] JAMS stands for Judicial Arbitration and Mediation Services, Inc.

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Paragraph 21 of the Release and Arbitration Agreement provides, in pertinent part, as follows:

> I acknowledge and agree that … each of the Released Parties is an express intended third party beneficiary of this Agreement, including, without limitation, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto.

Paragraph 22 provides, in pertinent part, that:

> This is the entire agreement between Producer and me, and it supersedes all prior oral or written communications. I am not relying on any promise or statement, express or implied, that is not contained in this Agreement."

Immediately above the signature line is the following, in bold, all capitalized and underlined:

> **I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**

3. Plaintiff's Appearance on *Southern Charm*.

Plaintiff Abruzzo appeared briefly on an episode of Season 6 of *Southern Charm*. Morgan Miller, who served as the Executive Producer for Season 6 of *Southern Charm*, attests that neither the Producers nor any of the Defendants had any discussions with Plaintiff Abruzzo prior to his arrival in Charleston, South Carolina, for his dinner date with Ms. Dennis. (Affid. of Morgan Miller, Exh. 2 ¶¶ 2, 6). Ms. Dennis was free to date whomever she chose, and Plaintiff Abruzzo could have pursued a romantic relationship with Ms. Dennis without appearing on

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Southern Charm. (Exh. 2 ¶¶ 4, 5). Plaintiff Abruzzo knew, prior to traveling to Charleston, South Carolina, that he was pursuing a relationship with a reality television cast member during active filming and that his dinner date with Ms. Dennis would be filmed. Indeed, Plaintiff Abruzzo alleges he had input into the circumstances in which he was willing to be filmed and had declined to participate in two other possible outings, one being a "guy's trip" and the other a dinner date with Ms. Dennis in a busy restaurant. (Exh. 2 ¶ 7) (Complaint ¶¶ 42, 56).

Prior to filming, the Release and Arbitration Agreement was handed to Plaintiff Abruzzo turned to the first page, and he took time to review each of the three pages. In fact, he asked a question about Paragraph 5 of the Release and Arbitration Agreement—which concerns whether the voluntary participant is or will become a candidate for public office—which is located on the first page of Release and Arbitration Agreement. (Exh. 2 ¶¶ 8, 9). That question was answered to Plaintiff's satisfaction. If Plaintiff Abruzzo had raised any other issues with the Release and Arbitration Agreement, they would have been addressed prior to filming. If Plaintiff Abruzzo had declined to sign the Release and Arbitration Agreement, his dinner date with Ms. Dennis simply would not have been filmed. (Exh. 2 ¶¶ 10, 11). Instead, Mr. Abruzzo chose to sign the Release and Arbitration Agreement, which was documented with the attached photograph. (Exh. 3). Plaintiff Abruzzo seemed eager to appear on *Southern Charm*. (Exh. 2 ¶¶ 7, 12).

ARGUMENTS

This case must be dismissed for two separate and independent reasons. First, the parties' arbitration agreement should be enforced. Plaintiff Abruzzo—a highly educated, credentialed, former Florida Congressman who currently works at a major law firm in Florida—voluntarily signed an arbitration agreement agreeing that, in the event "any dispute in connection with this Agreement" arises, the parties would first "try to resolve such dispute through confidential

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mediation," and, if that failed, "all disputes, including the scope or applicability of this Agreement to arbitrate, **shall be** resolved by final and binding arbitration administered by JAMS or its successor." (Exh. 1 ¶ 19) (emphasis added). Even if the Court were to decline to enforce those mandatory dispute resolution provisions, this case should still be dismissed because the parties agreed that the exclusive venue for any dispute arising from the Release and Arbitration Agreement or Abruzzo's participation on *Southern Charm* is New York.

The Release and Arbitration Agreement requires any unresolved disputes, including this lawsuit, to be mediated and, if necessary, arbitrated in New York City. Under both South Carolina and New York law, "[t]here is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013); *see also PromoFone, Inc. v. PCC Mgmt.*, 224 A.D.2d 259, 260, 637 N.Y.S.2d 405, 406 (N.Y. App. Div. 1996) (noting New York's strong public policy in favor of arbitration).

All of Plaintiff's claims fall within the scope of the parties' broad and enforceable arbitration agreement. As set forth in detail below, all ten causes of action asserted by Plaintiff arise out of and in connection with his signing the Release and Arbitration Agreement and his participation on the Program. As also is set forth below, Plaintiff has not adequately alleged—let alone established—unconscionability, duress or fraud in the inducement sufficient to override South Carolina's and New York's strong presumptions in favor of enforcing arbitration agreements. Indeed, he does not even allege that that the arbitration agreement is itself a product of fraud, which is required under the applicable law to render that provision unenforceable.

Alternatively, and in the event the arbitration agreement is not enforced, this action should still be dismissed because the Release and Arbitration Agreement requires exclusive

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venue in the appropriate New York state or federal court. Specifically, the parties agreed to submit to the "in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York," waiving "any objections thereto." (Exh. 1 ¶ 20). Thus, Abruzzo has expressly and voluntarily waived his right to file this lawsuit in South Carolina state court.

Because Abruzzo agreed to arbitrate all claims in New York and agreed to exclusive jurisdiction of all proceedings in New York, and with respect to any court proceedings, in the appropriate state and federal courts in New York, this Court is an improper venue for this lawsuit. Therefore, the Defendants respectfully request that the Court grant their Motion to Dismiss Plaintiff's Complaint and issue an Order Compelling Arbitration or, in the alternative, dismiss this case for having been filed in an improper venue.

I. All of the Defendants are entitled to enforce the agreement to arbitrate.

All of the Defendants, including the Individual Defendants, are fully entitled to enforce the arbitration agreement. The Release and Arbitration Agreement is between Haymaker, as Producer, and Abruzzo. In Paragraph 1, NBCUniversal is named as the "Network." (Exh. 1 ¶ 1). The Release provision of the Release and Arbitration Agreement directly names the Producer and Network, and includes "any of their **parents**, **subsidiaries**, assignees, licensees, affiliates **or anyone associated with the Program**," as "the 'Released Parties.'" (Exh. 1 ¶ 17) (emphasis added). Comcast Corporation is NBCUniversal's parent company, Bravo Media Productions, LLC is indirectly owned by NBCUniversal and is a subsidiary thereof, (Exh. 4, Davenport Affidavit ¶¶ 4, 5), and the Individual Defendants indisputably are "associated with the Program." Consequently, all of the Defendants are included by the terms of the Release and Arbitration Agreement as Released Parties. As Released Parties, even those Defendants that are not

specifically named in the Release and Arbitration Agreement are "express intended third party beneficiar[ies] of this Agreement," and have "full standing to enforce each, every, any and all of its provisions as if it was an express party thereto." (Exh. 1 ¶ 21).

Even if the Individual Defendants were not express intended third party beneficiaries of the Release and Arbitration agreement with authority to enforce the arbitration agreement, which they are, South Carolina courts routinely allow non-contracting parties to enforce arbitration agreements in circumstances like this. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (noting that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint … because this would nullify the rule requiring arbitration"); *citing South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993) (allowing non-signatory to enforce arbitration agreement). Thus, by the terms of the Release and Arbitration Agreement and by law, each of the Defendants is fully entitled to enforce the arbitration agreement and other provisions of the Release and Arbitration Agreement.

II. The substantive law of New York applies to this case.

The Release and Arbitration Agreement provides that New York's substantive law applies to this dispute. The Release and Arbitration Agreement specifies that, "[w]ithout regard to the conflicts of law provisions, **New York law shall govern the entire relationship between the parties**, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program." (Exh. 1 ¶ 20) (emphasis added). Given the clear and unambiguous choice of law provisions in the Release and Arbitration Agreement, the internal substantive law of New York should be applied to determine whether the Defendants' Motion to Dismiss should be granted in favor of mediation/arbitration.

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"Choice of law clauses are generally honored in South Carolina." *Team IA, Inc. v. Lucas*, 395 S.C. 237, 248, 717 S.E.2d 103, 108 (Ct. App. 2011). Where "the parties to a contract specify the law under which the contract shall be governed, the court will honor this choice of law." *Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 448-449, 814 S.E.2d 643, 652 (Ct. App. 2018); *see also Albermarle Corp. v. Astrazeneca UK Ltd*, 628 F.3d 643, 652 (4th Cir. 2010) ("for an action filed in South Carolina, South Carolina law would be consulted for its choice of law rules, and under those rules, South Carolina law would give effect to the parties' choice of law as specified in the contract"). The only exception to this general rule is where application of foreign law would violate South Carolina public policy. *Skywaves*, S.C. at 449, 814 S.E.2d at 652. Generally, however, "South Carolina's public policy regarding contracts focuses on holding parties to their contract provisions and the effect of those provisions." *Id.* at 450, 814 S.E.2d at 653.

The choice of law provision in the Release and Arbitration Agreement is based on substantive corporate connections to the State of New York. Affidavits filed herewith establish that the Corporate Defendants have substantial connections with the State of New York. Bravo and NBCUniversal regularly do business in and have offices, including their principal places of business, in New York. Comcast has no substantive connection with this lawsuit other than indirectly owning NBCUniversal and Bravo, both of which are headquartered in New York. (Davenport Second Affid., Exh. 5 ¶¶ 2-4) (Exh. 4 ¶¶ 4, 5). Haymaker is organized and incorporated in the State of New York, with its principle office in New York City. (Rothman Second Affid., Exh. 6 ¶ 2). On the other hand, Abruzzo is a Florida resident. (Complaint ¶ 1).

Given South Carolina's policy that parties should be held to the terms of their contracts, *e.g.*, *Skywaves*, S.C. at 450, 814 S.E.2d at 653, and its policy favoring enforcement of valid

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arbitration clauses, *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013) (noting "a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration"),[5] there is no public policy violation here that would invalidate the parties' agreed-upon choice of law provisions. In fact, with respect to the enforceability of arbitration provisions and holding parties to the terms of their contracts, New York and South Carolina law is fairly consistent.

III. The parties entered into a valid, binding and broad agreement to arbitrate.

Under both New York and South Carolina law, it is for a court to determine, in the first instance, whether a binding arbitration agreement exists between the parties. "Generally, 'whether there is a clear, unequivocal and extant agreement to arbitrate the claims[] is for the court and not the arbitrator to determine.'" *Matter of Fiveco, Inc. v. Haber*, 11 N.Y.3d 140, 144, 893 N.E.2d 807, 809 (N.Y. 2008). "In determining whether an agreement to arbitrate exists, 'the court should apply "ordinary state-law principles that govern the formation of contracts."'" *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999).[6]

[5] Given South Carolina's strong policy in favor of enforcing parties' agreements to arbitrate, a denial of a motion to arbitrate a dispute is immediately appealable. *Cape Romain*, 405 S.C. at 121 n.4, 747 S.E.2d at 464 n.4.

[6] In the context of arbitration agreements, the relevant inquiry is whether the arbitration agreement, separate and apart from the Release and Arbitration Agreement of which it is a part, is itself valid and supported by adequate consideration. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) ("Under the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole"). As to consideration, the law is clear that, "[a] mutual promise to arbitrate constitutes sufficient consideration for this arbitration agreement." *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997); *see also American Gen. Life & Accid. Ins. Co. v. Wood*, 429 F.3d 83, 91 n.5 (4th Cir. 2005) (the employer's "promise to be bound to arbitration is *a fortiori* adequate consideration because '"no consideration [is required] above and beyond the agreement to be bound by the arbitration process" for any claims brought by the employee'"). Here, in addition to other forms of consideration exchanged, as set forth in additional detail below, both parties agreed to resolve any disputes first through mediation and, if that failed, through binding arbitration in New York.

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As an initial matter, Plaintiff's claims clearly involve interstate commerce as contemplated by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), in that his Complaint states as a factual matter that *Southern Charm* "has been airing on national and worldwide television, as well as streaming online, since March 2014." (Complaint ¶ 31). As recognized in *Zabinski v. Bright Acres Assocs.*, the United States Supreme Court interprets the phrase "involving commerce," as contained in the FAA as "the functional equivalent of 'affecting commerce,'" which typically indicates Congress' intent to exercise its commerce power in full." 346 S.C. 580, 591, 553 S.E.2d 110, 116 (2001).

Under South Carolina law, where interstate commerce is involved, "the United States Supreme Court [has] found that courts may invalidate arbitration provisions on general contract defenses, such as fraud, duress, and unconscionability, but courts may not invalidate arbitration agreements under state laws applicable only to arbitration provisions." *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 116; *see also Wilson v. Willis*, 426 S.C. 326, 336-337, 827 S.E.2d 167, 173 (2019) ("[a] state law that places arbitration clauses on an unequal footing with contracts generally . . . is preempted if the FAA applies"). Where a contract involves interstate commerce, "state law regarding arbitration is supplanted by federal substantive law." *Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422, 425, 434 S.E.2d 281, 283 (1993). In other words, the U.S. Congress has "precluded states from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed 'upon the same footing as other contracts.'" *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 117.

Furthermore, the "federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate

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(Exh. 1 ¶ 19).

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arbitration agreements." *Zabinski*, 346 S.C. at 590, 553 S.E.2d at 116. In short, where interstate commerce is involved, as is the case here, the "FAA provisions trump conflicting requirements of South Carolina law," such as the notice of arbitration requirement set forth in S.C. Code Ann. § 15-48-10(a). *Zabinski*, 346 S.C. at 595, 553 S.E.2d at 118.

New York law, the substantive law chosen in the Release and Arbitration Agreement, provides that, "in the absence of an established ground for setting aside a contractual provision, such as fraud, duress, coercion or unconscionability, a court must enforce the parties' arbitration agreement according to its terms." *Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 85 N.Y.2d 173, 182, 647 N.E.2d 1298, 1302 (N.Y. 1995).[7]

To the extent Abruzzo's Fraud, Constructive Fraud, Negligent Misrepresentation and Fraudulent Inducement causes of action are intended to undermine the enforceability of the arbitration agreement, they fail as a matter of law for several reasons. First, in order to set aside the arbitration agreement, Abruzzo must show that he was fraudulently induced and/or that the Corporate Defendants misrepresented the terms and applicability of the arbitration agreement separate and apart from the Release and Arbitration Agreement in general. *See, e.g.*, *Matter of Monarch Consulting, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 26 N.Y.3d 659, 675, 47 N.E.3d 463, 474 (N.Y. 2016) ("[C]ourts treat an arbitration clause as severable from the contract in which it appears and enforce it according to its terms unless the party resisting arbitration specifically challenges the enforceability of the arbitration clause itself"); *see also, e.g.*, *Munoz*, 343 S.C. at 540, 542 S.E.2d 364 (the validity of an arbitration clause is evaluated separately from the validity of the contract as a whole). Plaintiff has not even alleged any fraud

[7] Similarly, in South Carolina, a contract is enforceable unless grounds exist to revoke it, such as fraud, duress, and unconscionability. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007).

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or misrepresentation relating to the arbitration agreement separate and apart from the Release and Arbitration Agreement.

Second, under both New York and South Carolina law, in order to prove fraudulent inducement and/or negligent misrepresentation, Abruzzo must establish that he justifiably relied on misrepresentations and/or that the alleged misrepresentation related to a present fact or was made with a present intent to not perform. *See Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 31 N.Y.3d 569, 578-579, 106 N.E.3d 1176, 1182 (N.Y. 2018) (the "required elements of a common-law fraud claim are 'a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury); *Turner v. Milliman*, 392 S.C. 116, 122-123, 708 S.E.2d 766, 769 (2011) (setting forth the elements required to prove a claim for negligent misrepresentation and for fraud including, in both instances, justifiable reliance). Even assuming solely for the sake of argument that the statements alleged in Paragraphs 59-52 of his Complaint were conveyed to Abruzzo,[8] he cannot prove justifiable reliance for numerous reasons. Paragraph 22 of the Release and Arbitration Agreement states unequivocally that "I am **not relying** on any promise or statement, express or implied, that is not contained in this Agreement." (Exh. 1 ¶ 22) (emphasis added). Such a specific disclaimer "destroys the allegations in [a] plaintiff's complaint that the agreement was executed in reliance upon these contrary oral representations." *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 320, 157 N.E.2d 597, 599 (N.Y. 1959*); see also Rissman v. Rissman*, 213 F.3d 381, 384 (7th Cir. 2000) (rejecting fraud argument in the face of a

[8] Ms. Miller stated that she did not recall providing any assurances to Abruzzo regarding how he would or would not be portrayed on *Southern Charm* and was unaware of any other Producer giving him such assurances. Neither she nor the other Producers provide such assurances to volunteer participants. (Exh. 2 ¶ 8).

non-reliance clause, explaining that such provisions "ensure[] that both the transaction and any subsequent litigation proceed on the basis of the parties' writings, which are less subject to the vagaries of memory and the risks of fabrication"). Even assuming the Release and Arbitration Agreement was turned to the third page, Paragraph 22 appears on the third page, immediately above the bolded statement that Abruzzo had ample time to review the agreement and seek legal counsel, should he have chosen to do so, which in turn is right above the signature block where Abruzzo signed the agreement.

Any purported reliance on alleged promises about how he would be portrayed on the Program, is suspect in light of other provisions of the Release and Arbitration Agreement. These include but are not limited to: Paragraph 8, in which Abruzzo agreed that he understood "that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort"; Paragraph 9, in which Plaintiff acknowledged that, "[f]or dramatic or creative purposes, Producer and Network may make misrepresentations to me related to any and all topics, prior to and during the course of my participation. I consent to and assume all risks of such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim"; and Paragraph 2, in which Abruzzo "waive[d] any right to object to any use (including any editing/dubbing/fictionalization) of the Materials by Producer or Network for any reason." (Exh. 1 ¶¶ 2, 8, 9).

In addition, Abruzzo is a sophisticated, well-educated politician and lobbyist who works for "a major law firm in Florida." (Compliant ¶ 12). He knew Ms. Dennis was a long-time cast

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member on a reality television program that features scandal and that his dinner date with her was going to be filmed. "Where there is no confidential or fiduciary relationship and an arm's length transaction between mature, educated people is involved, there is no right to rely. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Florentine Corp. v. Peda I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985).

Lastly, with respect to the alleged misrepresentation, it must be a misstatement of material fact or a promise made with a present but undisclosed intent not to perform, rather than a mere statement of future intent. *Luckow v. RBG Design-Build, Inc.*, 156 A.D. 3d 1289, 1294, 128 N.Y.S.3d 549, 554-555 (N.Y. App. Div. 2017) (it is "nonactionable [to] promise to perform a future act" where "there is no indication that [a defendant] did not intend to carry out that duty when he made the statement"). Here, the only promises identified by Abruzzo go to future actions. (Complaint ¶ 49 (none of the Defendants "state[d], suggest[ed] or impl[ied] that Plaintiff Abruzzo would be portrayed in a negative and/or false light"), ¶ 50 (alleging the Corporate Defendants "falsely represented to Plaintiff Abruzzo that they were there to simply film and observe, and that Plaintiff Abruzzo would be portrayed accurately and fairly"), ¶ 51 (alleging the Corporate Defendants "represented to Plaintiff Abruzzo that his appearance on Southern Charm would be a great thing for Kathryn Dennis, his girlfriend at the time, and her role on Southern Charm"), and ¶ 52 (the Corporate Defendants "represented to Plaintiff how it would be good for Defendant Conover because his storyline was in jeopardy, and falsely represented that Plaintiff Abruzzo was to have 'no worries in the world.' Kathryn Dennis told Plaintiff Abruzzo that the Corporate Defendants were going to make him look incredible, and would portray him as Dennis's comforting knight in shining armor"). All of these alleged

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statements relate to future actions, relate to a party other than Abruzzo (Defendant Conover) or were made by non-party (Kathryn Dennis). Thus, Plaintiff cannot establish any basis sounding in fraud or misrepresentation to set aside the parties' arbitration agreement.

Nor can Plaintiff establish duress, unfair surprise and/or unconscionability with respect to the arbitration agreement or, for that matter with respect to the Release and Arbitration Agreement. Plaintiff was not required to sign the Release and Arbitration Agreement or appear in the Program in order to pursue or engage in a "romantic relationship" with Dennis. Instead, Plaintiff merely alleges that he felt pressure to be a good boyfriend to Dennis because Dennis "began imploring Plaintiff Abruzzo to be on the show" because the Corporate Defendants "would pay big money for rights to televise her wedding, honeymoon, an exclusive, and other things of that nature." (Complaint ¶ 41). He further alleges that he was "forced to sign as he was sitting down to dinner with Dennis for filming," and that he "was further under pressure from the Corporate Defendant producers to begin filming" because it "would be 'a great thing' for his then girlfriend Dennis." (Complaint ¶¶ 54-55). Even if true, Plaintiff's allegations fall far short of establishing duress or coercion sufficient to render the Release and Arbitration Agreement unenforceable, let alone the agreement to arbitrate. In any event, Plaintiff's claims of duress are belied by his own allegations. Indeed, he concedes that he had a say in whether and how he would participate in any filming for the Program. For example, Plaintiff alleges that although the Corporate Defendants wanted him to go on a "guy's trip," or to go on a dinner date with Dennis at a "public and crowded restaurant," he "declined any such outing or event, and ultimately agreed to a private dinner at Dennis's residence in downtown Charleston." (Complaint ¶ 42). In addition, none of the Defendants required Plaintiff to participate on the Program in order to date Dennis, nor could they. (Exh. 2 ¶¶ 4-6, 11). Had Plaintiff chosen not to

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appear on the Program or declined to sign the Release and Arbitration Agreement, the Corporate Defendants simply would not have filmed the dinner. (Exh. 2 ¶ 11).

Plaintiff's claim that he was handed the Release and Arbitration Agreement "turned to the third page" also falls far short of establishing unconscionability. (Complaint ¶¶ 53, 54). Even if true, Plaintiff does not allege that anyone told him that he could not review each page of the agreement, that he was otherwise prevented from reviewing each page of the agreement, that he requested additional time to review it, or that he asked to consult with a lawyer, such as any of the lawyers at the major law firm at which he was employed at the time. He simply alleges, without any foundation, that he was denied adequate time or opportunity to review the document and/or consult with an attorney. However, that allegation is directly contradicted by the Release and Arbitration Agreement. On page three of that agreement—the page that Plaintiff Abruzzo alleges the agreement was turned to—right above the signature line, in boldface type, underlined and capital letters is the statement: "**I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**"

In addition, even assuming, without conceding, that he was handed the Release and Arbitration Agreement turned to the third page, the arbitration agreement is also **on the third page**, in boldface type, all capital letters and with the heading "**MEDIATION & ARBITRATION**" underlined. It was not hidden or obscured in any way. The provision is

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clear, unambiguous and references the arbitration procedures issued by JAMS, which are publicly available. The arbitration provision is not tucked away in the body of other provisions and is in typeface that makes it prominent. In addition, the title of Release and Arbitration Agreement, "**APPEARANCE RELEASE, VOLUNTARY PARTICIPATION, AND ARBITRATION AGREEMENT**, clearly and conspicuously put Plaintiff on notice that it contains an arbitration agreement. Thus, Plaintiff cannot argue credibly that he was unfairly surprised by or unaware of the arbitration agreement in the Release and Arbitration Agreement.

In addition, under both New York and South Carolina law, "[a] party is under an obligation to read a document before he or she signs it, and a party cannot generally avoid the effect of a [document] on the ground that he or she did not read it or know its contents." *Anderson v. Dinkes & Schwitzer, P.C.*, 150 A.D.3d 805, 806, 56 N.Y.S.3d 127, 128 (N.Y. App. Div. 2017) (citations omitted); *see also Munoz*, 343 S.C. at 541, 542 S.E.2d at 365 ("a person who can read is bound to read an agreement before signing it"); *see also Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 399, 498 S.E.2d 898, 904 (Ct. App. 1998) (the failure of a contracting party "to read the entire contract was not a basis for setting aside the arbitration clause, particularly where "nothing in the contract prevented the [party] from consulting a lawyer"). That is especially true here, when the Plaintiff—as is alleged in the five pages of background on his education, successes and credentials in the Complaint—is a well-educated, successful, former Florida Congressman and current lobbyist who has worked a major Florida law firm for years.

Finally, it is worth noting that Ms. Miller attests that she handed Plaintiff Abruzzo the Release and Arbitration Agreement turned to the first page, noting that that is what she always does. (Exh. 2 ¶ 8). In fact, Plaintiff Abruzzo asked specific questions regarding a provision in

Paragraph 5 of the agreement, which is on the first page of the Release and Arbitration Agreement. (Exh. 2 ¶ 9).

As to unconscionability, under New York law, "[t]he doctrine of unconscionability contains both substantive and procedural aspects, and whether a contract or clause is unconscionable is to be decided by the court against the background of the contract's commercial setting, purpose and effect." *Sablosky v. Edward S. Gordon Co.*, 73 N.Y.2d 133, 138, 535 N.E.2d 643, 647 (N.Y. 1989). With regard to substantive unconscionability, "courts consider whether one or more key terms are unreasonably favorable to one party," although New York does not require mutuality of remedy in arbitration clauses or in contracts in general. *Id.*, 73 N.Y.2d 137-138, 535 N.E.2d at 646-647. A contract is substantively unconscionable where it "is so grossly unreasonable or unconscionable in the light of the mores and business practices of the time and place as to be unenforceable according to its literal terms." Procedural unconscionability results from the contract formation process, and looks at "whether the party seeking to enforce the contract has used high pressure tactics or deceptive language in the contract and whether there is inequality of bargaining power between the parties." *Id.*, 73 N.Y.2d 139, 535 N.E.2d at 647; *see also Arrowhead Golf Club, LLC v. Bryan Cave, LLP*, 59 A.D.3d 347, 348, 873 N.Y.S.2d 620, 621 (N.Y. App. Div. 2009) (finding arbitration provision not unconscionable where it was "not the product of disparate bargaining power or deceptive language in the contract, and there is no evidence that plaintiff lacked meaningful choice or was otherwise pressured into executing the engagement letters containing the provision").

Matter of Conifer Realty LLC (Envirotech Servs., Inc.), 106 A.D.3d 1251, 964 N.Y.S.2d 735 (N.Y. App. Div. 2013), is instructive on this issue. There, the New York Court of Appeals held that an arbitration agreement in a contract to remediate flooded properties was not

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unconscionable. The Court explained that substantive unconscionability may be found where "contract terms … are unreasonably favorable" to one party, such as "by way of example, 'inflated prices, unfair termination clauses, unfair limitations on consequential damages and improper disclaimers of warranty.'" 106 A.D.3d at 1254, 964 N.Y.S.2d at 739. The Court concluded that there was "nothing inherent in the [agreements] … which suggests that the terms [are] *unreasonably* favorable to [EnviroTech]." *Id.* With respect to procedural unconscionability, the Court concluded that the arbitration agreement, which was on the back of a one-page agreement and not highlighted in any way was nonetheless not unconscionable in light of the fact that the contracts called "the reader's attention to those additional terms and conditions and advise[d] that such provisions are part and parcel thereof." 106 A.D.3d at 1255, 964 N.Y.S.2d at 739. The signing party had between two and four days to review the agreements and seek legal counsel if desired. The Court explained that, "[t]he unconscionability doctrine is not designed 'to redress … inequality between the parties but simply to ensure that the more powerful party cannot surprise the other party with some overly oppressive term.'" 106 A.D.3d at 1255, 964 N.Y.S.2d at 740.

South Carolina law follows the same principles. For example, in *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007), the South Carolina Supreme Court explained, "unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." 373 S.C. at 25, 644 S.E.2d at 668. Finding no South Carolina cases on point, the *Simpson* Court looked to Ohio case law which had considered "numerous cases in the very recent past specifically addressing issues of unconscionability of arbitration clauses embedded in adhesion

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contracts between automobile retailers and consumers." 373 S.C. at 26, 644 S.E.2d at 669. The Court first noted that adhesion contracts "are not per se unconscionable." However, in *Simpson*, the Court held that, because the arbitration agreement was embedded in paragraph 10 out of 16 paragraphs on the back of the purchase contract for a personal vehicle, and was not highlighted or conspicuous in any other way, it was unconscionable. 373 S.C. at 27-28, 644 S.E.2d at 670. Here, in contrast, the arbitration provision is not hidden or obscured but is prominently displayed in boldface and all capital letters, under the heading, "**MEDIATION & ARBITRATION**," on the very page of the Release and Arbitration Agreement that Plaintiff acknowledges he could see and read. (Complaint ¶ 53).

Higgins v. Superior Court, 140 Cal. App.4th 1238, 45 Cal. Rptr.3d 293 (Cal. Ct. App. 2006), which considered a reality television program contract containing an arbitration agreement, is also instructive. *Higgins* involved five siblings, ranging in age from 14 to 21, and the reality show Extreme Makeover: Home Edition, which refurbishes homes for "needy and deserving" people. After the Higgins siblings lost their parents, a church family, the Leomitis, who had three children of their own, took the Higgins siblings in. The show's producers apparently contacted Charles Higgins, the eldest of the siblings, through the church and, after several months of discussions, sent the Leomitis and the Higgins siblings a 24-page, single spaced agreement that contained an arbitration clause. Nothing in the agreement called attention to the arbitration clause, which was not highlighted in any way. 140 Cal. App.4th at 1242-1243, 45 Cal. Rptr.3d at 296-297. In addition, the agreement contained a release that was in smaller print and had an arbitration provision embedded in the middle. After meeting with the producers, the Leomitis presented the agreements to the five Higgins siblings, told them to "flip through the pages and sign and initial," giving them about five minutes to review the documents.

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After the Leomitis' home had been expanded and reconstructed, the Leomitis "informed petitioners that the home was theirs (the Leomitis'), and the Leomitis ultimately forced petitioners to leave." 140 Cal. App.4th at 1245, 45 Cal. Rptr.3d at 298. Although the Higgins siblings contacted the show's producers, they were told the show could not help them and, in fact, the show was rebroadcast.

When the Higgins siblings filed suit in California state court, the show's producers petitioned to compel arbitration. The Higgins siblings opposed arbitration on the grounds that the agreement was procedurally and substantively unconscionable. Explaining that arbitration clauses can be rescinded on the same grounds as other contracts in general, the Court analyzed the contract and release signed by the Higgins siblings. The Court first looked to see whether the agreement and release were contracts of adhesion, which it acknowledged "are routine in modern day commerce," and "are worthy of neither praise nor condemnation, only analysis." 140 Cal. App.4th at 1248, 45 Cal. Rptr.3d at 300. Furthermore, "adhesion is not a prerequisite for unconscionability." 140 Cal. App.4th at 1249, 45 Cal. Rptr.3d at 301.

The Court then explained that "[u]nconscionability has both a procedural and a substantive element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results. [citation omitted] The prevailing view is that **both** must be present in order for a court to refuse to enforce a contract or clause under the doctrine of unconscionability." *Higgins*, 140 Cal. App.4th at 1249, 45 Cal. Rptr.3d at 301 (emphasis added).[9] As to surprise, the Court noted that "the arbitration provision appears in one paragraph near the end of a lengthy, single-space document … The television defendants knew

[9] The Court pointed out that, "[u]nder the FAA, a court may not consider a claim that an arbitration provision is unenforceable if it is a subterfuge for a challenge that the entire agreement (in which the arbitration clause is only a part) is unconscionable. That contention must be presented to the arbitrator." *Id.*

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petitioners were young and unsophisticated … [but] made no effort to highlight the presence of the arbitration provision in the Agreement. It was one of 12 numbered paragraphs in a section entitled 'MISCELLANEOUS.'" The text was neither bolded nor highlighted and, although boxes next to the other paragraphs required the siblings' initials, the arbitration clause did not. Based on these facts, the Court found the arbitration clause was procedurally unconscionable. 140 Cal. App.4th at 1253, 45 Cal. Rptr.3d at 304.

As to substantive unconscionability, the Court concluded the arbitration clause required only the siblings to submit their claims to arbitration because it repeatedly used the words "I agree" and only used the words "the parties" in connection with the parties' agreement that the producer had the right to seek injunctive or other equitable relief in court. *Higgins*, 140 Cal. App.4th at 1253, 45 Cal. Rptr.3d at 304. The Court explained, however, that "the fact that the injunction provision is one-sided does not necessarily mean that the clause is substantively unconscionable," but that any "'business realities' creating the special need, must be explained in the terms of the contract or factually established." 140 Cal. App.4th at 1254 n. 12, 45 Cal. Rptr.3d at 305 n.12. Other indicia of substantive unconscionability included that only the television producers could seek appellate review of the arbitrator's decision with regard to the statutory claims, and the requirement that costs be shared equally between the parties, even though the lower court shifted all the arbitration costs to the television defendants. 140 Cal. App.4th at 1254, 45 Cal. Rptr.3d at 305.

Unlike the *Higgins* siblings, here, as set forth in detail above, Plaintiff has not adequately alleged—let alone established—procedural unconscionability. Although Plaintiff alleges he was "forced to sign as he was sitting down to dinner with Dennis for filming," (Complaint ¶ 54), because he felt pressure to be a good boyfriend, he does not allege that he was forced to pursue a

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romantic relationship with cast member of a reality show during active filming or to agree to have the dinner filmed or forced to sign the Release and Arbitration Agreement in order to engage in a romantic relationship with Dennis. Plaintiff is a highly educated professional politician and lobbyist, who worked at a major law firm at the time he voluntarily signed the agreement. (Complaint ¶¶ 12-29). The arbitration agreement is set out as a separate provision and is highlighted with boldface type and all capital letters, under the heading, "**MEDIATION & ARBITRATION**," (Exh. 1 ¶ 19), on the very page of the Release and Arbitration Agreement Plaintiff acknowledges he saw before signing. (Complaint ¶¶ 53, 54). Thus, even as alleged, Plaintiff cannot establish procedural unconscionability under either New York or South Carolina law.

Nor has Plaintiff alleged—let alone established—substantive unconscionability. The arbitration agreement applies to both parties equally. (Exh. 1 ¶ 19 ("where any dispute in connection with this agreement arises, the parties agree to first try to resolve such dispute through confidential mediation," and "if mediation is unsuccessful, the all disputes … shall be resolved by final and binding arbitration"). Thus, both sides, Plaintiff and the Defendants, agreed to resolve any dispute arising out of or in connection with the Release and Arbitration Agreement, first through mediation and, if that is unsuccessful, via binding, confidential arbitration. Furthermore, the arbitration agreement provides that it is subject to the appellate provisions of the JAMS rules, which are publicly available and apply equally to all parties. (Exh. 1 ¶ 19) (Exh. 8).

While only the Corporate Defendants have the right to seek injunctive relief, the underlying business rationale for that right is unique to them, is justified by the unique realities of the media industry, and is spelled out in detail in the arbitration agreement, which is a far

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more robust explanation than the explanation provided in the *Higgins* case. In *Higgins*, the arbitration provision—which was only one of several aspects of the arbitration provision not at issue here on which the court's substantive unconscionability decision turned—merely provided that "[t]he parties hereto agree that, notwithstanding the provisions of this paragraph, Producer shall have a right to injunctive or other equitable relief as provided for in California Code of Civil Procedure [section] 1281.8 or other relevant laws." 140 Cal. App.4th at 1243, 45 Cal. Rptr.3d at 297. Here, in contrast, the 2014 arbitration agreement provides, "**I AGREE THAT GIVEN THE UNIQUE NATURE OF THE ENTERTAINMENT INDUSTRY, AND THE IRREPARABLE DAMAGE TO PRODUCER, NETWORK AND THEIR LICENSEES THAT WOULD RESULT FROM DELAYING OR PREVENTING THE EXHIBITION OF ANY PROGRAM PRODUCED HEREUNDER, I MAY NOT SEEK OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT.**" (Exh. 1 ¶ 19) (underline emphasis added). Where, like here, there is a legitimate need for a one-sided injunctive relief provision, courts have upheld similar arbitration provisions. *See, e.g., Kaufman v. Sony Pictures TV, Inc.*, Civ. No. 16-12027-LTS, 2017 U.S. Dist. LEXIS 112938, at *19 (D. Mass. July 20, 2017) (enforcing, in the reality television context, arbitration clause with a one-sided injunctive relief provision because it "spell[ed] out the 'legitimate commercial need' for the lopsided provision").[10] Thus, for the reasons set forth above, the arbitration agreement in the

[10] The arbitration agreement in *Kaufman* provided that only the Producer of the reality television show had the right to seek injunctive or other equitable relief, and provided, in pertinent part, that the participant agreed "that the business realities of reality competition television production . . . create special circumstances for which Producer must be able to maintain its ability to seek injunctive relief and/or other equitable and/or provisional remedies. For example, a participant's premature or threatened disclosure in violation of the confidentiality or publicity provisions of this Agreement could result in a reduction of audience interest or their diminution in the value of the Series … and/or [cause] Network irreparable injury and damage that could not be [recovered in an action at] law." 2017 U.S. Dist. LEXIS 112938 at *18-19. This explanation is

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Release and Arbitration Agreement is not substantively or procedurally unconscionable under either New York or South Carolina law; rather, it is valid and enforceable.[11]

IV. Whether Plaintiff's claims are subject to arbitration is for the arbitrator to decide.

Once this Court has determined that the parties entered into an enforceable agreement to arbitrate their disputes, it need not resolve any other issues. Under both New York and South Carolina substantive law, the court decides the scope of the arbitration agreement unless, as is the case here, the parties have provided that the arbitrator decides whether the claims fall within the arbitration agreement. *See Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 208 n.1 (2d Cir. 2005) (the question of who determines arbitrability generally "is a question for the court unless there is 'a "clear and unmistakable" agreement to arbitrate arbitrability'"); *see also Zabinski v*, 346 S.C. at 597, 553 S.E.2d at 118 ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise").

Pursuant to clear language in the Release and Arbitration Agreement, it is for the arbitrator, not the Court, to decide whether Plaintiff's claims fall within the agreement to arbitrate this dispute. The arbitration provision provides, that "**IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, <u>INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE</u>, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION …**" (Exh. 1 ¶ 19) (underline emphasis added).

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substantively similar to the legitimate business rationale set forth in the arbitration provision at issue here.

[11] Although it does not constitute binding precedent, a recent decision by the South Carolina federal district court in *Ledwell v. Ravenel, et al.*, is also instructive. That case involved a challenge to substantially similar release and arbitration agreements as the one at issue here brought by a voluntary participant on *Southern Charm* against the Corporate Defendants. There, the court rejected Plaintiff Ledwell's—a nanny with less experience and credentials than Abruzzo—unconscionability and duress arguments, as well as her argument that the release and arbitration agreements were void for lack of consideration. (*See* Exh. 7).

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Furthermore, where "parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator." *Contec Corp.*, 398 F.3d at 208. The streamlined JAMS rules, called for in the arbitration agreement, provide that the arbitrator is to decide the arbitrability of disputes. "Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or **scope of the Agreement** under which Arbitration is sought, and who are proper Parties to the Arbitration, **shall be submitted to and ruled on by the Arbitrator**. The Arbitrator has the **authority to determine jurisdiction and arbitrability issues as a preliminary matter**." *JAMS Streamlined Arbitration Rules & Procedures*, effective July 1, 2014, Rule 8(b) (emphasis added) (Exh. 8). Thus, whether each of Plaintiff's causes of action falls within the terms of the arbitration agreement is for the arbitrator, not the Court, to decide in the first instance.

In any event, all of Plaintiff's claims clearly fall within the scope of the parties' broad arbitration agreement because they all arise in connection with Abruzzo's participation with the Program and/or the Release and Arbitration Agreement. (Exh. 1 ¶ 19). All of Plaintiff's causes of action are based on his allegations that the Defendants made statements or encouraged the Individual Defendants to make statements on the Program that were false, depicted Plaintiff in a false light and/or showed misleading photographs of him, all in order to promote a "storyline" for dramatic effect and/or profit contrary to assurances purportedly made by certain Defendants in connection with Plaintiff's execution of the Release and Arbitration Agreement. Thus, all of Plaintiff's claims must be dismissed in favor of mediation/arbitration in New York.

V. Even if the arbitration agreement is not enforceable, the Amended Complaint must be dismissed based on the exclusive forum selection clause.

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Even if this Court were to find that the arbitration agreement is not enforceable, Plaintiff's Complaint still must be dismissed. The Release and Arbitration Agreement contains a forum selection clause that requires exclusive venue in the appropriate New York state or federal court only. Thus, Plaintiff has expressly waived his right to file this lawsuit in South Carolina state court.

The Release and Arbitration Agreement provides, in pertinent part, that "[t]he parties **submit to the in personam jurisdiction of the Supreme Court of the State of New York** located in New York County and the United States District Court for the Southern District of New York, **and waive any objections thereto**." (Exh. 1 ¶ 20) (emphasis added). As is the case with the arbitration agreement, this forum selection provision is located on the page of the Release and Arbitration Agreement that Plaintiff concedes he saw. (Complaint ¶¶ 53, 54). Because Plaintiff agreed to *exclusive* jurisdiction of all court proceedings in the appropriate state and federal courts in New York, (Exh. 1 ¶ 20), this Court lacks in personam jurisdiction over his claims.

Based on the Release and Arbitration Agreement's clear choice of law provisions, New York law should be applied to consideration of the forum selection clause. In *Minorplanet Sys. USA Ltd. v. American Aire, Inc.*, because the contract designated that the agreement was to be "governed by and construed in accordance with the laws of the state of Texas," the South Carolina Supreme Court applied Texas law in its analysis of whether a forum selection clause requiring exclusive venue in Texas was enforceable. 368 S.C. 146, 150, 628 S.E.2d 43, 45 (2006); *see also Loyd & Ring's Wholesale Nursery, Inc. v. Long & Woodley Landscaping & Garden Ctr., Inc.*, 315 S.C. 88, 94, 431 S.E.2d 632, 636 (Ct. App. 1993) (looking to Florida law to determine whether a forum selection clause choosing Florida courts was enforceable).

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Under New York law, "it is the well-settled 'policy of the courts of this State to enforce contractual provisions for choice of law and selection of a forum for litigation.'" *Sterling Nat'l Bank v. Eastern Shipping Worldwide, Inc.*, 35 A.D.3d 222, 222, 826 N.Y.S.3d 235, 237 (N.Y. App. Div. 2006). Forum selection clauses are "prima facie valid and enforceable unless shown by the resisting party to be unreasonable." *Brooke Group v. JCH Synd. 488*, 87 A.D.2d 530, 534, 663 N.Y.S.2d 635, 638 (N.Y. App. Div. 1996). "Although once disfavored by the courts, it is now recognized that parties to a contract may freely select a forum which will resolve any disputes," and such clauses are "enforced because they provide certainty and predictability in the resolution of disputes." *Id.* 87 A.D.2d at 534, 663 N.Y.S.2d at 638. Where parties agree to the jurisdiction of the courts of a specific state to resolve any controversy between them, and agree that that state's laws apply, "[t]here is no requirement for 'a more explicit expression of consent to the jurisdiction of the courts of a particular State.'" *Boss v. American Express Fin. Advisors, Inc.*, 15 A.D.3d 306, 307, 791 N.Y.S.3d 12, 14 (N.Y. App. Div. 2005). In fact, New York courts will honor the parties' choice of law and forum even where that means the plaintiff's claims are barred by the applicable statute of limitations. *Boss*, 15 A.D.3d at 308, 791 N.Y.S.3d at 14-15.

Under South Carolina law, it is well-established that a party can waive personal jurisdiction of South Carolina courts: "It has long been the law of the State of South Carolina that lack of subject matter jurisdiction cannot be waived even by consent but lack of jurisdiction of the person may be waived," where a party consents in writing thereto. *Firestone Fin. Corp. v. Owens*, 309 S.C. 73, 75-76, 419 S.E.2d 830, 832 (Ct. App. 1992); *see also Republic Leasing Co. v. Haywood*, 329 S.C. 562, 566, 495 S.E.2d 804, 806 (Ct. App. 1998) ("[a] party may always waive lack of personal jurisdiction …. It is not the function of courts to rewrite contracts between parties. Our function is limited to the contract's terms, and absent ambiguity, their plain

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meaning controls our inquiry"). Here, Plaintiff, a Florida resident, consented in writing to the jurisdiction of New York state or federal courts.

To the extent Plaintiff argues that S.C. Code Ann. § 15-7-120,[12] absolves him of bringing his claims in New York, that provision does not apply in this case because the Release and Arbitration Agreement contains a choice of law provision specifying that "the entire relationship between the parties" is governed by New York substantive law. (Exh. 1 ¶ 20). For example, as noted above, in *Minorplanet*, the South Carolina Supreme Court held that the forum selection clause requiring exclusive venue in Texas was enforceable under Texas law, in a contract designating that the agreement was to be "governed by and construed in accordance with the laws of the state of Texas." 368 S.C. at 150, 628 S.E.2d at 45. This ruling is consistent with the well accepted principle under South Carolina law that forum selection clauses are enforceable in general where they are not unreasonable or unjust. *Haywood*, 329 S.C. at 566, 495 S.E.2d at 806 (noting also that forum selection clauses "made at arms' length by sophisticated business entities" enjoy *prima facie* validity and enforceability).

Even if Section 15-7-120 applied in this case (which it does not since the Release and Arbitration Agreement requires application of New York substantive law) the enforceability of that statutory provision is in serious doubt. In *The Bremen v. Zapata Off-Shore Co.*, the United States Supreme Court rejected state and federal courts' historical reluctance to enforce forum selection clauses. 407 U.S. 1 (1972). The Supreme Court explained that reluctance to enforce valid forum selection clauses is "hardly more than a vestigial legal fiction," reflecting

[12] That section provides, in pertinent part, that a "[n]otwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action." S.C. Code Ann. § 15-7-120(A).

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"something of a provincial attitude regarding the fairness of other tribunals." *Id.* at 12. Thus, they have "little place" in the current era. *Id.*

While the parties in *The Bremen* both were sophisticated business entities, the United States Supreme Court expanded its holding in *The Bremen* to individual purchasers of cruise line tickets in *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991). The Supreme Court explained that, "a clause establishing *ex ante* the forum for dispute resolution has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions." 499 U.S. at 593-594. The Court also noted the business purpose behind the cruise line's "special interest in limiting the fora in which it potentially could be subject to suit." *Id.* As to whether the forum selection clauses were fundamentally unfair, the Court noted that there was no indication the forum had been chosen as a means to dissuade passengers from bringing claims but, rather had a legitimate basis, namely, the cruise line had its principle place of business in the forum. 499 U.S. at 595. Furthermore, there was no evidence the defendants obtained the agreement to the forum clause, which was not hidden, by fraud or overreaching, and the plaintiffs had "the option of rejecting the contract with impunity." *Id.*

The same is true here. The forum selection clause in the Release and Arbitration Agreement is conspicuously set out under the heading "Governing Law" on the page of the agreement that Plaintiff concedes he saw. Plaintiff has not adequately alleged—let alone established—that the Release and Arbitration Agreement was obtained by "fraud or overreaching." Moreover, he has not even alleged that the governing law and exclusive venue provisions themselves were a product of fraud. As set forth in detail above, none of the

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Defendants coerced Plaintiff into signing the Release and Arbitration Agreement. (Exh. 2 ¶¶ 6, 8) Plaintiff voluntarily chose to pursue a romantic relationship with a cast member on a reality television show during active filming. He was not required to sign the Release and Arbitration Agreement or appear on the Program in order to pursue a romantic relationship with Dennis. (Exh. 2 ¶¶ 4, 5, 11). Had Plaintiff chosen not to participate in the Program, Defendants simply would not have filmed the dinner. (Exh. 2 ¶¶ 5, 11). There is no evidence—just an unsubstantiated allegation—that Plaintiff did not have ample time to review and, if he had chosen to do so, seek legal counsel in connection with the Release and Arbitration Agreement, (Exh. 2 ¶¶ 8, 9), including the forum selection clause. That unsubstantiated allegation is contradicted by the express terms of the agreement he voluntarily signed. The Corporate Defendants have a legitimate, business reason for choosing New York as the forum to resolve disputes with Program participants. As noted in the attached affidavits, Corporate Defendants have substantial connections with the State of New York, including because Haymaker, Bravo and NBCUniversal regularly do business in and have offices, including their principal places of business, in New York. (Exh. 5 ¶¶ 2-4) (Exh. 4 ¶¶ 4, 5) (Exh. 6 ¶ 2). Having disputes arising out of its television programs resolved in a central location where their businesses and witnesses are headquartered is reasonable and based on legitimate business considerations. On the other hand, Plaintiff—a Florida resident—has not alleged any substantive connection to South Carolina other than a short trip to visit Dennis at her home.

The Fourth Circuit likewise has questioned the continued viability of Section 15-7-120. In *Albemarle Corp. v. Astrazeneca UK Ltd*, 628 F.3d 643 (4th Cir. 2010), the Fourth Circuit considered a forum selection clause in a contract between a South Carolina corporation and a British corporation. The Fourth Circuit noted that it saw no evidence that S.C. Code Ann. § 15-

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7-120(A) "manifests a strong public policy of South Carolina," noting that South Carolina courts "have enforced forum selection clauses in contracts, notwithstanding the existence of 15-7-120(A)." 628 F.3d at 652. In addition, the Fourth Circuit concluded that "it can hardly be a strong public policy to countermand the very policy that the [U.S.] Supreme Court adopted in *The Bremen*," which "would have little effect if states could effectively override the decision by expressing disagreement with the decision's rationale." *Id.*; *see also T.R. Helicopters, LLC v. Bell Helicopter Textron, Inc.*, No. 3:10-2250-JFA, 2010 U.S. Dist. LEXIS 21923 *12 (D.S.C. Nov. 17, 2010) (enforcing forum selection clause and concluding that "no South Carolina court has explicitly stated whether South Carolina has a strong public policy against forum selection clauses that would deprive a citizen of his choice"). Thus, even if the Court were to find the arbitration agreement unenforceable, the exclusive choice of forum provision, which is valid and enforceable, requires that the Complaint be dismissed as having been filed in an improper forum.

CONCLUSION

For all of the reasons stated herein, this Court should dismiss Plaintiff's Complaint in favor of mediation, and if necessary, arbitration in New York. Alternatively, even if the court were to find the parties' arbitration agreement unenforceable, it should dismiss Plaintiff's Complaint based on improper venue pursuant to the valid, binding exclusive forum selection clause in the Release and Arbitration Agreement.

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ATTORNEYS FOR DEFENDANTS

June 19, 2020

EXHIBIT 1

APPEARANCE RELEASE, VOLUNTARY PARTICIPATION, AND ARBITRATION AGREEMENT

This is an agreement between myself and Haymaker Media, Inc. (including its licensees, successors and assigns, and each of their respective parents, subsidiaries, agents and affiliates, and each of their respective officers, directors, shareholders, employees, agents, and representatives) (collectively, "Producer"). In exchange for the opportunity to be part of the program currently titled "Southern Charm" (the "Program"), I agree to the following:

1. I irrevocably grant to Producer the right to record and photograph me and to use my name, likeness, voice, information or comments about me, and any material that I contribute (collectively, the "Materials") in connection with the Program and other productions. I further grant to Producer and any programming service or other platform of NBCUniversal Media, LLC ("Network") and its advertisers the right to use the Materials throughout the universe, in perpetuity, in any and all media now known and hereafter devised, in any manner, including in connection with advertising, merchandising and publicity for the Program (the "Promotions").

2. I agree that Producer shall own all of the rights to the Materials, and that the Materials will be a "work for hire" by me for Producer. I assign and transfer any rights, including copyright, I may have in the Materials to Producer. I waive the exercise of any "moral rights," "droit moral," and any analogous rights, in any jurisdiction of the world, which I may have. I waive any right to object to any use (including any editing/dubbing/fictionalization) of the Materials by Producer or Network for any reason. I also waive my claims to any royalties relating to the use of any music performed or contributed by me (including, without limitation, any applicable copyright, public performance, mechanical and synchronization royalties).

3. I represent and warrant that I am mentally, physically, and emotionally able to participate in the Program and have the right and authority to enter into, fully perform obligations, and grant all rights in this Agreement. My participation is not restricted by nor shall it cause me to be in breach of any other agreements to which I am a party. I agree to participate in connection with the production of the Program and related materials on such dates and at such locations as Producer shall designate.

4. I represent and warrant that I have not (a) given anyone associated with the Program anything of value to arrange my appearance in the Program or the Promotions or (b) accepted anything of value to promote any product service or venture on air in the course of my participation in the Program, and I understand that such acts may be a federal offense. Furthermore, I shall not mention or "plug" any product, service, venture, or thing on the Program without approval of Producer and/or Network.

5. I am not currently, nor do I currently intend to be, a candidate for public office, and I agree that if there is any change in this representation prior to the initial exhibition of the Program in which I appear, I will immediately notify Susanna Zwerling, at susanna.zwerling@nbcuni.com. Becoming a candidate before or around the time of the initial exhibition of the Program may under certain circumstances have legal implications on the exhibitor's ability to exhibit the Program.

6. I will not be paid for any and all of the rights listed in this Agreement and waive any right I may have to any compensation. I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes the Materials in the Program or in the Promotions. I agree that I am a volunteer and not an employee of Producer and I am not entitled to any employment benefits. Producer has no obligation to me and is under no obligation to use the Materials. If I receive anything of value in connection with the Program, I shall be responsible for all taxes and other obligations that arise.

7. I shall not participate in any unscripted, "reality-based" program, from the date of this Agreement through 6 months after the date of the initial exhibition of the final episode of the last cycle in which I participated.

8. I understand that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort.

9. For dramatic or creative purposes, Producer and Network may make misrepresentations to me, related to any and all topics, prior to and during the course of my participation. I consent to, and assume all risks of, such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim.

10. If requested by Producer, I agree to execute a location agreement, which shall grant Producer and Network the right (without limitation) to enter upon and use my home for the purpose of photographing, filming and recording the Program, as further detailed in such location agreement. Further, if requested by Producer, I agree to use reasonable, good faith efforts to assist Producer in obtaining appearance releases from my family, friends, employees and any other individuals in my life, in connection with the Program.

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11. I consent to Producer and Network recording my actions and statements via concealed or hidden cameras and audio devices throughout the filming locations, including in areas in which a person might have a reasonable expectation of privacy.

12. **CONFIDENTIALITY AND PUBLICITY**. All publicity in connection with the Program is under the sole control of Network and subject to the following terms and conditions of confidentiality and publicity:

(a) I shall not disclose any information or materials about Producer, the Network, this Agreement, the Program, its participants, location(s), events, and outcomes, that I learn from my Program participation (collectively, the "Confidential Information"), unless such Confidential Information is specifically disclosed in the Program exhibition, if ever. My confidentiality obligations shall continue in perpetuity or until terminated by Network in writing.

(b) Except as requested by Producer or Network, I shall not (nor shall anyone on my behalf): (i) discuss with any third party the Program, my participation in the Program, or make negative statements about or otherwise disparage any of the Released Parties (as defined in paragraph 17), except that I may make incidental, non-derogatory mention that I participated in the Program (i.e., "I was on *Southern Charm*.") only after Network has announced or exhibited my appearance in the Program or a new cycle, or (ii) advertise, promote, or make any commercial use of either my Program participation, or any of Producer's or Network's names, logos, trade names or trademarks.

(c) Any breach by me of any of these confidentiality and publicity provisions would cause Producer and Network irreparable injury and damage that cannot be reasonably or adequately compensated by damages in an action at law. I agree that Producer and Network will be entitled to injunctive and other equitable relief (without posting bond) to prevent or cure any such breach or threatened breach. I also recognize that proof of damages for any such breach will be costly, difficult, and inconvenient to ascertain. Accordingly, I agree to pay Producer and Network the sum of $500,000 per breach plus disgorgement of any income that I may receive in connection with any such breach as liquidated damages.

13. I authorize Producer and Network to investigate, access, collect, and use for any purpose whatsoever, information about me and any of the statements made by me in this Agreement or otherwise in connection with my participation in the Program. Additionally, any such information may be disclosed publicly, used, broadcast, distributed, advertised, promoted or otherwise exploited as part of the Program or otherwise.

14. I agree not to infringe upon or violate the rights of any other person or entity, not to cause or threaten injury or harm to any person or property, and that I shall abide by all applicable laws, rules, and regulations. I agree that Producer has the right, but not the obligation, to use the means it deems necessary to preserve order and the safety of myself and other participants. I acknowledge and accept all risks to my person or property arising from my participation in the Program, including those arising from my interactions with other participants in the course of my participation in the Program.

15. I understand and freely consent to participating in activities in connection with the Program that may be hazardous, dangerous, and may expose me to physical, emotional, and mental stress or injury. I accept and assume any and all risks, hazards and dangers regardless of whether they are explicitly detailed in this Agreement, and the waivers, releases and indemnities that I have executed or may execute apply to all such risks, hazards and dangers.

16. **NO REPRESENTATIONS OR WARRANTIES BY PRODUCER. Producer has made no representations or warranties of any kind regarding my or others' qualifications, ability or fitness to participate in the Program, and the waivers, releases and indemnities contained in this Agreement and any other Agreement that I have executed or may execute in the future related to the Program expressly apply to my participation in or presence around any such activities or persons.**

17. **RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY. To the maximum extent permitted by law, I (on behalf of myself and my heirs, executors, agents, successors or assigns) agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the "Released Parties") for any claims, actions, damages, losses, costs, expenses or causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including, without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the Released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement.**

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18. I acknowledge that there is a possibility that after the execution of this Agreement, I may discover facts or incur or suffer claims which were unknown or unsuspected at the time of execution, and which if known by me at that time may have materially affected my decision to execute this Agreement. I agree that by reason of this Agreement, and the releases contained in the preceding paragraphs I am assuming any risk of such unknown or unsuspected facts and claims.

19. **MEDIATION & ARBITRATION. WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES," HARD COPIES PROVIDED UPON REQUEST). THE JAMS RULES FOR SELECTION OF MEDIATORS AND ARBITRATORS WILL BE FOLLOWED, EXCEPT THAT ANY MEDIATOR WILL BE (I) LICENSED TO PRACTICE LAW IN NEW YORK, OR (II) A RETIRED JUDGE. UPON THE CONCLUSION OF ANY ARBITRATION PROCEEDINGS, THE ARBITRATOR SHALL RENDER FINDINGS OF FACT AND CONCLUSIONS OF LAW AND A WRITTEN OPINION SETTING FORTH THE BASIS AND REASONS FOR ANY DECISION REACHED. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES. I AGREE THAT GIVEN THE UNIQUE NATURE OF THE ENTERTAINMENT INDUSTRY, AND THE IRREPARABLE DAMAGE TO PRODUCER, NETWORK AND THEIR LICENSEES THAT WOULD RESULT FROM DELAYING OR PREVENTING THE EXHIBITION OF ANY PROGRAM PRODUCED HEREUNDER, I MAY NOT SEEK OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT.**

20. Governing Law. Without regard to the conflicts of law provisions, New York law shall govern the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

21. I acknowledge and agree that, regardless of any assignment of this Agreement, each of the Released Parties is an express intended third party beneficiary of this Agreement, including, without limitation, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto. Producer may license, assign, and transfer this Agreement and any or all rights granted by me to Producer under this Agreement to any person or entity.

22. This is the entire agreement between Producer and me, and it supersedes all prior oral or written communications. I am not relying on any promise or statement, express or implied, that is not contained in this Agreement. The illegality, invalidity or unenforceability of any specific provision shall in no way affect the remainder of this Agreement. This Agreement cannot be terminated, rescinded or amended, except by a written agreement signed by both Producer and me. It may be executed by original, facsimile or electronic signature. I shall execute any documents, and do any other acts that are necessary to evidence, effectuate or protect any of the rights granted by me or support any of the representations or warranties made by me.

I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.

Signature: _____ Date: 10-30-18 Phone: 561-212-1111

Print Name: Joseph Abruzzo Date of Birth: [redacted]

Address: 301 YAMATO RD, STE 1240 BOCA RATON, FL 33431

R 10/30

For verification purposes only pursuant to 18 U.S.C. §§ 2256 et seq.

001

If participant is under 18 years of age: If participant is under 18 years of age: The undersigned represents and warrants that they are the parent(s)/guardian(s) having sole and complete legal custody, care and control of the above-named minor and give permission for such minor to enter into this Agreement. I have read and fully understand this Agreement and expressly approve of, and consent and agree to the minor's execution of the Agreement and his/her undertakings and obligations in the Agreement and will not revoke consent during the minority of the minor. I affirm all representations and warranties made in this Agreement and guarantee the performance of this Agreement by the minor and represent and warrant that the minor will not disaffirm the Agreement at any time during or after minority. I release, discharge and indemnify the Released Parties from all liability, damages, and claims made by or on behalf of the minor arising out of or in connection with the minor's participation in the Program or relating to the subject matter of this Agreement and this parental consent (other than as may be expressly provided for in the Agreement), including but not limited to negligence and all other released claims identified in paragraph 17 of this Agreement.

Signature of Parent or Guardian: _____ Date: _____ Phone: _____

Print Name of Parent or Guardian:_____Date of Birth: _____

Address:_____

Signature of Parent or Guardian: _____ Date: _____ Phone: _____

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EXHIBIT 2

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **AFFIDAVIT OF MORGAN MILLER**

PERSONALLY APPEARED BEFORE ME, the undersigned, Morgan Miller, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.
2. I served as the Executive Producer for Season 6 of the television show *Southern Charm,* set in Charleston, South Carolina.
3. In my role as Executive Producer for Season 6 of *Southern Charm*, I was in contact with cast member Kathryn Dennis regularly.
4. Kathryn Dennis was free to date whomever she chose. When Kathryn Dennis began dating Plaintiff Joseph Abruzzo, he was not required or pressured by any of the Defendants or, to my knowledge, anyone else to appear on the show *Southern Charm*.
5. Plaintiff Joseph Abruzzo could have pursued a romantic relationship with Ms. Dennis without appearing on the show *Southern Charm*.
6. Neither I nor any of the other Producers of the show *Southern Charm* had any discussions with Plaintiff Joseph Abruzzo prior to his dinner date with Kathryn Dennis; instead, all discussions about appearing on the show were between him and Ms. Dennis.
7. Plaintiff Joseph Abruzzo knew prior to coming to Charleston, South Carolina for the dinner with Kathryn Dennis that it would be filmed, and he appeared eager to participate in the filming.
8. On October 30, 2018, Plaintiff Joseph Abruzzo signed the Appearance Release, Voluntary Participation, and Arbitration Agreement without incident or any pressure from any of the Defendants or anyone else. I do not recall providing any assurances to Plaintiff Joseph Abruzzo about how he would or would not be portrayed on *Southern Charm* and I am unaware of any Producer giving him any such assurances. The Producers of *Southern Charm* do not typically provide such assurances to volunteer participants. The Appearance Release, Voluntary Participation, and Arbitration Agreement was handed to Plaintiff Joseph Abruzzo turned to the first page; it would have been highly unusual to hand such an agreement to a potential participant turned to any other page, and I do not recall ever having done so.
9. Plaintiff Joseph Abruzzo had adequate time to review the Appearance Release, Voluntary Participation, and Arbitration Agreement, and took time to review each page before he signed it. He asked about the provision in Paragraph 5 of the

Appearance Release, Voluntary Participation, and Arbitration Agreement that concerns whether he is or will become a candidate for public office, which appears on page 1 of the Agreement. His concern was addressed at the time.

10. Plaintiff Joseph Abruzzo did not question any other provisions in the Appearance Release, Voluntary Participation, and Arbitration Agreement. Had Plaintiff Joseph Abruzzo raised any other issue with the Appearance Release, Voluntary Participation, and Arbitration Agreement, it would have been flagged and addressed prior to filming.
11. If Plaintiff Joseph Abruzzo had declined to sign the Appearance Release, Voluntary Participation, and Arbitration Agreement, his dinner date with Kathryn Dennis simply would not have been filmed.
12. Attached to this Affidavit as Exhibit A is a photograph taken of Plaintiff Joseph Abruzzo immediately after signing the Appearance Release, Voluntary Participation, and Arbitration Agreement. The Producers of *Southern Charm* routinely photograph participants immediately after they sign an appearance agreement so that they can readily identify participants later if needed.

FURTHER, AFFIANT SAYETH NAUGHT.

_____
Morgan Miller

Pursuant to the South Carolina Supreme Court's April 22, 2020 amended Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

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EXHIBIT 3

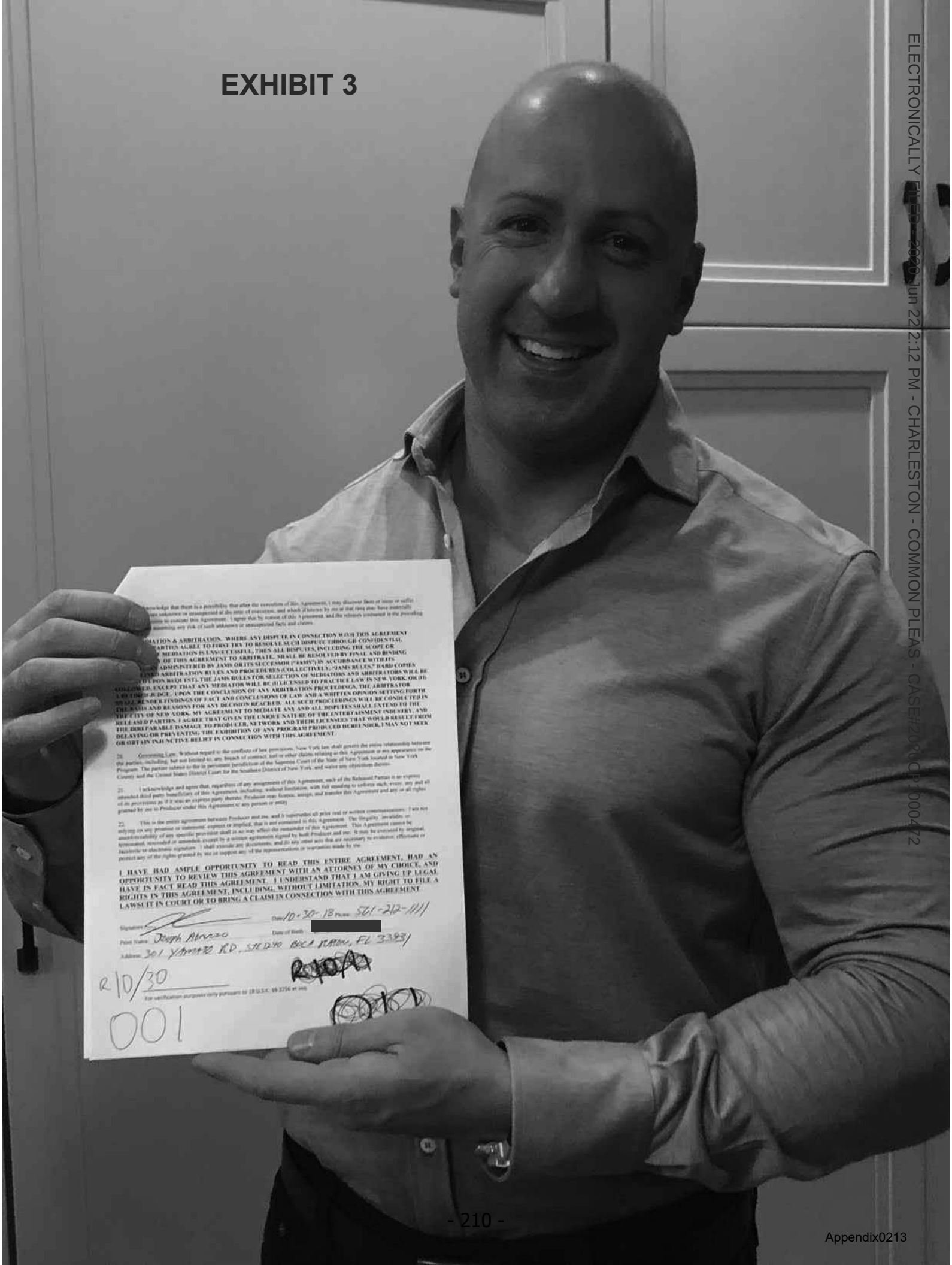

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ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS
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ON REQUEST). THE JAMS RULES FOR SELECTION OF MEDIATORS AND ARBITRATORS WILL BE
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OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT.
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RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A
LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.
Signature
Date 10-30-18 Phone 561-212-1111
Print Name Joseph Alfasso
Date of Birth
Address 301 YAMATO RD, STE 290 BOCA RATON, FL 33431
R10/30
001

EXHIBIT 4

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS, LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **AFFIDAVIT OF SAMANTHA H. DAVENPORT**

PERSONALLY APPEARED BEFORE ME, the undersigned, Samantha H. Davenport, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.

2. I am Senior Vice President, Legal Affairs, Cable Entertainment, for NBCUniversal Media, LLC. I have been employed by NBCUniversal Media, LLC for more than ten years. I am responsible for legal advice and counsel, on behalf of NBCUniversal, Media, LLC and Bravo Media Productions LLC, in connection with the development, production and exhibition of *Southern Charm*.

3. I understand that Plaintiff Joseph Abruzzo signed an Appearance Release, Voluntary Participation, and Arbitration Agreement on or about October 30, 2018, which is referenced as Exhibit 1 (the "Release and Arbitration Agreement").

3. NBCUniversal Media, LLC is expressly defined as a "Released Party" in Exhibit 1.

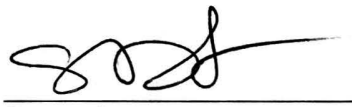
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4. NBCUniversal Media, LLC is indirectly owned by Comcast Corporation, a publicly held corporation and a defendant in this case. Thus, as NBCUniversal Media, LLC's parent company, Comcast Corporation is also defined as a "Released Party" in Exhibit 1.

5. Bravo Media Productions LLC is a defendant in this case and is party to a production services agreement with Haymaker Media Inc., dated March 12, 2013 relating to the production of *Southern Charm*. Bravo Media Productions LLC is indirectly owned by NBCUniversal Media, LLC. Thus, as a subsidiary of NBCUniversal Media, LLC, Bravo Media Productions LLC is defined as a "Released Party" in Exhibit 1.

FURTHER, AFFIANT SAYETH NAUGHT.



Samantha H. Davenport

Pursuant to the South Carolina Supreme Court's April 3, 2020 Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

EXHIBIT 5

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **SECOND AFFIDAVIT OF SAMANTHA H. DAVENPORT**

PERSONALLY APPEARED BEFORE ME, the undersigned, Samantha H. Davenport, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.

2. Bravo Media Productions LLC ("Bravo") is the name of Bravo's production contracting entity for unscripted programming on the Bravo network; Bravo Media LLC operates the Bravo network. Both Bravo and Bravo Media LLC have offices and other substantive connections to the State of New York as their principal place of businesses are located in New York, and they regularly conduct business in New York.

3. Defendant NBCUniversal Media, LLC ("NBCU") has offices and other substantive connections to the State of New York as its principal place of business is located in New York, and it regularly conducts business in New York.

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4. Defendant Comcast Corporation owns NBCU and Bravo (the two other defendants which are both headquartered in NY and themselves regularly conduct business in NY). Comcast also regularly conducts business in New York.

FURTHER, AFFIANT SAYETH NAUGHT.

Samantha H. Davenport

Pursuant to the South Carolina Supreme Court's April 22, 2020 amended Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

EXHIBIT 6

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **SECOND AFFIDAVIT OF AARON ROTHMAN**

PERSONALLY APPEARED BEFORE ME, the undersigned, Aaron Rothman, who, after being duly sworn, deposes and states:

1. I am over the age of eighteen (18) and competent to testify about the information contained in this Affidavit.
2. Defendant Haymaker Content, LLC is organized and incorporated in the State of New York. It also has its principal office at 150 West 22nd Street, 7th Floor, NY, NY 10011.
3. I have a fifty percent (50%) ownership interest in Haymaker Content, Inc. (Haymaker), and I had this same ownership interest in Haymaker when Plaintiff Joseph Abruzzo signed an Appearance Release, Voluntary Participation, and Arbitration Agreement ("Release and Arbitration Agreement") on or about October 30, 2018, in connection with the television program entitled "*Southern Charm*" (the "Show"), which is referenced as Exhibit 1.
4. Exhibit 1 is a true and correct copy of the Release and Arbitration Agreement signed by Plaintiff Abruzzo, is kept in Haymaker's ordinary course of business, and is in the same or substantially same condition as it was in when Plaintiff Abruzzo signed it.
5. Plaintiff Abruzzo had adequate time in order to read, review and consider the contents of the Release and Arbitration Agreement identified as Exhibit 1.
6. There were not any representations or guarantees made to Plaintiff Abruzzo that Exhibit 1 provided or meant anything other than the terms themselves expressly state.
7. No one connected with the show Southern Charm pressured or coerced Plaintiff Abruzzo to execute Exhibit 1.
8. Defendant Haymaker did not have any control over who Katheryn Dennis chose to date.
9. Plaintiff was not required in any way to appear on or be the subject of any conversations aired on Southern Charm in order to pursue a romantic relationship with Kathryn Dennis.
10. Plaintiff could have dated Kathryn Dennis without appearing on the Program.
11. Defendant Haymaker would not have included any film of or statements regarding Plaintiff if he had chosen to not sign the Release and Arbitration Agreement.

FURTHER, AFFIANT SAYETH NAUGHT.

Aaron Rothman

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Pursuant to the South Carolina Supreme Court's April 22, 2020 amended Order concerning Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

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EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Dawn Ledwell, Plaintiff, v. Thomas Ravenel; Haymaker Content, LLC; Bravo Media Productions, Inc.; NBC Universal Media, LLC; and Comcast Corporation, Defendants.	Civil Action No. 2:19-cv-2815-RMG **ORDER AND OPINION**

Before the Court is Defendant Haymaker Media, Inc. ("Haymaker"), Bravo Media Productions LLC ("Bravo"), NBCUniversal Media, LLC ("NBC"), and Comcast Corporation's ("Comcast") (collectively the "Defendants") Motion to Dismiss Plaintiff's Amended Complaint. (Dkt. No. 6.)[1] For the reasons set forth below, the motion is granted.

I. Background

Plaintiff Dawn Ledwell alleges that she was the caretaker for the children of Thomas Ravenel for roughly three years. (Dkt. 1-2 ¶ 27.) Ravenel began appearing on the reality television show *Southern Charm* around March 2014 and is a central character on the show. (Dkt. 1-2 ¶¶ 11, 14-15.) *Southern Charm* airs on national and worldwide television. (Dkt. No. 1-2 ¶11.) At some

[1] Plaintiff's Amended Complaint incorrectly designates defendants Haymaker Media, Inc. as "Haymaker Content, LLC" and Bravo Media Productions LLC as "Bravo Media Productions, Inc." (Dkt. No. 6-1.) The signatories to the arbitration agreements at issue in this motion are Plaintiff and Defendant Haymaker. NBC, however, is defined as a "Released Party" in both agreements. (Dkt. Nos. 17-2 and 17-3.) Further, Defendants have submitted undisputed affidavits affirming that: (a) defendant Comcast indirectly owns NBC and that (b) Bravo is a subsidiary of NBC. (Dkt. No. 6-5.) Both Agreements define "Released Party" to include these parent or subsidiary entities. Thus, for the purpose of this motion, said parties are referred to interchangeably as "Defendants."

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point after beginning to work for Ravenel, (Dkt. No. 17-1 ¶ 5), Plaintiff signed a document, on September 13, 2014, entitled "Appearance Release Form, Arbitration Provision and Voluntary Participation Agreement" (the "2014 Agreement") with Haymaker, *Southern Charm*'s producer, to appear on *Southern Charm*, (Dkt. No. 17-3). Around January 2015, "Plaintiff was the victim of an unwanted careless and reckless physical act at the hands of an intoxicated . . . Ravenel." (Dkt. No. 1-2 ¶ 35.) Around December 2015, Plaintiff "notified and informed" Defendants' employee Chaz Morgan about the incident, but Defendants "failed to investigate Plaintiff's allegations . . . when they were first made aware of these allegations." (Dkt. No. 1-2 ¶ 46.) Prior to Plaintiff reporting Ravenel's actions to Defendants, Plaintiff signed a second document, dated September 15, 2015, with Haymaker entitled "Appearance Release Form, Arbitration Provision and Voluntary Participation Agreement" (the "2015 Agreement") to again appear on *Southern Charm*. (Dkt. No. 17-2) The 2014 and 2015 Agreements (collectively the "Agreements") contain similar "Mediation & Arbitration" clauses and are set in similar type. In relevant part, the 2014 Agreement's "Mediation & Arbitration" clause, which is set in bold type and includes certain sections in all capital letters, reads:

> The parties agree that if any controversy or claim arising out of or relating to the Agreement cannot be settled through direct discussions [or JAMS administered mediation] . . . THE PARTIES AGREE THAT THE CONTROVERSY OR CLAIM, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBTIRATE, SHALL THEN BE RESOLVED BY FINAL AND BINDING CONFIDENTIAL ARBITRATION ADMINISTERED BY JAMS IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES . . . .

(Dkt. No. 17-3 § 13.) (bolding removed) The 2015 Agreement's clause is similar. (Dkt. No. 17-2 § 22.) Plaintiff alleges that she made various appearances on *Southern Charm.* (Dkt. No. 1-2 ¶ 29.)

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On October 3, 2019, Defendants removed this action, which had originally been filed on or around December 7, 2018. (Dkt. No. 1.) Plaintiff's Amended Complaint was filed on or around February 26, 2019. (Dkt. No. 1-2.) Sole resident defendant Ravenel settled with Plaintiff on July 18, 2019. (Dkt. No. 1-1 at 13-23.) Defendants received a copy of the settlement agreement on September 11, 2019 and within thirty days removed the instant action. (Dkt. No. 1.) Plaintiff filed a motion to remand to state court, (Dkt. No. 13), which this Court denied, (Dkt. No. 21). Plaintiff brings causes of action for defamation, various types of negligence, and South Carolina Unfair Trade Practices Act ("SCUTPA") violation. Defendants make a motion to dismiss the action and compel arbitration.[2]

II. Legal Standard

The Federal Arbitration Act ("FAA") reflects a liberal policy toward arbitration. The Act provides that a written agreement to arbitrate in any contract involving interstate commerce "shall be valid, irrevocable and enforceable" unless there exists grounds for revocation in law or equity. 9 U.S.C. § 2; *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). A litigant can compel arbitration under the FAA if the litigant can demonstrate: "(1) the existence of a dispute between the parties; (2) a written agreement that includes an arbitration provision which purports to cover the dispute; (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce; and (4) the failure, neglect or refusal of the [party] to arbitrate the dispute." *American Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83,

[2] Defendants move under Rule 12(b)(1). (Dkt. No. 6.) The Court will analyze the instant motion under Rule 12(b)(3), however, the correct rule for a motion to dismiss in favor of arbitration. *Brown v. Five Star Quality Care, Inc.*, No. 2:15-cv-4105-RMG, 2016 WL 8710474, at *2 (D.S.C. Jan. 8, 2016) ("In this Circuit, litigants seeking to [compel arbitration] should move under Rule 12(b)(3) (improper venue)" (citing *Aggarao v. MOL Ship. Mgmt. Co.*, 675 F.3d 355, 365 n.9 (4th Cir. 2012)). "This Court's subject-matter jurisdiction is not subject to diminution by private agreement." *Id.* at *5.

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87 (4th Cir. 2005) (quoting *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500-01 (4th Cir. 2002)). District courts have "no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview." *Adkins*, 303 F.3d at 500.

Where all of the claims asserted in a complaint are subject to arbitration, the Fourth Circuit has held that dismissal is an appropriate remedy. *Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709–10 (4th Cir. 2001) ("[D]ismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable."). On a Fed. R. Civ. P 12(b)(3) motion to dismiss to compel arbitration, the Court may consider evidence outside the pleadings, but the facts are viewed in a light most favorable to the plaintiff because a plaintiff need only make a *prima facie* showing of proper venue to survive a motion to dismiss. *Brown v. Five Star Quality Care, Inc.*, No. 2:15-cv-4105-RMG, 2016 WL 8710474, at *2 (D.S.C. Jan. 1, 2016).

III. Discussion

This dispute is subject to arbitration under the FAA and the four-part test applied by the Fourth Circuit. First, there is a dispute between the parties, as evidenced by the Complaint filed in this action. (Dkt. No. 1.) Second, Plaintiff does not deny she refused to arbitrate, as evidenced by her complaint and the filings in this case. Third, the Agreements affect interstate commerce as shown by Plaintiff's allegations that *Southern Charm* is a television show which airs worldwide, and which is produced by out-of-state defendants. (Dkt. No. 1-2 ¶ 11.) Thus, the only issue in dispute is whether there is a valid written agreement which purports to cover this dispute.

Here, the Court finds that the parties entered into valid written agreements which contain arbitration provisions covering this dispute. For example, the 2014 Agreement, signed by Plaintiff before the January 2015 incident with Ravenel, explicitly covers "any controversy or claim arising out of or relating to this Agreement" and further states that "the scope or applicability of this agreement to arbitrate" shall be resolved by arbitration. (Dkt. No. 17-3 § 13) (emphasis removed)

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Plaintiff claims this and the similar provision from the 2015 Agreement do not cover her claims because she "does not allege any wrongdoing out of her participation on [*Southern Charm*]." (Dkt. No. 17 at 9.) Plaintiff's Amended Complaint belies this argument. Plaintiff's negligence claims arise from allegations that Defendants were careless or reckless in hiring, training, and/or supervising their employees, including Ravenel, in connection with *Southern Charm*, as well as "carelessly and recklessly violating the applicable standards of care owed to persons *appearing* on Corporate Defendants' reality television show." (Dkt. No. 1-2 ¶ 79) (emphasis supplied) Similarly, Plaintiff's defamation claim arises out of the allegation "Defendants, by and through their employee/agent/servant Chaz Morgan and other employees/agents/servants, have made false, defamatory misrepresentations to others regarding the aforementioned incident involving Plaintiff and [Ravenel]." (Dkt. No. 1-2 ¶ 50.) Lastly, Plaintiff's SCUTPA claim arises from allegations that various negligent acts "were done for the purpose of preserving and increasing the profitability of the Corporate Defendant's reality television show and television networks." (Dkt. No. 1-2 ¶ 91.) The Agreements' arbitration clauses cover Plaintiff's claims. *See, e.g.*, *Gray v. Talking Phone Book*, No. 8:08-cv-01833-GRA, 2008 WL 11348324, at *1 (D.S.C. Aug 7, 2008) (granting motion to dismiss where arbitration clause encompassed "any controversy or claim arising out of or relating to this Agreement"); *Jefferies v. Certified Auto Center, LLC*, 2017 WL 10810592, at *3 (D.S.C. Feb. 8, 2017) ("[T]he court may not deny a party's request to arbitrate an issue 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'").

Plaintiff, however, argues that no agreement existed between the parties, and that the arbitration agreements are unconscionable.

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Plaintiff's argument that the Agreements are unsupported by a lack of consideration is unconvincing. The Agreements do not lack consideration because the "mutual promise to arbitrate constitutes sufficient consideration." *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 275 (4th Cir. 1997). Further, both agreements state that "I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes the Footage and Materials in the Program or in the Advertisements." (Dkt. No. 17-2 § 7; Dkt. No. 17-3 § 6.) As one court reasoned, Plaintiff "signed on to participate in a television show" and "bargained for the chance for publicity." *See Klapper v. Graziano*, 970 N.Y.S.2d 355, 361 (Sup. Ct. 2013) (upholding release barring plaintiff from suing television producer for defamation in exchange for plaintiff's appearance on reality television show).

By extension, Plaintiff's contention that she needed "new and additional consideration" to support the Agreements is confounding. (Dkt. No. 17 at 6.) Before signing the Agreements, Plaintiff had no contracts with the Defendants. Therefore, to enter into the 2014 Agreement, Plaintiff would not need "new and additional consideration." The fact Plaintiff worked for Ravenel as a nanny prior to her appearances on *Southern Charm* is irrelevant.

Plaintiff also claims she signed the Agreements under duress. However, the 2015 Agreement states that Plaintiff acknowledges that she "had ample opportunity to read, and [has] in fact read, this entire agreement" and that "I understand I am giving up certain legal rights under this agreement, including, without limitation, my right to file a lawsuit in court with respect to any claim arising in connection with this agreement." (Dkt. No. 17-2 at 9) (bolding, capitalization, and underlining removed) Plaintiff has not presented any non-conclusory allegations or evidence that she did not have the opportunity to read or review the document or that Defendants pressured Plaintiff to sign the Agreements. Plaintiff's assertions that "the frequency of filming and my

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schedule as a nanny [for Ravenel] . . . made my appearance on [*Southern Charm*] almost inevitable" and that "crew for [*Southern Charm*] approach[ed] me on two separate occasions about appearing on the television show and requesting my consent" do not come close to constituting duress. (Dkt. No. 17-1 ¶¶ 7, 9, 10.) *See Philips v. Baker*, 284 S.C. 134, 325 S.E.2d 533 (S.C. 1985) (no duress absent "improper external pressure or influence that practically destroys the free agency of a party").

Lastly, Plaintiff argues that the Agreements are unconscionable. Plaintiff's principal point is that there are various procedural deficiencies with the arbitration agreements, namely that the 2015 Agreement waives Plaintiff's right to punitive or exemplary damages and limits Plaintiff's recovery to actual damages. (Dkt. No. 17 at 13.) However, a review of the Agreements reveals this is not the case. The 2015 Agreement states "the damages recoverable by the parties to any dispute shall be limited to actual damages, and such parties waive the right to seek, and shall in no event by liable for, punitive or exemplary damages" *only* "to the maximum extent permitted by the law." (Dkt. No. 17-2 § 22.) *See also* 2014 Agreement (Dkt. No. 17-3 § 13) (allowing the arbitrator to award "any remedy that would have been available in court" arising from "unwaivable public rights"). As the Agreements allow the types of "mandatory statutory remedies" Plaintiff could in theory be entitled to under SCUTPA, the Agreements are not unconscionable or against public policy. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663, 671 (2007) (invalidating arbitration provision providing "[i]n *no* event shall the arbitrator be authorized to award punitive . . . or [mandatory] treble damages" under SCUTPA) (emphasis supplied).

IV. Conclusion

For the foregoing reasons, Defendants Haymaker Media, Inc., Bravo Media Productions LLC, NBCUniversal Media, LLC, and Comcast Corporation's Motion to Dismiss (Dkt. No. 6) is **GRANTED**. The Court **ORDERS** Plaintiff Dawn Ledwell and Defendants Haymaker Media,

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Inc., Bravo Media Productions LLC, NBCUniversal Media, LLC, and Comcast Corporation to arbitrate their dispute in accordance with the Agreements. All claims against Defendants Haymaker Media, Inc., Bravo Media Productions LLC, NBCUniversal Media, LLC, and Comcast Corporation are **DISMISSED WITHOUT PREJUDICE.**

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

January 17, 2020
Charleston, South Carolina

EXHIBIT 8

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JAMS Streamlined Arbitration Rules & Procedures

Effective July 1, 2014

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JAMS STREAMLINED ARBITRATION RULES & PROCEDURES

JAMS provides arbitration and mediation services worldwide. We resolve some of the world's largest, most complex and contentious disputes, utilizing JAMS Rules & Procedures as well as the rules of other domestic and international arbitral institutions.

JAMS arbitrators and mediators are full-time neutrals who come from the ranks of retired state and federal judges and prominent attorneys. These highly trained, experienced ADR professionals are dedicated to the highest ethical standards of conduct.

Parties wishing to write a pre-dispute JAMS arbitration clause into their agreement should review the sample arbitration clauses on pages 3 and 4. These clauses may be modified to tailor the arbitration process to meet the parties' individual needs.

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Administrative Fees

For two-party matters, JAMS charges a $1,500 Filing Fee, to be paid by the party initiating the Arbitration. JAMS also charges a $1,500 Filing Fee for counterclaims. For matters involving three or more parties, the Filing Fee is $2,000. A Case Management Fee of 12% will be assessed against all Professional Fees, including time spent for hearings, pre- and post-hearing reading and research and award preparation.

JAMS neutrals set their own hourly, partial and full-day rates. For information on individual neutrals' rates and the administrative fees, please contact JAMS at 800.352.5267. The fee structure is subject to change.

Standard Arbitration Clauses Referring to the JAMS Streamlined Arbitration Rules

Standard Commercial Arbitration Clause

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in (insert the desired place of arbitration), before (one) (three) arbitrator(s). The arbitration shall be administered by JAMS pursuant to its

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Streamlined Arbitration Rules & Procedures (Comprehensive Arbitration Rules & Procedures). Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

(Optional) Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

Sometimes contracting parties may want their agreement to allow a choice of provider organizations (JAMS being one) that can be used if a dispute arises. The following clause permits a choice between JAMS or another provider organization at the option of the first party to file the arbitration.

Standard Commercial Arbitration Clause Naming JAMS or Another Provider*

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in (insert the desired place of arbitration), before (one) (three) arbitrator(s). At the option of the first party to file an arbitration, the arbitration shall be administered either by JAMS pursuant to its (Streamlined Arbitration Rules & Procedures) (Comprehensive Arbitration Rules & Procedures), or by (name an alternate provider) pursuant to its (identify the rules that will govern). Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

(Optional) Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

*The drafter should select the desired option from those provided in the parentheses.

All of the JAMS Rules, including the Streamlined Arbitration Rules set forth below, can be accessed at the JAMS website: **www.jamsadr.com/rules-clauses.**

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JAMS STREAMLINED ARBITRATION RULES & PROCEDURES

NOTICE: These Rules are the copyrighted property of JAMS. They cannot be copied, reprinted or used in any way without permission of JAMS, unless they are being used by the parties to an arbitration as the rules for that arbitration. If they are being used as the rules for an arbitration, proper attribution must be given to JAMS. If you wish to obtain permission to use our copyrighted materials, please contact JAMS at 949.224.1810.

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Rule 1. Scope of Rules

(a) The JAMS Streamlined Arbitration Rules and Procedures ("Rules") govern binding Arbitrations of disputes or claims that are administered by JAMS and in which the Parties agree to use these Rules or, in the absence of such agreement, no disputed claim or counterclaim exceeds $250,000, not including interest or attorneys' fees, unless other Rules are prescribed.

(b) The Parties shall be deemed to have made these Rules a part of their Arbitration agreement ("Agreement") whenever they have provided for Arbitration by JAMS under its Streamlined Rules or for Arbitration by JAMS without specifying any particular JAMS Rules and the disputes or claims meet the criteria of the first paragraph of this Rule.

(c) The authority and duties of JAMS as prescribed in the Agreement of the Parties and in these Rules shall be carried out by the JAMS National Arbitration Committee ("NAC") or the office of the General Counsel or their designees.

(d) JAMS may, in its discretion, assign the administration of an Arbitration to any of its Resolution Centers.

(e) The term "Party" as used in these Rules includes Parties to the Arbitration and their counsel or representatives.

(f) "Electronic filing" (e-file) means the electronic transmission of documents to and from JAMS and other Parties for the purpose of filing via the Internet. "Electronic service" (e-service) means the electronic transmission of documents via JAMS Electronic Filing System to a Party, attorney or representative under these Rules.

Rule 2. Party Self-Determination

(a) The Parties may agree on any procedures not specified herein or in lieu of these Rules that are consistent with the applicable law and JAMS policies (including, without limitation, Rules 12(j), 25 and 26). The Parties shall promptly notify JAMS of any such Party-agreed procedures and shall confirm such procedures in writing. The Party-agreed procedures shall be enforceable as if contained in these Rules.

(b) When an Arbitration Agreement provides that the arbitration will be non-administered or administered by an entity other than JAMS and/or conducted in accordance with rules other than JAMS rules, the Parties may subsequently agree to modify that agreement to provide that the arbitration will be administered by JAMS and/or conducted in accordance with JAMS rules.

Rule 3. Amendment of Rules

JAMS may amend these Rules without notice. The Rules in effect on the date of the commencement of an Arbitration (as defined in Rule 5) shall apply to that Arbitration, unless the Parties have agreed upon another version of the Rules.

Rule 4. Conflict with Law

If any of these Rules, or modification of these Rules agreed to by the Parties, is determined to be in conflict with a provision of applicable law, the provision of law will govern over the Rule in conflict, and no other Rule will be affected.

Rule 5. Commencing an Arbitration and Service

(a) The Arbitration is deemed commenced when JAMS issues a Commencement Letter based upon the existence of one of the following:

(i) A post-dispute Arbitration Agreement fully executed by all Parties specifying JAMS administration or use of any JAMS Rules; or

(ii) A pre-dispute written contractual provision requiring the Parties to arbitrate the dispute or claim specifying JAMS administration or use of any JAMS Rules or that the Parties agree shall be administered by JAMS; or

(iii) A written confirmation of an oral agreement of all Parties to participate in an Arbitration administered by JAMS or conducted pursuant to any JAMS Rules, confirmed in writing by the Parties; or

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(iv) The Respondent's failure to timely object to JAMS administration; or

(v) A copy of a court order compelling Arbitration at JAMS.

(b) The issuance of the Commencement Letter confirms that the requirements for commencement have been met, that JAMS has received all payments required under the applicable fee schedule and that the Claimant has provided JAMS with contact information for all Parties along with evidence that the Demand for Arbitration has been served on all Parties.

(c) If a Party that is obligated to arbitrate in accordance with subparagraph (a) of this Rule fails to agree to participate in the Arbitration process, JAMS shall confirm in writing that Party's failure to respond or participate, and, pursuant to Rule 14, the Arbitrator shall schedule, and provide appropriate notice of, a Hearing or other opportunity for the Party demanding the Arbitration to demonstrate its entitlement to relief.

(d) The date of commencement of the Arbitration is the date of the Commencement Letter but is not intended to be applicable to any legal requirements such as the statute of limitations, any contractual limitations period or claims notice requirements. The term "commencement," as used in this Rule, is intended only to pertain to the operation of this and other Rules (such as Rule 3, 10(a) and 26(a)).

(e) Service by a Party under these Rules is effected by providing one signed copy of the document to each Party and two copies to JAMS. Service may be made by hand-delivery, overnight delivery service or U.S. mail. Service by any of these means is considered effective upon the date of deposit of the document. In computing any period of time prescribed or allowed by these Rules for a Party to do some act within a prescribed period after the service of a notice or other paper on the Party and the notice or paper is served on the Party only by U.S. mail, three (3) calendar days shall be added to the prescribed period.

(f) Electronic Filing. The Arbitrator may at any time require electronic filing and service of documents in an Arbitration. If an Arbitrator requires electronic filing, the Parties shall maintain and regularly monitor a valid, usable and live email address for the receipt of all documents filed through JAMS Electronic Filing System. Any document

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filed electronically shall be considered as filed with JAMS when the transmission to JAMS Electronic Filing System is complete. Any document e-filed by 11:59 p.m. (of the sender's time zone) shall be deemed filed on that date. Upon completion of filing, JAMS Electronic Filing System shall issue a confirmation receipt that includes the date and time of receipt. The confirmation receipt shall serve as proof of filing.

Every document electronically filed or served shall be deemed to have been signed by the Arbitrator, Case Manager, attorney or declarant who submits the document to JAMS Electronic Filing System, and shall bear the typed name, address and telephone number of a signing attorney. Typographical signatures shall be treated as personal signatures for all purposes under these Rules. Documents containing signatures of third parties (i.e., unopposed motions, affidavits, stipulations, etc.) may also be filed electronically by indicating that the original signatures are maintained by the filing Party in paper format.

Delivery of e-service documents through JAMS Electronic Filing System to other registered users shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through JAMS Electronic Filing System. E-service shall be deemed complete when the Party initiating e-service completes the transmission of the electronic document(s) to JAMS Electronic Filing System for e-filing and/or e-service. Upon actual or constructive receipt of the electronic document(s) by the Party to be served, a Certificate of Electronic Service shall be issued by JAMS Electronic Filing System to the Party initiating e-service, and that Certificate shall serve as proof of service. Any Party who ignores or attempts to refuse e-service shall be deemed to have received the electronic document(s) 72 hours following the transmission of the electronic document(s) to JAMS Electronic Filing System.

If an electronic filing or service does not occur because of (1) an error in the transmission of the document to JAMS Electronic Filing System or served Party that was unknown to the sending Party; (2) a failure to process the electronic document when received by JAMS Electronic Filing System; (3) the Party was erroneously excluded from the service list; or (4) other technical problems experienced by the filer, the Arbitrator or JAMS may, for good cause shown, permit the document to be filed *nunc pro tunc* to the date it was first attempted to be sent electronically. Or, in the case of

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service, the Party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

Rule 6. Preliminary and Administrative Matters

(a) JAMS may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the Arbitration.

(b) If no Arbitrator has yet been appointed, at the request of a Party and in the absence of Party agreement, JAMS may determine the location of the Hearing, subject to Arbitrator review. In determining the location of the Hearing, such factors as the subject matter of the dispute, the convenience of the Parties and witnesses, and the relative resources of the Parties shall be considered.

(c) If, at any time, any Party has failed to pay fees or expenses in full, JAMS may order the suspension or termination of the proceedings. JAMS may so inform the Parties in order that one of them may advance the required payment. If one Party advances the payment owed by a non-paying Party, the Arbitration shall proceed, and the Arbitrator may allocate the non-paying Party's share of such costs, in accordance with Rules 19(e) and 26(c). An administrative suspension shall toll any other time limits contained in these Rules or the Parties' Agreement.

(d) JAMS does not maintain an official record of documents filed in the Arbitration. If the Parties wish to have any documents returned to them, they must advise JAMS in writing within thirty (30) calendar days of the conclusion of the Arbitration. If special arrangements are required regarding file maintenance or document retention, they must be agreed to in writing, and JAMS reserves the right to impose an additional fee for such special arrangements. Documents that are submitted for e-filing are retained for thirty (30) calendar days following the conclusion of the Arbitration.

(e) Unless the Parties' Agreement or applicable law provides otherwise, JAMS may consolidate Arbitrations in the following instances:

(i) If a Party files more than one Arbitration with JAMS, JAMS may consolidate the Arbitrations into a single Arbitration.

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(ii) Where a Demand or Demands for Arbitration is or are submitted naming Parties already involved in another Arbitration or Arbitrations pending under these Rules, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators already appointed.

(iii) Where a Demand or Demands for Arbitration is or are submitted naming parties that are not identical to the Parties in the existing Arbitration or Arbitrations, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators already appointed.

When rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations.

Unless applicable law provides otherwise, where JAMS decides to consolidate a proceeding into a pending Arbitration, the Parties to the consolidated case or cases will be deemed to have waived their right to designate an Arbitrator as well as any contractual provision with respect to the site of the Arbitration.

(f) Where a third party seeks to participate in an Arbitration already pending under these Rules or where a Party to an Arbitration under these Rules seeks to compel a third party to participate in a pending Arbitration, the Arbitrator shall determine such request, taking into account all circumstances he or she deems relevant and applicable.

Rule 7. Notice of Claims

(a) Each Party shall afford all other Parties reasonable and timely notice of its claims, affirmative defenses or counterclaims. Any such notice shall include a short statement of its factual basis. No claim, remedy, counterclaim or affirmative defense will be considered by the Arbitrator in the absence of such prior notice to the other Parties, unless the Arbitrator determines that no Party has been unfairly prejudiced by such lack of formal notice or all Parties agree that such consideration is appropriate notwithstanding the lack of prior notice.

(b) Claimant's notice of claims is the Demand for Arbitration referenced in Rule 5. It shall include a statement of the remedies sought. The Demand for Arbitration may attach and incorporate a copy of a Complaint previously filed with a court. In the latter case, Claimant may accompany

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the Complaint with a copy of any Answer to that Complaint filed by any Respondent.

(c) Within seven (7) calendar days of service of the notice of claim, a Respondent may submit to JAMS and serve on other Parties a response and a statement of any affirmative defenses, including jurisdictional challenges, or counterclaims it may have.

(d) Within seven (7) calendar days of service of a counterclaim, a Claimant may submit to JAMS and serve on other Parties a response to such counterclaim and any affirmative defenses, including jurisdictional challenges, it may have.

(e) Any claim or counterclaim to which no response has been served will be deemed denied.

(f) Jurisdictional challenges under Rule 8 shall be deemed waived, unless asserted in a response to a Demand or counterclaim or promptly thereafter, when circumstances first suggest an issue of arbitrability.

Rule 8. Interpretation of Rules and Jurisdiction Challenges

(a) Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.

(b) Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

(c) Disputes concerning the appointment of the Arbitrator shall be resolved by JAMS.

(d) The Arbitrator may, upon a showing of good cause or *sua sponte*, when necessary to facilitate the Arbitration, extend any deadlines established in these Rules, provided that the time for rendering the Award may only be altered in accordance with Rule 19.

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Rule 9. Representation

(a) The Parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by counsel or any other person of the Party's choice. Each Party shall give prompt written notice to JAMS and the other Parties of the name, address, telephone and fax numbers and email address of its representative. The representative of a Party may act on the Party's behalf in complying with these Rules.

(b) Changes in Representation. A Party shall give prompt written notice to the Case Manager and the other Parties of any change in its representation, including the name, address, telephone and fax numbers and email address of the new representative. Such notice shall state that the written consent of the former representative, if any, and of the new representative, has been obtained and shall state the effective date of the new representation.

Rule 10. Withdrawal from Arbitration

(a) No Party may terminate or withdraw from an Arbitration after the issuance of the Commencement Letter (see Rule 5), except by written agreement of all Parties to the Arbitration.

(b) A Party that asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice on the other Parties and the Arbitrator. However, the opposing Parties may, within seven (7) calendar days of service of such notice, request that the Arbitrator condition the withdrawal upon such terms as he or she may direct.

Rule 11. *Ex Parte* Communications

No Party will have any *ex parte* communication with the Arbitrator regarding any issue related to the Arbitration. The Arbitrator may authorize any Party to communicate directly with the Arbitrator by email or other written means as long as copies are simultaneously forwarded to the JAMS Case Manager and the other Parties.

Rule 12. Arbitrator Selection, Disclosures and Replacement

(a) JAMS Streamlined Arbitrations will be conducted by one neutral Arbitrator.

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(b) Unless the Arbitrator has been previously selected by agreement of the Parties, the Case Manager may attempt to facilitate agreement among the Parties regarding selection of the Arbitrator.

(c) If the Parties do not agree on an Arbitrator, JAMS shall send the Parties a list of at least three (3) Arbitrator candidates. JAMS shall also provide each Party with a brief description of the background and experience of each Arbitrator candidate. JAMS may replace any or all names on the list of Arbitrator candidates for reasonable cause at any time before the Parties have submitted their choice pursuant to subparagraph (d) below.

(d) Within seven (7) calendar days of service by the Parties of the list of names, each Party may strike one (1) name and shall rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking shall be appointed the Arbitrator. JAMS may grant a reasonable extension of the time to strike and rank the Arbitrator candidates to any Party without the consent of the other Parties.

(e) If this process does not yield an Arbitrator, JAMS shall designate the Arbitrator.

(f) If a Party fails to respond to a list of Arbitrator candidates within seven (7) calendar days after its service or fails to respond according to the instructions provided by JAMS, JAMS shall deem that Party to have accepted all of the Arbitrator candidates.

(g) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of the Arbitrator selection process. JAMS shall determine whether the interests between entities are adverse for purposes of Arbitrator selection, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the Arbitration.

(h) If, for any reason, the Arbitrator who is selected is unable to fulfill the Arbitrator's duties, a successor Arbitrator shall be chosen in accordance with this Rule. JAMS will make the final determination as to whether an Arbitrator is unable to fulfill his or her duties, and that decision shall be final.

(i) Any disclosures regarding the selected Arbitrator shall be made as required by law or within ten (10) calendar

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days from the date of appointment. Such disclosures may be provided in electronic format, provided that JAMS will produce a hard copy to any Party that requests it. The Parties and their representatives shall disclose to JAMS any circumstances likely to give rise to justifiable doubt as to the Arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the Arbitration or any past or present relationship with the Parties or their representatives. The obligation of the Arbitrator, the Parties and their representatives to make all required disclosures continues throughout the Arbitration process.

(j) At any time during the Arbitration process, a Party may challenge the continued service of an Arbitrator for cause. The challenge must be based upon information that was not available to the Parties at the time the Arbitrator was selected. A challenge for cause must be in writing and exchanged with opposing Parties, who may respond within seven (7) days of service of the challenge. JAMS shall make the final determination as to such challenge. Such determination shall take into account the materiality of the facts and any prejudice to the Parties. That decision will be final.

Rule 13. Exchange of Information

(a) The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and information (including electronically stored information ("ESI")) relevant to the dispute or claim, including copies of all documents in their possession or control on which they rely in support of their positions or that they intend to introduce as exhibits at the Arbitration Hearing, the names of all individuals with knowledge about the dispute or claim and the names of all experts who may be called upon to testify or whose reports may be introduced at the Arbitration Hearing. The Parties and the Arbitrator will make every effort to conclude the document and information exchange process within fourteen (14) calendar days after all pleadings or notices of claims have been received. The necessity of additional information exchange shall be determined by the Arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness.

(b) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-

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privileged documents, to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.

(c) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute.

Rule 14. Scheduling and Location of Hearing

(a) The Arbitrator, after consulting with the Parties that have appeared, shall determine the date, time and location of the Hearing. The Arbitrator and the Parties shall attempt to schedule consecutive Hearing days if more than one day is necessary.

(b) If a Party has failed to participate in the Arbitration process, the Arbitrator may set the Hearing without consulting with that Party. The non-participating Party shall be served with a Notice of Hearing at least thirty (30) calendar days prior to the scheduled date, unless the law of the relevant jurisdiction allows for, or the Parties have agreed to, shorter notice.

(c) The Arbitrator, in order to hear a third-party witness, or for the convenience of the Parties or the witnesses, may conduct the Hearing at any location. Any JAMS Resolution Center may be designated a Hearing location for purposes of the issuance of a subpoena or subpoena *duces tecum* to a third-party witness.

Rule 15. Pre-Hearing Submissions

(a) Except as set forth in any scheduling order that may be adopted, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall file with JAMS and serve and exchange (1) a list of the witnesses they intend to call, including any experts; (2) a short description of the anticipated testimony of each such witness and an estimate of the length of the witness' direct testimony; and (3) a list of all exhibits intended to be used at the Hearing. The Parties should exchange with each other copies of any such exhibits to the extent that they have not been previously exchanged. The Parties should pre-mark exhibits and shall

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attempt to resolve any disputes regarding the admissibility of exhibits prior to the Hearing.

(b) The Arbitrator may require that each Party submit a concise written statement of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought. The statements, which may be in the form of a letter, shall be filed with JAMS and served upon the other Parties at least seven (7) calendar days before the Hearing date. Rebuttal statements or other pre-Hearing written submissions may be permitted or required at the discretion of the Arbitrator.

Rule 16. Securing Witnesses and Documents for the Arbitration Hearing

At the written request of a Party, all other Parties shall produce for the Arbitration Hearing all specified witnesses in their employ or under their control without need of subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents either prior to or at the Hearing pursuant to this Rule or Rule 14(c). The subpoena or subpoena *duces tecum* shall be issued in accordance with the applicable law. Pre-issued subpoenas may be used in jurisdictions that permit them. In the event a Party or a subpoenaed person objects to the production of a witness or other evidence, the Party or subpoenaed person may file an objection with the Arbitrator, who shall promptly rule on the objection, weighing both the burden on the producing Party and witness and the need of the proponent for the witness or other evidence.

Rule 17. The Arbitration Hearing

(a) The Arbitrator will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator may vary these procedures if it is determined to be reasonable and appropriate to do so.

(b) The Arbitrator shall determine the order of proof, which will generally be similar to that of a court trial.

(c) The Arbitrator shall require witnesses to testify under oath if requested by any Party, or otherwise at the discretion of the Arbitrator.

(d) Strict conformity to the rules of evidence is not required, except that the Arbitrator shall apply applicable

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law relating to privileges and work product. The Arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The Arbitrator may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The Arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

(e) The Arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape, provided that the other Parties have had the opportunity to attend and cross-examine. The Arbitrator may in his or her discretion consider witness affidavits or other recorded testimony even if the other Parties have not had the opportunity to cross-examine, but will give that evidence only such weight as he or she deems appropriate.

(f) The Parties will not offer as evidence, and the Arbitrator shall neither admit into the record nor consider, prior settlement offers by the Parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

(g) The Hearing, or any portion thereof, may be conducted telephonically or videographically with the agreement of the Parties or at the discretion of the Arbitrator.

(h) When the Arbitrator determines that all relevant and material evidence and arguments have been presented, and any interim or partial Awards have been issued, the Arbitrator shall declare the Hearing closed. The Arbitrator may defer the closing of the Hearing until a date determined by the Arbitrator, to permit the Parties to submit post-Hearing briefs, which may be in the form of a letter. If post-Hearing briefs are to be submitted, the Hearing shall be deemed closed upon receipt by the Arbitrator of such briefs.

(i) At any time before the Award is rendered, the Arbitrator may, *sua sponte* or upon the application of a Party for good cause shown, reopen the Hearing. If the Hearing is reopened, the time to render the Award shall be calculated from the date the reopened Hearing is declared closed by the Arbitrator.

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(j) The Arbitrator may proceed with the Hearing in the absence of a Party that, after receiving notice of the Hearing pursuant to Rule 14, fails to attend. The Arbitrator may not render an Award solely on the basis of the default or absence of the Party, but shall require any Party seeking relief to submit such evidence as the Arbitrator may require for the rendering of an Award. If the Arbitrator reasonably believes that a Party will not attend the Hearing, the Arbitrator may schedule the Hearing as a telephonic Hearing and may receive the evidence necessary to render an Award by affidavit. The notice of Hearing shall specify if it will be in person or telephonic.

(k) Any Party may arrange for a stenographic or other record to be made of the Hearing and shall inform the other Parties in advance of the Hearing.

(i) The requesting Party shall bear the cost of such stenographic record. If all other Parties agree to share the cost of the stenographic record, it shall be made available to the Arbitrator and may be used in the proceeding.

(ii) If there is no agreement to share the cost of the stenographic record, it may not be provided to the Arbitrator and may not be used in the proceeding, unless the Party arranging for the stenographic record agrees to provide access to the stenographic record either at no charge or on terms that are acceptable to the Parties and the reporting service.

(iii) The Parties may agree that the cost of the stenographic record shall or shall not be allocated by the Arbitrator in the Award.

Rule 18. Waiver of Hearing

The Parties may agree to waive oral Hearing and submit the dispute to the Arbitrator for an Award based on written submissions and other evidence as the Parties may agree.

Rule 19. Awards

(a) The Arbitrator shall render a Final Award or Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing as defined in Rule 17(h) or (i), or, if a Hearing has been waived, within thirty (30) calendar days after the receipt by the Arbitrator of all materials specified by the Parties, except (1) by the agreement of the Parties; (2) upon good cause for an extension of time to render the Award; or (3) as provided in Rule 17(i). The Arbitrator shall provide the Final Award or Partial Final Award to JAMS for issuance in accordance with this Rule.

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(b) In determining the merits of the dispute, the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator will be guided by the law or the rules of law that he or she deems to be most appropriate. The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy.

(c) In addition to a Final Award or Partial Final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

(d) Interim Measures. The Arbitrator may grant whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. Such interim measures may take the form of an interim or Partial Final Award, and the Arbitrator may require security for the costs of such measures. Any recourse by a Party to a court for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(e) The Award of the Arbitrator may allocate Arbitration fees and Arbitrator compensation and expenses, unless such an allocation is expressly prohibited by the Parties' Agreement. (Such a prohibition may not limit the power of the Arbitrator to allocate Arbitration fees and Arbitrator compensation and expenses pursuant to Rule 26(c).)

(f) The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law. When the Arbitrator is authorized to award attorneys' fees and must determine the reasonable amount of such fees, he or she may consider whether the failure of a Party to cooperate reasonably in the discovery process and/or comply with the Arbitrator's discovery orders caused delay to the proceeding or additional costs to the other Parties.

(g) The Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless all Parties agree otherwise, the Award shall also contain a concise written statement of the reasons for the Award.

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(h) After the Award has been rendered, and provided the Parties have complied with Rule 26, the Award shall be issued by serving copies on the Parties. Service may be made by U.S. mail. It need not be sent certified or registered.

(i) Within seven (7) calendar days after service of a Partial Final Award or Final Award by JAMS, any Party may serve upon the other Parties and on JAMS a request that the Arbitrator correct any computational, typographical or other similar error in an Award (including the reallocation of fees pursuant to Rule 26(c) or on account of the effect of an offer to allow judgment), or the Arbitrator may *sua sponte* propose to correct such errors in an Award. A Party opposing such correction shall have seven (7) calendar days thereafter in which to file any objection. The Arbitrator may make any necessary and appropriate corrections to the Award within fourteen (14) calendar days of receiving a request or seven (7) calendar days after his or her proposal to do so. The Arbitrator may extend the time within which to make corrections upon good cause. The corrected Award shall be served upon the Parties in the same manner as the Award.

(j) The Award is considered final, for purposes of judicial proceeding to enforce, modify or vacate the Award pursuant to Rule 20, fourteen (14) calendar days after service is deemed effective if no request for a correction is made, or as of the effective date of service of a corrected Award.

Rule 20. Enforcement of the Award

Proceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. Sec 1, *et. seq.*, or applicable state law. The Parties to an Arbitration under these Rules shall be deemed to have consented that judgment upon the Award may be entered in any court having jurisdiction thereof.

Rule 21. Confidentiality and Privacy

(a) JAMS and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

(b) The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

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(c) Subject to the discretion of the Arbitrator or agreement of the Parties, any person having a direct interest in the Arbitration may attend the Arbitration Hearing. The Arbitrator may exclude any non-Party from any part of a Hearing.

Rule 22. Waiver

(a) If a Party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause substantial injustice or hardship.

(b) If any Party becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly, in writing, to the Arbitrator or JAMS. Failure to do so shall constitute a waiver of any objection to continued service by the Arbitrator.

Rule 23. Settlement and Consent Award

(a) The Parties may agree, at any stage of the Arbitration process, to submit the case to JAMS for mediation. The JAMS mediator assigned to the case may not be the Arbitrator, unless the Parties so agree, pursuant to Rule 23(b).

(b) The Parties may agree to seek the assistance of the Arbitrator in reaching settlement. By their written agreement to submit the matter to the Arbitrator for settlement assistance, the Parties will be deemed to have agreed that the assistance of the Arbitrator in such settlement efforts will not disqualify the Arbitrator from continuing to serve as Arbitrator if settlement is not reached; nor shall such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

(c) If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator shall comply with such request, unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she shall inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

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Rule 24. Sanctions

The Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses; any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to Arbitration adversely to the Party that has failed to comply.

Rule 25. Disqualification of the Arbitrator as a Witness or Party and Exclusion of Liability

(a) The Parties may not call the Arbitrator, the Case Manager or any other JAMS employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the Parties and relating to the dispute that is the subject of the Arbitration. The Arbitrator, Case Manager and other JAMS employees and agents are also incompetent to testify as witnesses or experts in any such proceeding.

(b) The Parties shall defend and/or pay the cost (including any attorneys' fees) of defending the Arbitrator, Case Manager and/or JAMS from any subpoenas from outside parties arising from the Arbitration.

(c) The Parties agree that neither the Arbitrator, nor the Case Manager, nor JAMS is a necessary Party in any litigation or other proceeding relating to the Arbitration or the subject matter of the Arbitration, and neither the Arbitrator, nor the Case Manager, nor JAMS, including its employees or agents, shall be liable to any Party for any act or omission in connection with any Arbitration conducted under these Rules, including, but not limited to, any disqualification of or recusal by the Arbitrator.

Rule 26. Fees

(a) Each Party shall pay its *pro rata* share of JAMS fees and expenses as set forth in the JAMS fee schedule in effect at the time of the commencement of the Arbitration, unless the Parties agree on a different allocation of fees and expenses. JAMS' agreement to render services is jointly with the Party and the attorney or other representative of the Party in the Arbitration. The non-payment of fees may

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result in an administrative suspension of the case in accordance with Rule 6(c).

(b) JAMS requires that the Parties deposit the fees and expenses for the Arbitration from time to time during the course of the proceedings and prior to the Hearing. The Arbitrator may preclude a Party that has failed to deposit its *pro rata* or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the Hearing.

(c) The Parties are jointly and severally liable for the payment of JAMS Arbitration fees and Arbitrator compensation and expenses. In the event that one Party has paid more than its share of such fees, compensation and expenses, the Arbitrator may Award against any Party any such fees, compensation and expenses that such Party owes with respect to the Arbitration.

(d) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of JAMS' assessment of fees. JAMS shall determine whether the interests between entities are adverse for purpose of fees, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the Arbitration.

Rule 27. Bracketed (or High-Low) Arbitration Option

(a) At any time before the issuance of the Arbitration Award, the Parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate. The Parties shall promptly notify JAMS and provide to JAMS a copy of their written agreement setting forth the agreed-upon minimum and maximum amounts.

(b) JAMS shall not inform the Arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the Parties.

(c) The Arbitrator shall render the Award in accordance with Rule 19.

(d) In the event that the Award of the Arbitrator is between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the

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Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount. In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

Rule 28. Final Offer (or Baseball) Arbitration Option

(a) Upon agreement of the Parties to use the option set forth in this Rule, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall exchange and provide to JAMS written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 19(b). JAMS shall promptly provide copies of the Parties' proposals to the Arbitrator, unless the Parties agree that they should not be provided to the Arbitrator. At any time prior to the close of the Arbitration Hearing, the Parties may exchange revised written proposals or demands, which shall supersede all prior proposals. The revised written proposals shall be provided to JAMS, which shall promptly provide them to the Arbitrator, unless the Parties agree otherwise.

(b) If the Arbitrator has been informed of the written proposals, in rendering the Award, the Arbitrator shall choose between the Parties' last proposals, selecting the proposal that the Arbitrator finds most reasonable and appropriate in light of the standard set forth in Rule 19(b). This provision modifies Rule 19(g) in that no written statement of reasons shall accompany the Award.

(c) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 19, except that the Award shall thereafter be corrected to conform to the closest of the last proposals and the closest of the last proposals will become the Award.

(d) Other than as provided herein, the provisions of Rule 19 shall be applicable.

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Nov 13 2023

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

RECORD ON APPEAL

VOLUME II

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STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-00472**
	)	
JOSEPH ABRUZZO,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	
	)	
BRAVO MEDIA PRODUCTIONS, LLC, HAYMAKER MEDIA, INC., NBC UNIVERSAL MEDIA, LLC, COMCAST CORPORATION, CRAIG CONOVER, CHELSEA MEISSNER, AND MADISON LECROY,	)	
	)	
Defendants	)	
	)	

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Plaintiff Joseph Abruzzo ("Plaintiff"), hereby submits the following memorandum in opposition to the Defendants' joint motion to dismiss Plaintiff's Amended Complaint as follows:

PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS

Defendants jointly filed a motion to dismiss Plaintiff's original Complaint pursuant to Rule 12(b)(3), SCRCP, on May 12, 2020. A hearing was scheduled on Defendants' motion for June 22, 2020. On June 19, 2020, Plaintiff filed an Amended Complaint. Accordingly, the Defendants' motion to dismiss the original non-operative Complaint was mooted.[1]

[1] *See, e.g. Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 74 (Ct. App. 1985)("Since the First Amended Complaint has been superseded by the Second Amended Complaint, it is no longer the operative pleading in the case."); *Berkeley County School District v. Hub International Limited*, 944 F.3d 225 (4th Circuit 2019)(citing *Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 455 (4th Cir. 2017)("Because a properly filed amended complaint supersedes the original one and becomes the operative complaint in the case, it renders the original complaint "of no effect.")

On June 22, 2020, the Defendants filed a new motion, this time seeking to dismiss the Plaintiff's Amended Complaint, again pursuant to Rule 12(b)(3), SCRCP, and requested the Court hear the motion as scheduled. Exhibit 1. Defendants also submitted several exhibits, including an "Appearance Release, Voluntary Participation, and Arbitration Agreement," affidavits from individuals that fail to assert personal knowledge of the facts and circumstances alleged in the Amended Complaint and which directly conflict the allegations contained in the Plaintiff's Amended Complaint, and an Order from a wholly unrelated case involving different parties, facts, allegations and causes of action.[2]

On June 23, 2020, Plaintiff objected to the Defendants' request and to a hearing or ruling in violation of any provision regarding notice, time or opportunity to reply with respect to motions as provided by the rules of civil procedure, including Rule 6(d), or the Supreme Court's Order on Operation of the Trial Courts During the Coronavirus Emergency (As Amended April 22, 2020), unless the judge determined the motion is without merit. (see Supreme Court Order ¶ (c)(4)).

[2] Because the factual analysis of a motion under Rule 12 is usually confined to the four corners of the complaint, an affirmative defense usually must be pled in an answer and either resolved in later motions such as summary judgment or directed verdict or at trial. *Spence v. Spence*, 368 S. C. 106, 628 S.E.2d 869 (2006) (citing 5 Wright and Miller, *Federal Practice and Procedure Civil 3d,* § 1277 (2004)). Courts typically only allow such defenses or documents outside the pleadings to be raised in a motion to dismiss under Rule 12(b) "when there is no disputed issue of fact raised by an affirmative defense" or "nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense...." Wright and Miller, *supra,* § 1277. That is not the case here.

Notwithstanding the impropriety of the Court considering these documents at this stage, the revelation from these documents is clear: there are significant and material facts that are disputed regarding the circumstances of the "Arbitration Agreement" execution, the representations or omissions by the Defendants, and the substance of communications among the Plaintiff and the numerous agents/employees of the Corporate Defendants who interacted with the Plaintiff at the time of filming, all of which preclude dismissal at this stage. Plaintiff nevertheless addresses them herein out of abundance of caution.

Exhibit 2. The Court then scheduled a hearing to be heard seven (7) days later on June 30, 2020. Exhibit 3.

Plaintiff renews the objections set forth in Exhibit 2 and objects to the court resolving any factual disputes arising out of the documents submitted by the Defendants which were not attached to the Amended Complaint as not properly considered by this Court in resolution of the Defendants' motion. Plaintiff further reserves the right to submit supplemental memoranda, affidavits, and/or documents in connection with this memorandum as authorized by the Rules of Civil Procedure and the Supreme Court's April 3, 2020 Order, as Amended April 22, 2020 and/or as may be appropriate.

BACKGROUND SUMMARY

The factual allegations and causes of action are stated in Plaintiff's Amended Complaint, which is attached hereto and incorporated fully herein. Exhibit 4. For brevity purposes, the allegations are not fully recounted herein.

Plaintiff alleges seventeen (17) causes of action against the Defendants; Outrage/Intentional Infliction of Emotional Distress (Individual Defendants and Corporate Defendants), Fraud (Corporate Defendants), Constructive Fraud (Corporate Defendants), Negligent Misrepresentation (Corporate Defendants), Fraudulent Inducement (Corporate Defendants), Civil Conspiracy (Individual Defendants and Corporate Defendants), Defamation (Individual Defendants and Corporate Defendants), Violation of the South Carolina Unfair Trade Practices Act (Corporate Defendants), Negligence (Individual Defendants and Corporate Defendants), Quantum Meruit/Unjust Enrichment (Individual Defendants and Corporate Defendants), Wrongful Appropriate of Personality/Infringement on the Right of Publicity (Individual Defendants and Corporate Defendants), Wrongful Publicizing of Private Affairs

(Individual Defendants and Corporate Defendants), Public Nuisance (Individual Defendants and Corporate Defendants), Private Nuisance (Individual Defendants and Corporate Defendants), Fraudulent Inducement of Arbitration Agreement/Unconscionability of Arbitration Agreement (Individual Defendants and Corporate Defendants), Fraudulent Inducement of Release/Unconscionability of Release (Individual Defendants and Corporate Defendants), and Rescission of "Release and Arbitration Agreement" (Individual Defendants and Corporate Defendants).

Out of the seventeen (17) causes of action, fifteen (15) allege some form of intentional, willful and/or reckless conduct or some form of misrepresentation. The sole basis of the Defendants' joint motion is Rule 12(b)(3), SCRCP, improper venue. The Defendants' rely entirely upon a purported "Appearance Release, Voluntary Participation, and Arbitration Agreement" (Def. mot. to dismiss, Exhibit)(hereinafter referred to as "Arbitration Agreement"), the terms of which it is contended require dismissal of the Plaintiff's Amended Complaint.

As discussed more fully herein, venue is proper. The entire document, by its own terms, is the "Arbitration Agreement" and not just a single arbitration clause. Plaintiff has specifically alleged fraud, fraudulent inducement, unconscionability, and rescission of the "Arbitration Agreement" - including the "release," "arbitration," and "choice of forum" provisions. The agreement as a whole and these provisions individually are unenforceable and void as against public policy. Furthermore, the causes of action asserted in Plaintiff's Amended Complaint either arose prior to execution of the "Arbitration Agreement" or are otherwise outside the scope of arbitrable claims. Finally, even if the Court determines an agreement to arbitrate has been formed, which Plaintiff denies because the "Arbitration Agreement" itself was fraudulently induced, its terms violate South Carolina statutory and common law and are unenforceable.

For the reasons set forth herein, the Defendants' motion must be denied, and Plaintiff should be awarded reasonable fees and costs associated with responding to the Defendants' motion.

ARGUMENT

I. VENUE IS PROPER

A civil action against a resident individual defendant must be brought and tried in the county in which the defendant (1) resides at the time the cause of action arose; or (2) the most substantial part of the alleged act or omission giving rise to the cause of action occurred. S.C. Code § 15-7-30(C). A civil action against a foreign entity must be brought and tried in the county in which the most substantial part of the alleged act or omission giving rise to the cause of action occurred. S.C. Code § 15-7-30(G). Here, it is undisputed the Individual Defendants reside in Charleston County and the allegations that the most substantial acts or omissions giving rise to the action occurred in Charleston County. For this reason alone, dismissal on the grounds of improper venue would be improper.

The court may change venue if (1) it is a court in a county designated for that purpose in the complaint, but the designated county is not the proper county pursuant to the provisions of Chapter 7 of Title 15 of the 1976 Code or other statutes providing for the venue of actions; (2) there is reason to believe that a fair and impartial trial cannot be had there; or (3) the convenience of witnesses and the ends of justice would be promoted by the change. S.C. Code § 15-7-100.[3] The Defendants do not appear to seek a change in venue and do not assert any recognized grounds

[3] To the extent a change in venue is sought, "[a] motion for a change of venue is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of discretion." *State v. Kelsey*, 331 S.C. 50, 67, 502 S.E.2d 63, 71 (1998); *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2D 417 (Ct. App. 2004). Additionally, an order denying a motion to change venue is not immediately appealable. *Breland v. Love Chevrolet Olds, Inc.,* 339 S.C. 89, 95, 529 S.E.2d 11, 14 (2000).

for changing venue. Instead, they seek dismissal of the Amended Complaint pursuant to a forum selection clause contained in the "Arbitration Agreement." For the following reasons, this Court cannot dismiss the Amended Complaint on these grounds and the Defendants' motion must be denied.

a. The forum selection clause does not apply to the Plaintiff's claims

Forum selection clauses are enforceable unless shown by the resisting party to be "unreasonable" under the circumstances. *Insurance Products Marketing, Inc. v. Indianapolis Life Ins. Co.*, 176 F.Supp.2d 544 (D.S.C. 2001)(quoting *M/S Bremen v. Zapata Off–Shore Co.,* 407 U.S. 1, 12-12, 92 S.Ct. 1907 (1972)). A forum selection clause is "unreasonable" if its formation was induced by fraud or overreaching. *Id* (*citing Jewel Seafoods Ltd. v. M/V Peace River,* 39 F.Supp.2d 628, 633 (D.S.C.1999) (*citing M/S Bremen,* 407 U.S. at 10, 92 S.Ct. 1907)).

In *Johnson v. Key Equipment Finance*, 367 S.C. 665, 627 S.E.2d 740 (2006), a case with similarities to the Plaintiff's allegations in this case, the S.C. Supreme Court held that a New York forum selection clause in lease agreement for telephone marketing system did not prevent suit in South Carolina when the lessees alleged that lessor fraudulently induced the contract by misrepresenting or hiding pertinent information from lessees. The SC Supreme Court in *Johnson* explained as follows:

> The issue of whether a forum selection clause applies to causes of action alleging that a plaintiff was induced to enter into a contract or lease by the misrepresentations of the defendant is a question of first impression for this Court. Generally, when wrongs arise inducing a party to execute a contract and not directly from the breach of that contract, **the remedies and limitations specified by the contract do not apply**...it would not make logical sense to allow a forum selection clause to operate to prevent suit in South Carolina where the acts alleged occurred prior to the execution of the contract…But for the events leading to the signing of the contract, the agreement allegedly would not have been consummated.[4]

[4] This rule of law of course also applies to the "release" language Defendants rely upon as well, discussed more fully in part II and III.

367 S.C. at 668 (emphasis added)(internal citations omitted).

Here, the forum selection clause (Def. mot. to dismiss, Exhibit 1, ¶ 20) is unenforceable by this Court because of the Plaintiff's allegations that the "Arbitration Agreement" has been induced by fraud and/or overreaching. See, e.g. Exhibit 4, Am Compl. ¶¶ 47-54, 74-75, 77-104, 151-223. Plaintiff's causes of action for fraud, fraudulent inducement, constructive fraud, negligent misrepresentation, civil conspiracy, UTPA violations, public nuisance, private nuisance fraudulent inducement/unconscionability of release, fraudulent inducement/unconscionability of arbitration agreement, and rescission all allege acts or omissions forming their basis in events which occurred in whole or in part prior to execution of the "Arbitration Agreement." But for these events, the "Arbitration Agreement" would not have been signed. Therefore, the remedies and limitations contained therein, including the forum selection clause, do not apply and the Defendants' motion must be denied.

b. Enforcement of the forum selection clause would violate public policy

A forum selection clause "should be held unenforceable if enforcement would contravene a *strong public policy* of the forum in which suit is brought, whether declared by statute or a judicial decision." *Id* (quoting *M/S Bremen*, 407 U.S. at 15)). South Carolina Statute § 15–7–120 embodies just such a strong public policy. That statute reads:

> (A) Notwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action.
>
> (B) A provision in an arbitration agreement that arbitration proceedings must be held outside this State is not enforceable with respect to a cause of action, which, but for the arbitration agreement, is triable in the courts of this State. The method of selecting a forum for the conduct of the arbitration proceedings

> is as provided in this title, the Federal Arbitration Act, and any applicable rules of arbitration.[5]

This statute is controlling. *M/S Bremen*, 407 U.S. at 10, 92 S.Ct. 1907 (making clear that it is the public policy of the *forum* state that is controlling). Further, both the South Carolina Appellate Courts and South Carolina District Courts have concluded that this statute evidences "South Carolina has a strong policy disfavoring forum selection clauses." *Consolidated Insured Benefits, Inc. v. Conseco Medical Ins. Co.*, 370 F.Supp.2d 397, 401 (D.S.C 2004); *accord Indianapolis Life Ins. Co.*, 176 F.Supp.2d at 550 ("under the principles presented in *M/S Bremen,* the strong public policy pronounced by the legislature and courts of the State of South Carolina is sufficient, in and of itself, to render the forum selection clause here unenforceable"). A broad interpretation was also given the statute by the S.C. Court of Appeals in *Johnson v. Paraplane Corporation,* 319 S.C. 247, 460 S.E.2d 398 (1995), *vacated on other grounds,* 321 S.C. 316, 468 S.E.2d 620 (1996)(explaining the statute applied to jurisdiction as well as venue and holding case was properly brought in Horry County despite venue and jurisdiction being assigned to New Jersey in forum selection clause of contract). In *Spinks v. Krystal Co*., 2007 WL 2822788 (D.S.C. 2007), the Greenville District Court, agreeing with the aforementioned decisions, articulated its reasoning as follows:

> [the statute] is evidence of a strong public policy in South Carolina of non-enforcement of a forum selection clause that would deprive a litigant of his choice of forum…by enacting the statute, the legislature of South Carolina did not agree with the federal courts' favorable view of forum selection clauses and desired to insulate South Carolina litigants from their effect…the statute embodies South Carolina's policy against forum selection clauses through what it expressly allows. The statute permits a plaintiff, who would otherwise be bound to bring a case in the forum designated in a forum selection clause, to bring the case in South Carolina where possible under the South Carolina Rules of Civil Procedure…[it] does not

[5] Notably, this provision makes the purported location of any "arbitration" outside of South Carolina unenforceable as a matter of public policy as well. The validity and applicability of the arbitration provision of the "Arbitration Agreement" is discussed more fully in parts IV and V.

> prevent a plaintiff from bringing a case in the forum designated in the forum selection clause; rather, the statute allows a plaintiff to bring the case in South Carolina…Based on the foregoing, the court concludes that there is a strong public policy in South Carolina against forum selection clauses. As such, the forum selection clause is "unreasonable." [6]

In the present case, there is no dispute that the Individual Defendants reside in Charleston County or that the most substantial acts giving rise to this action by the Corporate Defendants arose in Charleston County. Accordingly, venue is proper on the face of the pleadings. It is equally clear that because the action is properly situated in Charleston County, enforcement of the forum selection clause at all would violate public policy set forth in S.C. Code § 15–7–120 by the legislature and the South Carolina judicial decisions interpreting it. Accordingly, the binding precedent cited herein requires this Court to deny the Defendants' motion.

II. THERE IS NO ENFORCEABLE ARBITRATION AGREEMENT

The factual allegations of Plaintiff's Amended Complaint must be taken as true for the purposes of a motion to dismiss and, when so construed, demonstrates the fraudulent inducement of the "Arbitration Agreement." *See Berkeley County School District v. Hub International Limited*, 944 F.3d 225 (4th Circuit 2019)(court must accept as true the allegations of the operative complaint that relate to the underlying dispute when determining a motion to compel arbitration). In the absence of an enforceable contract, traditional choice of law rules apply. Under traditional

[6] The cases cited by Defendants in their motion are irrelevant and inapplicable to the issue before this Court. The question before the courts in *Minorplanet Sys. USA Ltd. v. American Aire, Inc*., 368 S.C. 146, 150, 628 S.E.2d 43, 45 (2006) and *Loyd & Ring's Wholesale Nursery, Inc. v. Long & Woodley Landscaping & Garden Ctr., Inc*., 315 S.C. 88, 94, 431 S.E.2d 632, 636 (Ct. App. 1993) were **whether the courts in which the trials were held had jurisdiction.** The plaintiffs in those cases brought their actions in the forums delineated by the forum selection clauses. Accordingly, the South Carolina courts were not evaluating whether the plaintiff could bring the case in South Carolina (as in this case), but instead were evaluating whether the forum set forth in the forum selection clause had jurisdiction and whether the resulting decisions should be upheld.

South Carolina choice of law principles, the substantive law governing a tort action is determined by the *lex loci delicti*, the law of the state in which the injury occurred. *Boone v. Boone*, 345 S.C. 8, 546 S.E.2d 191 (2001)(citing *Lister v. NationsBank of Delaware, N.A.,* 329 S.C. 133, 494 S.E.2d 449 (Ct.App.1997); *Bannister v. Hertz Corp.,* 316 S.C. 513, 450 S.E.2d 629 (Ct.App.1994). Accordingly, South Carolina law applies and requires this Court to deny the Defendants' request to have the terms and provisions of the "Arbitration Agreement" enforced.

a. South Carolina law prevents enforcement of agreements procured by fraud

Plaintiff's Amended Complaint clearly alleges fraudulent inducement of the "Arbitration Agreement." [7] It is alleged that while he was sitting down at dinner, after many hours of preparation and discussion with Corporate employees or agents about the mechanics of filming, and with film crews in place and bright blinding lights shining on his face, he was presented a piece of paper with only the signature portion of the page revealed to him. It was falsely represented to Plaintiff that the signature was a formality and authorized only the filming of the dinner. At no time did any of the Corporate Defendants state, suggest, or imply that he was somehow authorizing them to lie, disparage, defame, or otherwise depict him in a false or misleading fashion, nor did he have any reason to so suspect. At no time did any of the Corporate Defendants state, suggest, or imply that he was somehow authorizing the Individual Defendants lie, disparage, defame, or otherwise cause him irreparable injury.

To the contrary, he was assured by the Corporate Defendants, falsely and with had no intention of abiding by those assurances, that he was only authorizing filming of the dinner and the would be portrayed fairly and accurately. He was presented only the signature portion of the document, given no time to read it, no time or encouragement to consult with an attorney regarding

[7] See, e.g. Exhibit 4, Am Compl. ¶¶ 47-56, 64, 74-75, 80-91, 99-104, 121-127, 141-145, 167-223.

its substance, no time or encouragement to verify the accuracy of its contents, no time or encouragement to verify the parties and no explanation of its contents by any of the producers, employees, and/or agents of the Corporate Defendants other than the false representation that it simply authorized filming of their dinner.

Plaintiff provided no photographs, videos, or depictions of his name, likeness, or voice at any time, nor did he authorize them to utilize any such thing other than to film the private dinner described. Plaintiff, who does not watch reality television, had no reason to suspect the Defendants would purport to grant themselves the illegal and outrageous rights contained therein or to acquire and alter images depicting the Plaintiff. Plaintiff did not and would not consent or otherwise knowingly, willfully, or voluntarily agree to the Defendants' false, misleading, deceptive, and fraudulent portrayal of him in what was a concerted and coordinated effort by the Defendants simply to create dramatic material for consumption by the viewers of the "reality" show Southern Charm in the United States and worldwide.

"When wrongs arise inducing a party to execute a contract and not directly from the breach of that contract, **the remedies and limitations specified by the contract do not apply**." *Johnson v. Key Equipment Finance*, 367 S.C. 665, 668, 627 S.E.2d 740 (2006)(emphasis added). South Carolina refuses to enforce contracts based on fraudulent conduct because "a party should not retain the benefits of an agreement that he knowingly and intentionally entered into though deceptive means." *Maybank v. BB&T Corporation*, 416 S.C. 541, 577, 787 S.E.2d 498, 517 (2016).

This is the consistent, unaltered, and binding law in South Carolina for more than 120 years. "Beyond the patent unfairness inherent in enforcing a contract induced through intentional fraud, giving legal effect to such a contract violates a fundamental principle of contract law: there

must be a meeting of the minds. By its very nature, there can be no union of purpose where one party is intentionally deceiving the other through fraud." *Id*. at 577-78, 517 (citing *Metro. Life Ins. Co. v. Stuckey*, 194 S.C. 469, 470, 10 S.E.2d 3, 5 (1940)("It is true that contracts may be avoided based on fraud" and "it is at the option of the party to be affected by the fraud whether or not he will treat the contract as void and rescind it")(citing *Levister v. Southern Railway Company*, 56 S.C. 508, 35 S.E. 207, 209 (1900)("fraud avoids all contracts")).

Further, when a person is induced to sign as instrument as a result of a false representation, the intentional omission of terms required by the authorization to be included or the inclusion of terms not so authorized constitute fraud, "invalidating the instrument as between the parties thereto, notwithstanding that the person signing it was negligent in relying on the misrepresentation." *Allen-Parker Co. v. Lollis*, 257 S.C. 266, 276, 185 S.E.2d 739, 744 (1971); *see also Souba v. Life Ins. Co. of Virginia*, 187 S.C. 311, 197 S.E. 826 (1938)(if party who signs a written contract in ignorance of its contents without reading it or having it read is induced to sign by other party's conduct amounting to actionable fraud, party signing contract has the right to void contract on ground of fraud).

Moreover, the Defendants' conclusory statements in their motion that the representations were merely future promises and that Plaintiff was not entitled to rely on the false representations made to him does not support a decision to dismiss the claims; it reveals the fact that this Court *must* deny the motion because intent and justifiable reliance are material issues of fact. *See Epstein v. Howell,* 308 S.C. 528, 530, 419 S.E.2d 379, 381 (Ct.App.1992) ("issues of reliance and its reasonableness, going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the triers of the facts"); *Baldwin v. Postal Telegraph Cable Co.*, 78 S.C. 419, 59 S.E. 67, 68 ("if one of the parties induces the other

to sign a paper in reliance upon his representation as to its contents, and the representation turns out to be untrue and fraudulently made, the party who relied on it is not bound to him who deceived him into signing the paper….It is a question for the jury to determine, in view of all the circumstances, whether the plaintiff's unequal contract was due to his own negligence, or to his reliance on a false statement of its purport, made to him by defendant's agent"); *Jones v. Cooper,* 234 S.C. 477, 109 S.E.2d 5 (1959)("An action in fraud can be based on an unfulfilled promise to perform in the future made with a present undisclosed intention not to perform and for the purpose of inducing one to sign a paper or do some other act").

The terms of the "Arbitration Agreement" that form the basis of the Defendants' motion cannot be enforced by this Court pursuant to a motion to dismiss because it requires a resolution of fact. The intent of the Defendants and justifiable reliance by the Plaintiff is not affirmatively shown by the mere assertion by the Defendants. Rather, it must be pleaded by way of answer and proven at trial. *Branham v. Miller Elec. Co*., 237 S.C 540, 547, 118 S.E.2d 167, 170-71 (1961)(when there is an assertion in motion to dismiss that conflicts with allegations of complaint, resolution by motion to dismiss is improper).

III. THERE IS NO ENFORCEABLE RELEASE

The "Arbitration Agreement" purports to grant the Defendants a release to defame, disparage, portray Plaintiff in a false light, make misrepresentations to Plaintiff and about Plaintiff to others, and to conceal or hide cameras and audio devices in areas which a person would have a reasonable expectation of privacy among other things no person would reasonably expect to be found in any agreement, much less one that authorizes filming of a single dinner. *see, e.g.* ¶ ¶ 8-11, 17. It further purports to release the Defendants from the aforementioned intentional torts as well as other intentional torts such as defamation, intentional infliction of emotional distress, and

the rights of privacy and publicity "regardless of whether caused by the negligence *or willful misconduct*" of the Corporate Defendants. (¶ 17). These provisions violate the statutory and common law of South Carolina and are unenforceable and void as against public policy. They cannot serve as a basis for dismissal.

It is axiomatic that "freedom of contract is subordinate to public policy[, and] agreements that are contrary to public policy are illegal." *Branham v. Miller Elec. Co*., 237 S.C 540, 545, 118 S.E.2d 167, 169 (1961) (citing 12 Am.Jur., Contracts, Section 167). Where legislative intent to declare an act unlawful is apparent from consideration of the statute, an act that violates the general policy and spirit of the statute is no less within its condemnation than one that is in literal conflict with its terms. *Id* (citing 12 Am.Jur., Contracts, Section 160; *McConnell v. Kitchens*, 20 S.C. 430; *Fairly v. Wappoo Mills*, 44 S.C. 227, 22 S.E. 108, 29 L.R.A. 215); *see also Carolina Care Plan, Inc. v. United HealthCare Services, Inc*., 361 S.C. 544, 606 S.E.2d 752 (2004), reh'g denied, (Jan. 6, 2005)(Courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the constitution); *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 638 S.E.2d 109 (S.C. Ct. App. 2006)(If a contract provision contravenes an applicable statute, that provision is invalid, and the statute prevails); *Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477 (S.C. 2012)(Freedom of contract is subordinate to public policy, and agreements that are contrary to public policy are illegal); *Mason v. Mason*, 412 S.C. 28, 770 S.E.2d 405 (Ct. App. 2015)(A court will not lend its assistance to carry out the terms of a contract that violates statutory law or public policy); *Ward v. West Oil Co*., Inc, 387 S.C. 268, 692 S.E.2d 516 (2010)(underlying contract is void *ab initio* and unenforceable if it violates statutory law or public policy); *Berkebile v. Outen,* 311 S.C. 50, 54 n. 2, 426 S.E.2d 760, 762 n. 2 (1993) (recognizing that an illegal contract has always been unenforceable and that South Carolina courts will not enforce a contract which is

violative of public policy, statutory law or provisions of the constitution); *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 33, 644 S.E.2d 663, 673 (2007) ("This [c]ourt will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.").

An agreement may be illegal in the consideration, in a promise, or in its performance. 30 S.C. Jur Contracts §3 (citing 17A Am Jur 2d, Contracts § 239). Of course, a contract is clearly illegal when it contravenes a specific statutory provision. *Id* (citing 17A Am Jur 2d, Contracts § 247).

a. The release provision of the "Arbitration Agreement" violates statutory law

Among the causes of action in Plaintiff's Amended Complaint are conspiracy, fraud, fraudulent inducement, defamation, and invasion of privacy including wrongful appropriate of personality/infringement on the right of publicity. Each of the underlying elements to these causes of action are proscribed in some manner by statute, making the purported "release" of them illegal and void *ab initio* thus prohibiting this Court from enforcement of the release.[8]

[8] For example, Title 16, Chapter 17 of the South Carolina Code of Laws is entitled "Crimes Against Public Policy." Among the miscellaneous offenses found therein is § 16-17-410 (Conspiracy, a felony), § 16-13-240 (Obtaining signature or property by false pretenses, also a felony), and § 16-17-640 (Blackmail, another felony, defined as any person who verbally or by printing or writing or by electronic communications exposes or publishes any of another's personal or business acts, infirmities, or failings; with intent to extort money or any other thing of value from any person). *See also* S.C. Code §16-7-150 (Slander and libel, a misdemeanor).

Taking the "release" language to its logical conclusion, the Defendants assertion that all of Plaintiff's intentional torts including the allegations of fraud, fraudulent inducement of Plaintiff's signature, conspiracy, wrongful appropriation of personality in order to obtain profit through fraudulent means, and defamation would all be released - in violation of these statutes and, therefore, public policy. Agreements calculated to impede the regular administration of justice are void. *Lawrence v. Hicks*, 132 S.C. 370, 128 S.E. 720 (1925); *George v. Leonard*, 71 F.Supp 665 (D.S.C. 1947).

b. The release provision of the "Arbitration Agreement" violates public policy

Taken as a whole and individually, the "Arbitration Agreement" in essence purports to allow the Defendants to engage in any type of conduct whatsoever, including lying to and about the Plaintiff and committing illegal acts or intentional torts against the Plaintiff, while purporting to prohibit Plaintiff from taking any action whatsoever to prevent or repair the harm caused and even from discussing the "Arbitration Agreement" with anybody, at any place, at any time, in perpetuity, and "throughout the universe." See, e.g. Def. mot. Ex. 1, ¶¶ 1, 8-9, 10, 11, 12-15, 17; Exhibit 4, Am Compl. ¶¶ 167-223. The terms are so one-sided and oppressive that no reasonable person would make them, Plaintiff included, and no fair and honest person would accept them. It does not seek to limit their liability. It purports to completely exculpate the Defendants from any claim arising out of any conduct whatsoever, including illegal and intentional acts, throughout the entirety of time and the cosmos themselves. It would be egregious error for this Court to enforce such a clause.

Contracts that seek to exculpate a party from liability for the party's **own negligence** are not favored by the law. *South Carolina Elec. And Gas Co. v. Combustion Engineering, Inc*., 283 S.C. 182, 322 S.E.2d 453 (Ct. App. 1984)(citing *Pride v. Southern Bell Telephone & Telegraph Co.,* 244 S.C. 615, 138 S.E.2d 155 (1964))(emphasis added). Since such provisions tend to induce a want of care, they will be strictly construed against the party relying on them. *Fisher v. Stevens*, 355 S.C. 290, 584 S.E.2d 149 (Ct. App. 2003)(finding exculpatory provision applying to anybody at any time too broad to be enforceable and void as against public policy)

An exculpatory agreement contravenes public policy if it is so broad that it would absolve the defendant from any injury to the plaintiff for any reason. *Id*. Further, "[c]ontracts which attempt to exculpate a party from liability for fraud in the inducement are strongly disfavored, and

are thus generally ineffective to prevent the subsequent assertion of fraud based on preliminary misrepresentations in connection with the contract." 30 S.C. Jur. Contracts § 4 (citing *Allen-Parker Co. v. Lollis*, 257 S.C. 266, 185 S.E.2d 739 (1971)("Even specific provisions or stipulations in a contract providing in effect for immunity from or nullification or waiver of preliminary or extraneous misrepresentations in connection with the contract are generally ineffective, and do not prevent a subsequent assertion of the misrepresentations as a basis for fraud"))(internal citations omitted).

Out of seventeen (17) causes of action asserted in Plaintiff's Amended Complaint, at least fifteen (15) assert intentional, willful, reckless conduct and/or misrepresentation, fraud, or deceit on behalf of the Defendants. Further, the UTPA claim and public nuisance claim explicitly contain allegations of negative impact on the public. Not only are exculpatory clauses for these types of claims void as against public policy and unenforceable in South Carolina, but they are also generally unenforceable throughout the vast majority of the country.[9]

[9] See, e.g. *Barnes v. Birmingham Intern. Raceway, Inc*., 551 So.2d 929 (Ala. 1989)(cannot release a party for wanton or willful conduct); *McShane v. Stirling Ranch Property Owners Ass'n*, Inc., 393 P.3d 978 (Colo. 2017)(can't be used to shield against a claim of willful/wanton negligence.); *Reardon v. Windswept Farm, LLC,* 280 Conn. 153 (Conn. 2006)(cannot release defendant from conduct which violates public policy); *Ketler v. PFPA, LLC*, 132 A.3d 746 (Del. 2016)(invalid if against public policy); *Moore v. Waller*, 930 A.2d 176 (D.C. 2007)(Cannot limit a party's liability for gross negligence, recklessness, or intentional torts); *Mankap Enterprises, Inc. v. Wells Fargo Alarm Servs., a Div. of Baker Protective Servs., Inc.*, 427 So.2d 332 (Fla. Dist. Ct. App. 1983)(An exculpatory agreement cannot be used to release a party for an intentional tort); *McFann v. Sky Warriors, Inc*., 603 S.E.2d 7 (Ga. Ct. App. 2004)(An exculpatory agreement may not relieve a party from liability for willful or wanton conduct); *Fujimoto v. Au*, 19 P.3d 699 (Haw. 2001)(Cannot exempt party from negligence in the performance of a public duty, or where a public interest is involved); *Bien v. Fox Meadow Farms Ltd*., 574 N.E.2d 1311 (Ill. App. Ct. 1991)(A release can be set aside if there is fraud in the execution or fraud in the inducement or is against public policy); *Huber v. Hovey*, 501 N.W.2d 53 (Iowa 1993)(unenforceable if procured by fraud or mistake or contrary to public policy); *New Hampshire Ins. Co. v. Fox Midwest Theatres, Inc*., 457 P.2d 133 (Kan. 1969)(unenforceable if against public policy or illegal); *Coughlin v. T.M.H. Int'l Attractions, Inc*., 895 F. Supp. 159 (W.D. Ky. 1995)(a release will be invalid if it releases a party for willful or wanton negligence); *Ostrowiecki v. Aggressor Fleet, Ltd*., 965 So.2d 527 (La.

Notably absent from this list, however, is the State of New York. This court cannot permit the enforcement of a patently invalid and illegal "release" provision of the "Arbitration Agreement" which would enable the Defendants' retreat to the safe harbor of New York law in order to escape culpability for their actions. "A choice-of-law clause in a contract will not be

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Ct. App. 2007)(Any clause that limits liability based on intentional fault or gross fault or for physical injury is unenforceable); *Wolf v. Ford*, 644 A.2d 522 (Md. Ct. Spec. App. 1994); *Winterstein v. Wilcom*, 293 A.2d 821 (Md. Ct. Spec. App. 1972)(cannot release for intentional harms or the more extreme forms of negligence and cannot affect the public); *Lee v. Allied Sports Assocs., Inc.*, 209 N.E.2d 329(Mass. 1965)(waiver will not be enforced if obtained by fraud, deceit, or goes against public policy); *Zavras v. Capeway Rovers Motorcycle Club, Inc,* 687 N.E.2d 1263 (Mass. App. Ct. 1997)(waiver will not enforced if it releases a party for injury caused by gross negligence); *Henry v. Mansfield Beauty Academy*, 233 N.E.2d 22 (Mass. 1968)(waiver will not be enforced if the conduct violates a statute); *Lamp v. Reynolds*, 645 N.W.2d 311 (Mich. Ct. App. 2002)(Party may not insulate himself against liability for gross negligence or willful and wanton misconduct); *Malecha v. St. Croix Valley Skydiving Club*, 392 N.W.2d 727 (Minn. App. 1986)(cannot purport to release a defendant from liability for intentional, willful, or wanton acts or violate public policy); *Util. Serv. & Maint., Inc. v. Noranda Aluminum, Inc.*, 163 S.W.3d 910 (Mo. 2005)(unenforceable if induced by fraud)*;* Mont. Stat. 28-2-702 (it is statutorily prohibited for any contracts to have the exemption of anyone from responsibility for their own fraud, willful injury to person or property, or violation of the law); *New Light Co. v. Wells Fargo Alarm Servs.*, 525 N.W.2d 25 (Neb. 1994)(Can't be exempt from liability for gross negligence or willful misconduct); *Vitale v. Schering-Plough Corp*., 146 A.3d 162(N.J. App. Div. 2016)(exculpatory clauses contrary to the public interest when they release party for intentional, reckless, or grossly negligent conduct); *Reed v. Univ. of N. Dakota*, 589 N.W.2d 880 (N.D. 1999)(exculpatory contract cannot release a party for intentional, willful, or wanton acts); *Bagley. Bagley v. Mt. Bachelor, Inc*., 340 P.3d 27 (Or. 2014)(Releases for gross negligence, reckless, or intentional conduct are unenforceable); *Tayar v. Camelback Ski Co.*, 47 A.3d 1190 (PA 2012)(Release of reckless conduct is against public policy); *Holzer v. Dakota Speedway, Inc*., 610 N.W.2d 787 (S.D. 2000)(Releases that cover willful or intentional torts are not valid and against public policy); *Adams v. Roark*, 686 S.W.2d 73 (Tenn. 1985)(Releases for gross negligence or willful conduct are against public policy); *Houghland v. Sec. Alarms & Servs., Inc*., 755 S.W.2d 769 (Tenn. 1988)(releases for fraud or intentional misrepresentation are against public policy); *Van Voris v. Team Chop Shop, LLC*, 402 S.W.3d 915 (Tex. App. 2013)(A waiver of gross negligence is against public policy); *Zachry Constr. Corp. v. Port of Hous. Auth. of Harris Cty*., 449 S.W.3d 98 (Tex. 2014)(waivers of intentional or reckless conduct are against public policy); *Street v. Darwin Ranch, Inc*., 75 F.Supp.2d 1296 (D. Wyo. 1999)(Claims for willful/wanton misconduct cannot be waived by exculpatory agreement); *Hiett v. Lake Barcroft Community Assoc*., 418 S.E.2d 894 (Va. 1992)(Public policy forbids the enforcement of a release or waiver for personal injury caused by future acts of negligence); *Street v. Darwin Ranch, Inc*., 75 F.Supp.2d 1296 (D. Wyo. 1999)(Claims for willful/wanton misconduct cannot be waived by exculpatory agreement).

enforced if application of foreign law results in a violation of South Carolina public policy." *Nucor Corp.*, 482 F.Supp.2d, 714, 728 (D.S.C. 2007); *see also Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 33, 644 S.E.2d 663, 673 (2007) ("This [c]ourt will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.").

It is clear that South Carolina's public policy does not permit exculpatory releases for intentional wrongs, fraudulent conduct, or for claims affecting the public interest or policy. If it did, contract murders, illegal gambling contracts, and a host of other unfathomable things would require court enforcement. Yet, that is exactly what the plain reading of the "Arbitration Agreement" would permit and what the Defendants ask this Court to enforce. It must not be permitted, and the Defendant's motion to dismiss the intentional wrongs alleged in Plaintiff's Amended Complaint must be denied.

IV. PLAINTIFF'S CLAIMS ARE NOT SUBJECT TO THE "ARBITRATION AGREEMENT"

Plaintiff has specifically alleged fraudulent inducement of the "arbitration" provision contained in the "Arbitration Agreement." See, e.g. Exhibit 4, Am Compl. ¶¶ 167-184, 203-223. Accordingly, there is a threshold issue of whether or not there was a meeting of the minds was formed with respect to this provision.

Contrary to the Defendants' contention otherwise, this threshold issue must be resolved by the court, not an arbitrator. *Berkeley County School District v. Hub International Limited*, 944 F.3d 225, 234 (4th Circuit 2019)("[the court] — rather than an arbitrator — decide[s] whether the parties have formed an agreement to arbitrate.") (citing *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 296, 130 S.Ct. 2847, 177 L.Ed.2d 567 (2010) (explaining that dispute over formation of agreement to arbitrate "is generally for court[ ] to decide"); *Snowden v. CheckPoint Check Cashing*, 290 F.3d 631, 637 (4th Cir. 2002) (agreeing with other courts of

appeals that party's assent to arbitration provision is question for court); *accord Partain v. Upstate Automotive Group,* 386 S.C. 488, 689 S.E.2d 602 (2010)(The question of arbitrability of a claim is an issue for the courts).

In making such a decision, the court is obliged to conduct a trial under the Trial Provision when a party unequivocally denies "that an arbitration agreement exists," and "show[s] sufficient facts in support" thereof. *Id* (citing *Chorley Enters., Inc. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 564 (4th Cir. 2015)); *accord Towles v. United HealthCare Corp*., 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999)(In determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'') (quoting *Johnson v. Circuit City Stores,* 148 F.3d 373, 377 (4th Cir.1998)); *see also Hous. Auth. of the City of Columbia v. Cornerstone Hous., LLC,*356 S.C. 328, 334, 588 S.E.2d 617, 620 (Ct.App.2003) ("The initial inquiry to be made by the trial court is whether an arbitration agreement exists between the parties.").

a. The "Arbitration Agreement" does not apply to claims arising prior to its execution or outside its scope.

"A party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.,* 96 F.3d 88, 92 (4th Cir.1996) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960)); *see also First Options of Chicago, Inc. v. Kaplan,* 514 U.S. 938, 944, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter ... courts generally ... should apply ordinary state-law principles that govern the formation of contracts.").

Plaintiff's causes of action for conspiracy, fraud, fraudulent inducement, constructive fraud, negligent misrepresentation, nuisance, and violation of the South Carolina Unfair Trade

Practices Act allege acts or omissions forming their basis which occurred in whole or in part prior to execution of the arbitration provision. But for these events, it would not have been signed. Therefore, the remedies and limitations contained therein, including the arbitration provision, do not apply and the Defendants' motion must be denied.

In *Vestry & Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Co.,* 356 S.C. 202, 588 S.E.2d 136 (Ct.App.2003), the issue before the court was whether the church's claims against Orkin and Terminix fell within the scope of each party's arbitration clause. 356 S.C. at 207, 588 S.E.2d at 138. In that case, the claims asserted by the church arose prior to the execution of the contracts which contain the arbitration clause. *Id*. The court recognized "the mere fact that an arbitration clause might apply to matters beyond the express scope of the underlying contract does not alone imply that the clause should apply to every dispute between the parties." *Id.* at 209, 588 S.E.2d at 140. The pertinent language in the arbitration provision at issue was as follows:

> ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PERFORMED UNDER THIS AGREEMENT OR TORT BASED CLAIMS FOR PERSONAL OR BODILY INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY SHALL BE FINALLY RESOLVED BY ARBITRATION ADMINISTERED UNDER THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION.

The *Vestry* court determined that because the church had not yet discovered the termite damage which formed the basis of its claims, it could not have intended to submit to arbitration specific claims for which it had no knowledge. *Id.* at 210, 588 S.E.2d at 141. Recognizing the broad policy in favor of arbitration, the court nevertheless concluded the words in no way evinced an intention to apply the clause to claims which had accrued at a time *prior to the execution of the contract* and, therefore the claims did not fall within the scope of the arbitration clause. *Id* (citing *Hendrick v. Brown & Root, Inc.,* 50 F.Supp.2d 527, 535 (E.D.Va.1999)(holding to allow a party

to insulate itself from pre-existing claims by failing to say so in explicit terms is a fundamental distortion of the principle involving interpretation of arbitration clauses).

Here, the "Mediation & Arbitration" provision reads substantially similar to that in Vestry, purporting to apply to "any dispute in connection with this agreement." Def. mot. to dismiss, Exhibit 1, ¶ 20. Like in Vestry, which determined the arguably broader words "arising out of or relating to this agreement" did not apply to claims that arose prior to its execution, the words utilized the Defendants "any dispute in connection with this agreement" in no way declares an intention to apply to claims which had accrued at a time *prior to the execution of the contract*. This would include at least Plaintiff's claims for fraud, fraudulent inducement, constructive fraud, negligent misrepresentation, civil conspiracy, UTPA violations, public nuisance, private nuisance fraudulent inducement/unconscionability of release, fraudulent inducement/unconscionability of arbitration agreement, and rescission of the "Release an Arbitration Agreement" because the causes of action arose from the Defendants conduct that began prior to its execution.

Indeed, the gratuitous inclusion in the provision that purports to prohibit Plaintiff from seeking injunctive relief evinces the Defendants' intention for the "Arbitration Agreement" to apply only to matters arising *after* the execution of the agreement - and after they have aired Southern Charm episodes - so they would not be hindered in their publication of the false, fraudulent, and defamatory depiction of the Plaintiff and others on national television. Because these claims arose in whole or in part *prior to the execution* of the "Arbitration Agreement," they do not fall within the scope of the arbitration clause and, therefore they are not subject to the arbitration provision.

Moreover, South Carolina has consistently held many of Plaintiff's causes of action are not arbitrable. *See e.g. Wilson v. Willis*, 426 S.C. 326, 342, 827 S.E.2d 167, 175 (2019)(conspiracy

and UTPA claims not subject to the arbitration - "Petitioners' allegation that Respondents possibly conspired with Willis and others to commit fraud is misconduct that does not arise from the contract. To hold otherwise would arguably allow Respondents to commit unfair trade practices and conspire to destroy the businesses of other insurance agencies while shielding themselves from the possibility of a jury trial with an arbitration clause agreed to only by the conspiring parties"); *South Carolina Public Service Authority v. Great Western Coal (Kentucky), Inc.,* 312 S.C. 559, 437 S.E.2d 22 (1993)(conspiracy and fraud claims outside scope of arbitration); *Chassereau v. Global Sun Pools, Inc*. 372 S.C. 168, 644 S.E.2d 718 (2007)(defamation and intentional infliction of emotional distress outside not arbitrable); *Ridgeway v. Litchfield Co. of South Carolina Ltd. Partnership*, 2004 WL 6339730 (Ct. App 2004)(non-signatory was not entitled to compel arbitration and claims for unfair trade practices, negligent misrepresentation, fraud, constructive fraud, promissory estoppel, and civil conspiracy were not arbitrable); *Hatcher v. Edward D. Jones & Co., L.P*., 379 S.C. 549, 666 S.E.2d 294 (Ct. App. 2008)(negligence and unfair trade practices act claims not arbitrable).

The mere fact there is an arbitration provision in the "Arbitration Agreement" does not mean the Plaintiff's claims fall within the scope of that provision or that it would be proper to compel arbitration. Plaintiff makes no breach of contract claim and completely disavows the existence of an "Arbitration Agreement" at all, including the arbitration provision itself. Accordingly, the Defendants' request to compel arbitration over these claims must be denied.

b. The "Arbitration Agreement cannot apply to unforeseeable conduct

Arbitration clauses are not applicable to "'illegal and outrageous acts' unforeseeable to a reasonable consumer in the context of normal business dealings." *Partain v. Upstate Auto. Group,* 386 S.C. 488, 689 S.E.2d 602, 605 (2010). "Absent evidence to the contrary, parties do not intend to arbitrate wholly unexpected, outrageous behavior." *Timmons v. Starkey*, 389 S.C.

375, 379, 698 S.E.2d 809, 811 (2010) (Toal, C.J., dissenting) ("An arbitration clause does not cover every potential suit between the signing parties; instead, it only applies to those claims foreseeably arising from the contractual relationship."); *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 172, 644 S.E.2d 718, 720 (2007)("Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis…we have no doubt that [the plaintiff] did not intend to agree to arbitrate the claims she asserts [defamation and intentional infliction of emotional distress] in the instant case [because those claims are based on the defendant's allegedly outrageous and unforeseeable behavior]."); *Aiken v. World Fin. Corp.,* 373 S.C. 144, 644 S.E.2d 705 (2007) (An arbitration clause does not cover every potential suit between the signing parties; instead, it only applies to those claims foreseeably arising from the contractual relationship. Because it was not foreseeable that company's employees would steal client's identity, the claim was not subject to the arbitration clause); *Parsons v. John Wieland Homes and Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 791 S.E.2d 128 (2016)(Toal, dissenting) (the so-called "outrageous and unforeseeable tort exception to arbitration" is merely a label for this Court's application of a longstanding contract principle—effectuating the parties' contractual expectations. Many courts have recognized that outrageous and unforeseeable conduct is generally not arbitrable)(citing *Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204 (11th Cir. 2011) (holding that claims of false imprisonment, intentional infliction of emotional distress, spoliation of evidence, invasion of privacy, and fraudulent misrepresentation were outside the scope of an arbitration clause in an employment agreement between the cruise line and a crewmember who claimed she was drugged and raped by fellow crewmembers)).

Even the Federal Arbitration Act (FAA) "imposes certain rules of fundamental importance, including the basic [contract] precept that arbitration 'is a matter of consent, not coercion.' " *Stolt–*

Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 681, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010) (internal citations omitted).[10]

Here, neither Plaintiff, nor any rational person, could have reasonably contemplated that by authorizing the Defendants to film his dinner with his then girlfriend, that he somehow was authorizing them to lie, disparage, defame, depict him in a false or misleading fashion, intentionally harm, or otherwise cause him irreparable injury. It is inconceivable Plaintiff, or any other rational person, could have reasonably contemplated that he was somehow authorizing the Defendants to engage in any type of conduct whatsoever while simultaneously being bound to complete secrecy. It is inconceivable Plaintiff, or any other rational person, could have reasonably contemplated that, should he try to prevent or mitigate his loss resulting from the Defendants' conduct by seeking judicial relief, that he could not do so and rather must arbitrate – again in complete secrecy - the false, fraudulent, and intentional harm perpetrated upon him by the Defendants or that he would not be able to recover *any damages whatsoever.*

It is further inconceivable Plaintiff could have reasonably contemplated that, should he dare to seek injunctive relief to prohibit continued harm caused by such unforeseeable conduct, he would be prevented from doing so and subject to a liquidated damages penalty of $500,000.00, along with payment of fees and expenses incurred by the Defendants – the very tortfeasors who caused the harm in the first place.[11] It is inconceivable Plaintiff, or any other rationale person, could have reasonably contemplated those severe restrictions and penalties, all while the

[10] Because Plaintiff disputes the valid formation of an agreement at all, Plaintiff does not stipulate that the FAA applies.

[11] Where a liquidated damages provision is not based upon contemplated actual damages but is intended to provide punishment for breach of the contract, it is a penalty. *Moser v. Gosnell,* 334 S.C. 425, 432, 513 S.E.2d 123, 126 (Ct.App.1999). The stipulation will be deemed a penalty if it "is so large that it is plainly disproportionate to any probable damage resulting from breach of contract." *Lewis v. Premium Inv. Corp.,* 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002).

Defendants simultaneously are permitted to continue to publish the false content on television and online, in perpetuity and throughout the universe. Because these provisions are patently illegal and unforeseeable, the Defendants' motion to enforce the terms of the "Arbitration Agreement" must be denied.

c. Questions of fact regarding the formation of the arbitration agreement cannot be resolved by a motion to dismiss

A jury normally decides whether a contract exists when there is conflicting evidence. *See Small v. Springs Indus., Inc.,* 292 S.C. 481, 483, 357 S.E.2d 452, 454 (1987)(noting "a trial court should submit to the jury the issue of existence of a contract when its existence is questioned and the evidence is either conflicting or admits of more than one inference").

Even under the FAA, a party resisting arbitration, like the Plaintiff in this case, may request a jury trial to resolve whether an arbitration agreement exists. A jury trial on the existence of an arbitration agreement is warranted when there are genuine issues of material fact regarding the parties' agreement. *Id*; *see also Berkeley County School District v. Hub International Limited*, 944 F.3d 225 (4th Circuit 2019)(Federal Arbitration Act (FAA) required district court to submit to jury question of whether school district was required to submit to arbitration its claim that its former chief financial officer (CFO) conspired with insurance broker and its employees to defraud district through concerted kickback scheme related to purchasing of unnecessary insurance policies, in light of genuine issues of material fact as to whether district was aware of unsigned brokerage service agreements that contained arbitration clauses)(applying South Carolina law); *Avedon Eng'g, Inc. v. Seatex,* 126 F.3d 1279, 1283 (10th Cir.1997); *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd*., 1980, 636 F.2d 51 (P.A. 1980)(Party who is contesting the making of an arbitration agreement has the right to have the issue presented to a jury); *Hopkins v. New Day Financial*, 643 F.Supp.2d 704 (E.D.Pa.2009)(Fact issue on motion to compel arbitration warranted

jury trial regarding substantive unconscionability under Pennsylvania law of provision of arbitration agreement in which account executives waived their to bring class actions or consolidate their claims); *Southside Internists Group PC Money Purchase Pension Plan v. Janus Capital Corp*., 741 F.Supp. 1536 (N.D.Ala. 1990)(Jury trial is available on genuine factual questions related to validity of arbitration clause when one party moves to compel arbitration); 9 U.S.C.A. § 4 (1999)(stating the party alleged to be in default may demand a jury trial when the making of the arbitration agreement is at issue).

To the extent there remains disputed issues of fact surrounding the formation, inducement, and representations made to the Plaintiff before, at and/or after the execution of the "Arbitration Agreement," Plaintiff demands a jury trial on those issues of fact. Accordingly, an order compelling arbitration would be improper, and the Defendants' motion must be denied.

V. THE "ARBITRATION AGREEMENT" IS UNCONSCIONABLE

To the extent this Court concludes there has in fact been an agreement to arbitration reached between the parties, which Plaintiff denies, the "Arbitration Agreement" is nevertheless unconscionable and unenforceable as a matter of law.

The circumstances described herein and in Plaintiff's Amended Complaint illustrate the procedural defects involved in the fraudulent procurement of Plaintiff's signature in the first place. In addition, the fraudulent procurement of the arbitration provision itself, by attempting to designate the location of any such arbitration in the city of New York, the "Arbitration Agreement" substantively violates South Carolina statutory law and public policy articulated in § 15–7–120(B). That statute reads:

> Notwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause

> of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action.

As discussed above, this statute has been held to evidence a strong public policy statement by the State of South Carolina and a substantial right the arbitration provision purports to deprive from the Plaintiff.

Further, the "Arbitration Agreement" purports to deprive the Plaintiff of the right to seek injunctive relief for the Defendants' conduct, another substantial right and remedy that the Plaintiff would otherwise be entitled to by statute or common law. *See, e.g.* S. C. Code 39-5-50 (authorizing the court to issue orders and injunctions to restrain and prevent violations of the Unfair Trade Practices Act); *Shaw v. Coleman*, 373 S.C. 485, 645 S.E.2d 252 (Ct. App, 2007)(finding permanent injunction appropriate remedy for nuisance); S.C. Code § 15-43-30 (authorizing temporary injunction for abatement of nuisance); S.C. Code § 15-69-90 (authorizing order restraining defendant from damaging, concealing or removing property); *Grosshuesch v. Cramer*, 367 S.C. 1, 623 S.E.2d 833 (2005)(temporary injunction proper for action alleging fraud). The deprivation of Plaintiff's right to seek injunctive relief is contrasted by the Defendants explicit statement that they are "entitled to injunctive and other equitable relief (without posting bond)" and "[Plaintiff] agree[s] to pay Producer and Network the sum of $500,000 per breach plus disgorgement of any income that I may receive in connection with any such breach as liquidated damages." See ¶ 12.[12]

[12] Because the posting of a bond is mandatory for injunctive relief in South Carolina, this provision violates statutory law and is also unenforceable. *See, e.g. AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009); Rule 65(c), SCRCP ("Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue **except upon the giving of security by the applicant**, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.")

Moreover, given the intertwined nature of the agreement, as evidenced by the fact the Defendants rely upon at least five (5) separate provisions of the "Arbitration Agreement" (¶¶ 17, 19, 20, 21, and a non-enumerated provision) in their effort to include all named Defendants and all claims in their motion to dismiss, the unconscionable portions of the arbitration provision cannot be severed from the remainder of the agreement. By its very own title ("Appearance Release, Voluntary Participation and Arbitration Agreement"), the entire four-page document as a whole constitutes the "Arbitration Agreement." The provisions cross reference one another (see e.g. (¶¶ 17, 19, and 21), and the Defendants rely on multiple provisions in their effort to enforce the entirety of the "Arbitration Agreement." When arbitration agreements are intertwined like the "Arbitration Agreement" here, the S.C. Supreme Court has declared they should be read together as a whole. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48–49, 790 S.E.2d 1, 4 (2016)(arbitration clause found in one section of a contract was so "intertwined" with other sections that the entirety constituted the arbitration provision and declaring arbitration agreement unconscionable and thus unenforceable merely because it attempted to disclaim implied warranty claims and prohibit *any* monetary damages).

Here, enforcement of the arbitration provision would mean preventing the Plaintiff from seeking injunctive relief (thereby permitting the Defendants to defame and disparage the Plaintiff in perpetuity) (¶ 19) and from recovering *any* monetary damages (¶ 17) while at the same time expressly permitting the Defendants to not only be *entitled to* "injunctive and other equitable relief (without posting bond)" (¶12) in violation of South Carolina law, expressly permitting Defendants to "record Plaintiff's actions and statements "via concealed or hidden cameras and audio devices…including in areas in which a person might have a reasonable expectation of privacy" (¶11), "use for any purpose whatsoever" information about Plaintiff (¶12), and also subjecting

Plaintiff to a mandatory penalty of at least $500,000 (¶ 12) and subjecting him to liability for indemnity, attorney fees and costs (¶ 17) for no reason other than attempting to seek a remedy for his wrongs.

Enforcement of the arbitration provision would require it be held in New York, again in violation of South Carolina law and public policy. S.C. Code 15-7-120. Moreover, by piggybacking the Individual Defendants and other non-parties to the scope of the arbitration provision, enforcement would mean those provisions of the "Arbitration Agreement" outside of the isolated arbitration provision itself would be given effect, including the illegal and unenforceable "release" of intentional torts as well as the unenforceable forum selection and choice of law provisions. This cannot be not be permitted.

a. There was absence of meaningful choice

In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. *Simpson,* 373 S.C. at 25, 644 S.E.2d at 668. Whether one party lacks a meaningful choice in entering the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process. *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013) (quoting *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669).

Procedural and substantive unconscionability need not be present in the same degree. essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation that creates the terms in proportion to the greater harshness or unreasonableness of the substantive terms themselves. 15 Williston on Contracts § 1763A, at 226-27 (3d ed. 1972). In other words, the more substantively oppressive the contract term, the less

evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.

A lack of a meaningful choice is often found when the dispute involves an adhesion contract. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (defining adhesion contracts as "standard form contract[s] offered on a take-it or leave-it basis with terms that are not negotiable"). While adhesion contracts are not unconscionable per se, courts tend to look upon them with "considerable skepticism" because they give rise to "considerable doubt that any true agreement ever existed to submit disputes to arbitration." *Id.* at 26–27, 644 S.E.2d at 669–70 (quotation marks omitted).

In determining whether a contract was "tainted by an absence of meaningful choice" to arbitrate, courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. *See Carlson v. General Motors Corp.,* 883 F.2d 287, 295 (4th Cir.1989). *See also Holler v. Holler,* 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct.App.2005)("A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case." (quoting 17A AM.JUR.2D *Contracts* § 279 (2004)).

Here, Plaintiff lacked a meaningful choice in his ability to negotiate the arbitration clause of the "Arbitration Agreement." There is no indication in the record that Plaintiff enjoyed a substantially stronger bargaining position against the Defendants than any other person appearing on Southern Charm, or that he was represented by independent counsel.[13] Moreover, Plaintiff was

[13] See also Exhibit 4, ¶¶ 182, 200, 221, among others, explicitly disavowing these things.

but a single person to a collection of corporations that produce and broadcast television shows throughout the United States and the world. Thus, the Plaintiff also not a substantial business concern of the Defendants as he did not comprise a large portion of the Defendants clientele or staff. The Defendants acknowledge that Plaintiff was required to sign the "Arbitration Agreement" or they would not be able to film the dinner. Had he chosen not to, they would not have filmed. Given the entirely false and fraudulent depiction of Plaintiff actually aired on the show, there is no reason to believe that Plaintiff would have had any success in negotiating or bargaining over its terms. While discovery has not yet been conducted, the undersigned would not be surprised to learn that not one person in Plaintiff's position has successfully negotiated the terms of any "Arbitration Agreement" with the Defendants. Accordingly, a finding that Plaintiff lacked a meaningful choice in their ability to negotiate the "Arbitration Agreement" is warranted.

b. The terms are so oppressive that no reasonable person would make them, and no fair and honest person would accept them

Finding a contract to be one of adhesion is merely the beginning point in the analysis of whether the contract is unconscionable. *Lackey,* 330 S.C. at 395, 498 S.E.2d at 902. Plaintiff acknowledges the state and federal policies favoring arbitration, where many courts view severing the offending provision and otherwise proceeding with arbitration to be the preferred remedy for an unconscionable provision in an arbitration clause. However, the present case is distinguishable from those cases prescribing severability such that the invalidation of the "Arbitration Agreement" in its entirety is the more appropriate remedy.

First, the arbitration clause itself here contains at least two unconscionable provisions (location of arbitration and lack of mutuality of remedies) while arbitration clauses examined by courts prescribing severability generally contained only one offending provision. *See Kristian v. Comcast Corp.,* 446 F.3d 25 (1st Cir.2006) (severing a provision in an arbitration clause that

prohibited the award of treble damages); *Safranek v. Copart, Inc.,* 379 F.Supp.2d 927 (D.Ill.2005)(severing a provision in an arbitration clause that violated Title VII by requiring each party to bear its own attorney's fees and costs); *Ex parte Celtic Life Ins. Co.,* 834 So.2d 766 (Ala.2002) (severing a provision in an arbitration clause that was void as a violation of public policy by prohibiting the award of punitive damages). The provision prohibiting Plaintiff from seeking or obtaining injunctive relief contravene state statutory and common law remedies otherwise provided to Plaintiff as set forth herein.

Moreover, the "Arbitration Agreement" here includes the "release" provision of paragraph 17, which purports to exculpate the Defendants from any claims for damages *of any kind*, *even for illegal or intentional acts*, violating the both common and statutory law mandating damages upon a showing of entitlement to relief and the public policy of the State of South Carolina. The sheer magnitude of unconscionability present in an arbitration agreement that prevents a party from vindicating the party's statutory or common law rights, along with the fact that such a grossly unconscionable provision occurred not once, but at least three times and would apply to all *seventeen* causes of action*, requires* this Court to give significant consideration to a remedy in this situation that best serves the interests of public policy. *Simpson*, 373 S.C. 14, 644 S.E.2d 663, fn 9 (citing *Graham Oil Co. v. ARCO Prods. Co.,* 43 F.3d 1244, 1249 (9th Cir.1994)(noting that severance of illegal provisions is inappropriate when the entire arbitration clause represents an "integrated scheme to contravene public policy" (citations omitted)).

"If illegality pervades the arbitration agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts, the judicial effort begins to look more like rewriting the contract than fulfilling the intent of the parties." *Booker v. Robert Half Intn'l*

Inc., 413 F.3d 77, 84–85 (D.C.Cir.2005)(citations omitted). The remedy that best serves the interests of public policy in this case is non-enforcement of the entire "Arbitration Agreement."

Because the arbitration provision itself does not contain a severability clause, the Court cannot simply strike unconscionable provisions from this provision, it must strike the provision in its entirety. To red line the "Arbitration Agreement" would result in the Court rewriting it in its entirety, something it cannot do. *See Simpson*, 373 S.C. at 34, 644 S.E.2d at 673 (citing *Ingle v. Circuit City Stores, Inc.,* 328 F.3d 1165, 1180 (9th Cir.2003); (finding arbitration agreement wholly unenforceable because of an "insidious pattern" of unconscionable provisions, and therefore "any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter")); see also *In re Cotton Yarn Antitrust Litig.,* 406 F.Supp.2d 585, 604 (M.D.N.C.2005)("[W]here, as here, multiple provisions of the arbitration clauses are inconsistent with Plaintiffs' ability to effectively vindicate their statutory rights ..., the Court finds that the better course of action in this case is to excise the arbitration clauses altogether."). Accordingly, the whole four-page "Arbitration Agreement" should be struck as unconscionable, and the Defendants' motion denied in its entirety.

CONCLUSION

For the reasons set forth herein, the Defendants' motion must be denied in its entirety.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

Mt. Pleasant, South Carolina
Dated: June 29, 2020

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS LLC; HAYMAKER MEDIA, INC.; NBCUNIVERSAL MEDIA, LLC; COMCAST CORPORATION; CRAIG CONOVER; CHELSEA MEISSNER; AND MADISON LECROY, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2020-CP-10-472 **DEFENDANTS' MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(e), SCRCP, AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 59(e), Defendants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, (jointly "Defendants")[1] by and through their undersigned attorneys move this Court to reconsider its Form 4 Order filed July 6, 2020 denying Defendants' Motion to Dismiss Plaintiff's Amended Complaint and for Order Compelling Arbitration ("Motion to Dismiss").[2] As this Court has issued only a Form 4 Order, Defendants assume, for purposes of this Motion, that their Motion to Dismiss was denied for the reasons set forth in Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss Amended Complaint ("Plaintiff's Opposition").[3]

[1] Where necessary for clarification, Defendants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, and Comcast Corporation are referenced herein as the "Corporate Defendants," and Craig Conover, Chelsea Meissner, and Madison LeCroy are referenced herein as the "Individual Defendants."

[2] References herein to Defendants' Motion to Dismiss also incorporate their Memorandum in Support of Motion to Dismiss Plaintiff's Amended Complaint and for Order Compelling Arbitration, filed June 29, 2020.

[3] On July 7, 2020, Defendants requested a written order setting forth the Court's reasoning.

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To the extent it is based on Plaintiff's Opposition, this Court's denial is grounded on numerous manifest legal and factual errors, and presents no valid reasons to deny Defendants' Motion to Dismiss. Based on the arguments set forth below and in Defendants' Motion to Dismiss—which is incorporated by reference herein—this Court should reconsider the Form 4 Order, dismiss the Amended Complaint and order the parties to mediate, and if necessary, arbitrate their dispute or, in the alternative, dismiss the Amended Complaint for improper venue based on the exclusive forum selection provision in the Appearance Release, Voluntary Participation, and Arbitration Agreement ("Release and Arbitration Agreement").[4]

As an initial matter, Plaintiff's argument that venue is proper pursuant to S.C. Code Ann. § 15-7-30 is irrelevant to the issues before this Court, and thus, not further addressed herein. Defendants have never argued that Plaintiff brought his lawsuit in an incorrect county pursuant to that statute. Rather, one of Defendants' primary arguments is that venue is improper in light of the valid and enforceable agreement between the parties to arbitrate any dispute in connection with the Release and Arbitration Agreement. (Exh. 1 ¶ 19).[5] Separately, and independently, venue is improper in this court also because of the exclusive venue selection provision of the Release and Arbitration Agreement. (Exh. 1 ¶ 20).

I. The parties' arbitration agreement is valid and enforceable.

a. Applying Plaintiff's proposed standard of review is plain legal error.

This Court erred in failing to enforce the valid arbitration agreement between Plaintiff and the Defendants. Plaintiff relies heavily on *Berkeley County School District v. Hub Int'l Ltd.*, 944 F.3d

[4] Because this Court did not issue a detailed written order and because Defendants are incorporating by reference their Motion to Dismiss, they address herein the arguments made in Plaintiff's Opposition and do not repeat the arguments set forth in the Motion to Dismiss except where specifically relevant to responding to arguments raised by Plaintiff.

[5] The Exhibits referenced herein are the Exhibits to Defendants' Motion to Dismiss.

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225 (4th Cir. 2019), in arguing that the Court's review of Defendants' Motion to Dismiss in favor or arbitration should be constrained by standards of review applicable to a motion to dismiss for failure to state a claim for relief. However, Plaintiff misconstrues *Berkeley County* in numerous respects. With regard to accepting the allegations in a complaint as true in the context of a motion to dismiss in favor of arbitration, a court "**accept[s] as true** the allegations of the Operative Complaint **that relate to the 'underlying dispute between the partie**s.'" 944 F.3d at 233; *citing Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 113 (2d Cir. 2012) (reviewing court accepting "as true for purposes of this appeal factual allegations in the plaintiff's complaint **that relate to the underlying dispute** between the parties").[6]

However, allegations as to whether the parties entered into a valid arbitration agreement are not accepted as true, and instead, must be supported by sufficient factual evidence. *Schnabel*, 697 F.3d at 113 (explaining that allegations as to whether the parties entered into a valid arbitration agreement "are evaluated to determine whether they raise a genuine issue of material fact that must be resolved by a fact-finder at trial"). Critically, as discussed in more detail below, "the court is

[6] As Defendants explained in their Motion to Dismiss, "When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) or 12(b)(3), the court **does not have to accept the pleadings as true**, and may go beyond the face of the complaint and consider evidence outside of the pleadings. In so doing, the court does not convert the motion to dismiss into one for summary judgment." *Tetrev v. Pride Int'l, Inc.*, 444 F. Supp. 2d 524, 528-529 (D. S.C. 2006) (internal citations omitted); *see also Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996) ("Under the Supreme Court's standard for resolving motions to dismiss based on a forum selection clause, the pleadings are not accepted as true as would be required under a rule 12(b)(6) analysis"). In addition, the Court should consider the contents of the Release and Arbitration Agreement, both because it is expressly incorporated by reference into Plaintiff's Amended Complaint and it is integral to several of his causes of action. *See, e.g., Patterson v. Witter*, 425 S.C. 213, 235, 821 S.E.2d 677, 689 (2018), *citing L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2nd Cir. 2011) ("A complaint is deemed to include … materials incorporated in it by reference, and documents that, although not incorporated by reference, are 'integral' to the complaint"). Thus, here, the Court is not required to accept any of Plaintiff's allegations as true for purposes of Defendants' Motion to Dismiss and should consider the Exhibits to that Motion.

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obligated to conduct a trial under the Trial Provision [of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA")] when a party unequivocally denies 'that an arbitration agreement exists,' **and** '**show[s] sufficient facts in support**' thereof." *Berkeley County*, 944 F.3d at 234 (emphasis added)[7]; *see also Schnabel*, 697 F.3d at 118 ("a trial is warranted only if there exists one or more genuine issues of material fact regarding whether the parties have entered into such an agreement"). In other words, in determining "whether 'sufficient facts' support a party's denial of an agreement to arbitrate, the district court is obliged to employ a standard such as the summary judgment test. [citation omitted] In applying that standard, the court is entitled to consider materials other than the complaint and its supporting documents." *Berkeley County*, 944 F.3d at 234. Notably, when reviewing "the question of whether an arbitration agreement was formed, [appellate courts] interpret the record as a whole in the light most favorable to the defendants, the party against whom the district court resolved the motion to compel arbitration." *Schnabel*, 697 F.3d at 114.

On one hand, while Plaintiff denies that he agreed to arbitrate his dispute with the Defendants, he has not presented any facts, let alone sufficient facts, to support his denial. On the other hand, Defendants have submitted affidavits and objective, photographic evidence that shows, at a minimum, that Plaintiff could see and signed the third page of a contract with a valid arbitration agreement. (Exh. 2; Exh. 3).

In *Berkeley County*—which involved an alleged insurance kick-back scheme—the plaintiff attached to its complaint "a total of twenty-three exhibits," including information concerning the indictment and conviction of one of the alleged perpetrators, emails and a spreadsheet. 944 F.3d

[7] Plaintiff quotes this language in full, (Plaintiff's Opposition p. 20), but fails to submit any evidence to support his conclusory claim that an arbitration agreement does not exist.

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at 231. The plaintiff also submitted additional information in response to the defendants' motion to compel arbitration by filing a declaration denying the existence of an agreement to arbitrate, as well as addressing the school's Chief Financial Officer's authority to bind the school. *Id.*

Here, in contrast, Plaintiff has not submitted a single piece of evidence supporting the allegations in his Amended Complaint that a binding and enforceable arbitration agreement does not exist. Plaintiff did not even submit an affidavit of his own attesting to any of the factual allegations in his Amended Complaint. While a verified complaint *may* serve as an affidavit so long as it complies with the verification requirements of Rule 56(e), that standard is difficult to meet. *Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 438 (2003) ("Few pleadings will satisfy [the Rule 56(e)] requirements, even when verified"). In addition, where a complaint contains an "abundance of conclusory allegations … it simply is not an appropriate substitute for an affidavit." *Id.* Here, Plaintiff's Amended Complaint is not verified by him and does not otherwise meet the requirements of Rule 56(e).[8] As this Court is well aware, an opposition to summary judgment—the standard Plaintiff urges this Court to apply—must be supported by affidavits or other evidence and an opposing party cannot rely solely on the unproven allegations in his Amended Complaint. Rule 56(e), SCRCP ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial").

[8] To be sure, the Amended Complaint is signed by Plaintiff's counsel; however, that merely signifies that his counsel believes, to the best of his knowledge, that the allegations are true. *See, e.g., Russell v. Wachovia Bank*, 370 S.C. 5, 19, 633 S.E.2d 722, 729 (2006) (quoting Rule 11(a), SCRCP, to the effect that "[t]he signature of an attorney [on a pleading, motion, or other paper] constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay").

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In addition, a court is not bound to accept allegations as true when there is concrete objective evidence to the contrary. *See Bridges v. United States*, No. 1:09CV4; 1:05CR244-1, 2009 U.S. Dist. LEXIS 42758 *5, 2009 WL 1035226 (M.D. N.C. April 15, 2009) ("the Court is not necessarily bound to accept [a statement in a pleading] but can reject it if it is 'frivolous or patently absurd on its face'"), *citing Raines v. United States*, 423 F.2d 526 (4th Cir. 1970); *see also Campbell v. Ashland Credit Union*, No. 3:10-1341, 2011 U.S. Dist. LEXIS 112387 *8, 2011 WL 4597356 (S.D. W.Va. Sept. 30, 2011) (a court "need not 'credit conclusory allegations or draw farfetched inferences'"). Exhibit 3 is a photograph of Plaintiff, taken shortly after he signed the Release and Arbitration Agreement, and shows him holding the Agreement up with the third page facing the camera.[9] Both the agreement to arbitrate and the forum selection clause are contained on the third page, which is clearly visible in its entirety to Plaintiff, as reflected in Exhibit 3. The provision above the signature line attesting that Plaintiff has had ample opportunity to read the entire Agreement, had an opportunity to review it with legal counsel of his own choice and had, in fact, read the Agreement, appears so prominently that it can be read in the photograph. (Exh. 3). Thus, Plaintiff's allegations in the Amended Complaint that he only could see the signature line is plainly and patently false.[10] Thus, for the reasons set forth above, applying the standard of review proposed by Plaintiff to evaluate Defendants' Motion to Dismiss is manifest legal error.

[9] While the photograph was taken after Plaintiff signed the Release and Arbitration Agreement, it plainly and completely refutes his argument that he was presented with only the signature portion of the Agreement and/or that "the contents of this 'Arbitration Agreement' was never provided to Plaintiff; only bottom half of a single piece of paper containing a signature block was provided." (Amended Complaint ¶¶ 48, 54, 170, 172, 173, 188, 190, 191, 209, 211, 212).

[10] Given the allegations in his original Complaint that he was handed the Release and Arbitration Agreement turned to the third page, on which the arbitration and forum selection provisions appear, and his strategic revision in the Amended Complaint to allege he only could see the signature line, it is apparent that his new and internally contradictory allegations on this issue are "part of a thinly-veiled attempt to gerrymander [his] case to avoid arbitration." *Berkeley County*, 944 F.3d at 231.

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b. Plaintiff has not established fraud in the inducement or a public policy basis to set aside the arbitration agreement or the forum selection clause.

Plaintiff's arguments that both the arbitration agreement and forum selection clause are unenforceable because they were obtained by fraud, some of which allegedly occurred prior to him signing the Release and Arbitration Agreement, fail for several reasons. First, as Defendants have previously pointed out, a party cannot prove fraudulent inducement if he cannot establish that he justifiably relied on the alleged misrepresentations. *See, e.g.*, *Turner v. Milliman*, 392 S.C. 116, 122-123, 708 S.E.2d 766, 769 (2011) (setting forth the elements required to prove a claim for negligent misrepresentation and for fraud including, in both instances, justifiable reliance).[11] This is because, "[a]s early as 1924, [the South Carolina Supreme] Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it." *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 39-40, 340 S.E.2d 786, 789-790 (1986) (internal citations omitted); *see also Tetrev*, 444 F. Supp. 2d at 530 (even assuming the drafting party "made false representations" regarding a contract, the other party has "no right to rely on them when the truth of these representations [would] have been evident by an inspection of the contract"). Thus, regardless of whether Plaintiff was handed the Release and Arbitration Agreement turned to the

[11] While Defendants dispute that South Carolina law applies to this analysis, given the New York choice of law provision in the Release and Arbitration Agreement, they rely on South Carolina law in this Motion in order to demonstrate that under either New York or South Carolina law, the Arbitration Agreement is valid and enforceable. In addition, given South Carolina's strong policy in favor of enforcing parties' agreements to arbitrate, a denial of a motion to arbitrate a dispute is immediately appealable. *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013); *see also Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) ("'an order that favors litigation over arbitration—whether it refuses to stay the litigation in deference to arbitration; refuses to compel arbitration, … is immediately appealable, even if interlocutory'").

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third page or with only the signature line showing, which Defendants deny and which objectively is not true, he had an obligation to read the contract before signing it and cannot claim his reliance, if any, on assurances allegedly provided by the Corporate Defendants was justified. And, while courts decline to enforce contracts induced by fraudulent conduct or misrepresentation, *see Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016), *citing Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003), "there is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Schmauch*, 354 S.C. at 673, 582 S.E.2 at 445 ("It is largely because the law of fraud requires [a claimant] to prove his ignorance of the falsity of the representation and his right to rely on the falsity that the courts long ago established the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering into a written contract must read it and avail himself of every reasonable opportunity to understand its content and meaning").[12] Plaintiff, who is a well-educated and a self-proclaimed accomplished politician and lobbyist who currently works at a

[12] *Jones v. Cooper*, 234 S.C. 477, 109 S.E.2d 5 (1959), on which Plaintiff relies, actually supports Defendants' position. First, the quote attributed to *Jones*, (Plaintiff's Opposition p. 13), appears nowhere in that case. Second, Jones, who was college educated and a salesman, failed to prove fraudulent inducement precisely because he admittedly did not read the contract before signing, because it was late and he wanted to have dinner. The South Carolina Supreme Court held that, even assuming the defendant made fraudulent misrepresentations to the plaintiff, the plaintiff's "reckless disregard of his duty to avail himself of the opportunity and means at hand to protect his own interest precludes recovery. This Court has consistently followed the rule that one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and one entering into a written contract should read it and avail himself of every opportunity to understand its content and meaning." *Id.* at 490, 109 S.E.2 at 12.

major law firm, claims that he was entitled to rely on alleged assurances and misrepresentations made by the Corporate Defendants, when he admits he failed to take even the most basic steps to protect his interests. South Carolina law requires the rejection of that argument.

As noted at oral argument, Plaintiff's reliance on and attempt to analogize his situation to that in *Allen-Parker Co. v. Lollis*, 257 S.C. 266, 185 S.E.2d 739 (1971), only serves to highlight the fact that any reliance on alleged statements made by the Corporate Defendants was not justified. In *Allen-Park*er, the plaintiff, who had only a sixth-grade education, signed a "blank contract" to purchase a mobile home that the authorized sales agent was to fill in later with the agreed-upon terms. Under these specific facts, where the parties had agreed upon terms and the plaintiff signed a blank contract relying on the defendant to fill in the agreed terms, the Supreme Court held that, "Where a person is induced to sign an instrument as a result of a false representation that it will be filled in or prepared as orally agreed upon, the intentional commission of terms required by the authorization to be included, or the inclusion of terms not so authorized, constitute fraud, invalidating the instrument as between the parties thereto, notwithstanding that the person signing it was negligent in relying on the misrepresentation." 257 S.C. at 276, 185 S.E.2d at 744.[13] Even setting aside Plaintiff's extensive education and professional experience, he has not alleged that he was presented with a blank contract that the Corporate Defendants promised to "fill in" later based on a prior agreement. Thus, *Allen-Parker* neither applies to the facts of this case nor does it support Plaintiff's position.

[13] For the same reason, *Baldwin v. Postal Tel. Cable Co.*, 78 S.C. 419, 59 S.E. 67 (1907) is also inapposite. There, the plaintiff produced evidence that he was illiterate and relied on the defendant's representation of what the contract involved. Here, at best, Plaintiff simply did not bother to read the contract carefully and now seeks to hold the Defendants accountable for the disregard of his duty to do so.

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Plaintiff's reliance on *Epstein v. Howell*, 308 S.C. 528, 419 S.E.2d 379 (Ct. App. 1992), for the proposition that "intent and justifiable reliance are material issues of fact," that must be determined by a jury, (Plaintiff's Opposition p. 12), is misplaced. In *Epstein*, the Court of Appeals held that the plaintiffs had a right to rely on certain representations made by a corporation president and manager in response to a specific question regarding the sale of stock to the plaintiff shareholder because the corporation president/manager owed a fiduciary duty to the shareholders. *Id.* at 530, 419 S.E.2d at 381. Here, Plaintiff has not even alleged that a fiduciary duty or other legally cognizable special relationship exists between him and Defendants. He has put forth absolutely no evidence even suggesting he had any right to rely on any alleged assurances. As a result and as explained above and in Defendants' Motion to Dismiss, there is no factual dispute that Plaintiff had no right to rely on any alleged assurances from them, especially in light of the merger clause of the Release and Arbitration agreement also located on the third page of the agreement.

Finally, Plaintiff's arguments with regard to the enforceability of the release provision of the Release and Arbitration Agreement, (Plaintiff's Objection pp. 13-19), are irrelevant to the issue of whether a valid and enforceable agreement to arbitrate disputes exits between the parties, despite Plaintiff's attempt to characterize the release as part of the arbitration agreement. (Id. pp. 16-19). The release is entirely separate from the arbitration agreement, which is severable from the rest of the agreement under both the applicable law and the express terms of the Release and Arbitration Agreement. Thus, to the extent this Court relied on any of Plaintiff's arguments regarding the release and other unrelated provisions of the Release and Arbitration Agreement in denying the Motion to Dismiss, that is legal error. *See, e.g.*, *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) ("Under the FAA, an arbitration clause is separable from the

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contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole"). *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016), relied on by Plaintiff in his argument that the arbitration agreement is "intertwined" with the rest of the Release and Arbitration Agreement, is readily distinguishable. There, the arbitration provision was not separate from the rest of the provisions of the agreement, but rather was included as a subparagraph of a comprehensive warranty paragraph that the court construed as a single provision because the text of the arbitration agreement was physically intertwined with the text of the larger warranty provisions, all of those sections addressed the buyer's remedies, and they contained "numerous cross-references to one another, intertwining the subparagraphs so as to constitute a single provision." 417 S.C. at 48, 790 S.E.2d at 4; *see also Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 13-14, 742 S.E.2d 37, 39 (Ct. App. 2013) (describing the various subparagraphs of the warranty paragraph, including 14(c), which disclaimed all other warranties and required all warranty disputes to be subject to arbitration, a different subparagraph addressing claims that arose prior to the closing date, and another purporting to limit the seller's damages). Here, in contrast, the various provisions Plaintiff argues are "intertwined" are set forth in separate paragraphs of the Release and Arbitration Agreement and address entirely different topics. The only cross reference to the release in the arbitration agreement is a cross reference to the definition of Released Parties. However, the fact that the arbitration agreement adopts the defined term of "Released Parties" from the release provision—which is the first place that phrase is used and defined—rather than relist those individuals and entities later in the agreement—does not render those provisions "intertwined" under the applicable law. [14]

[14] Despite Plaintiff's arguments to the contrary (Plaintiff's Opposition p. 33), the arbitration agreement in no way incorporates any other provisions of the release (Paragraph 17). Plaintiff's attempt to merge these provisions is nothing more than an attempt to divert this Court's attention

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As is discussed more fully in Defendants' Motion to Dismiss, the arbitration agreement is valid and enforceable. This Court should reconsider its Order, dismiss Plaintiff's Amended Complaint and order the parties to mediate and, if necessary, arbitrate this dispute.

c. The arbitration agreement is not unconscionable.

Plaintiff's sole arguments that the arbitration agreement is unconscionable are that it violates South Carolina statutory law and public policy because it requires mediation and arbitration to take place in New York, and because it allegedly deprives him of the right to seek injunctive relief. Neither argument has merit and, to the extent this Court's denial rests on Plaintiff's arguments, it is legal error.

First, as is discussed in detail in Defendants' Motion to Dismiss, the continued viability of S.C. Code § 15-7-120 is highly questionable given the United States Supreme Court rulings in *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), and their progeny. The Fourth Circuit specifically questioned the continued viability of Section 15-7-120 in *Albemarle Corp. v. Astrazeneca UK Ltd*, 628 F.3d 643 (4th Cir. 2010), holding that it saw no evidence that that statute "manifests a strong public policy of South Carolina," noting that South Carolina courts "have enforced forum selection clauses in contracts, notwithstanding the existence of 15-7-120(A)." 628 F.3d at 652. In addition, as the Fourth Circuit reasoned, "it can hardly be a strong public policy to countermand the very policy that the [U.S.] Supreme Court

away from the arbitration agreement to other parts of the Release and Arbitration Agreement that he misconstrues and finds objectionable. In any event, to the extent this Court finds the reference to the definition of "Released Parties" in the arbitration agreement unconscionable, it should merely sever that reference. The nonsignatory Defendants still would be entitled to enforce the arbitration agreement. *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (noting that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint … because this would nullify the rule requiring arbitration"); *citing South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993) (allowing non-signatory to enforce arbitration agreement).

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adopted in *The Bremen*," which "would have little effect if states could effectively override the decision by expressing disagreement with the decision's rationale." *Id.*; *see also T.R. Helicopters, LLC v. Bell Helicopter Textron, Inc.*, No. 3:10-2250-JFA, 2010 U.S. Dist. LEXIS 21923 *12 (D.S.C. Nov. 17, 2010) (enforcing forum selection clause and concluding that "no South Carolina court has explicitly stated whether South Carolina has a strong public policy against forum selection clauses that would deprive a citizen of his choice"). Plaintiff relies exclusively on various cases pre-dating and in conflict with *Albemarle Corp.*, which are of dubious precedential value.

Plaintiff's argument regarding injunctive relief focuses almost entirely on paragraphs and provisions of the Release and Arbitration Agreement, (Exh. 1 ¶¶ 11, 12, 17), that are separate and wholly distinct from the arbitration agreement. (Exh. 1 ¶ 19).[15] In fact, Plaintiff argues that "the whole four-page '[Release and] Arbitration Agreement' should be struck as unconscionable." (Plaintiff's Opposition p. 34). However, as noted above and in Defendants' Motion to Dismiss, this Court's focus at this stage of proceedings must be limited to the arbitration agreement and not the entire contract in which it is contained. *Munoz*, 343 S.C. at 540, 542 S.E.2d at 364; *Prima Paint*, 388 U.S. at 403-404.

In addition, Plaintiff has presented absolutely no evidence that he lacked a meaningful choice whether to enter into the arbitration agreement. Plaintiff simply complains that, had he not signed the arbitration agreement, the Corporate Defendants would not have filmed his dinner with Ms. Dennis. (Plaintiff's Opposition pp 31-32). However, having a dinner filmed for possible inclusion on a reality television show is a personal choice and not a necessity, unlike *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007), which "involved a vehicle

[15] As set forth in Defendants' Motion to Dismiss, Plaintiff also misconstrues the scope and application of the injunctive relief provisions.

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intended for use as Simpson's primary transportation, which is critically important in modern day society." 373 S.C. at 27, 644 S.E.2d at 670. Plaintiff clearly had a meaningful choice whether to enter into the arbitration agreement and appear on the Program for his own personal reasons (whether to be a good boyfriend or for the potential "fame" he might obtain), and he freely chose to do so.

Nor can Plaintiff establish surprise. The arbitration agreement is in bolded, capital letters, with the heading "**MEDIATION & ARBITRATION**" underlined. The arbitration agreement is not hidden or obscured in any way. The photograph of Plaintiff holding up the Release and Arbitration Agreement is turned to the third page, demonstrating that he could see—at a minimum—the page containing the arbitration agreement.

Thus, for the reasons set forth herein and in Defendants' Motion to Dismiss, this Court should reconsider its Order and find that Plaintiff has failed to establish that the arbitration agreement is unconscionable.

d. Plaintiff is not entitled to a jury trial to determine whether he entered into an agreement to arbitrate this dispute with Defendants.

While declining to "stipulate" that the FAA applies to the arbitration agreement, Plaintiff relies on that Act and cases applying Section 4 of the FAA to argue that he is entitled to a jury trial to determine whether he entered into an agreement to arbitrate. (Plaintiff's Opposition, pp. 25-27). As noted above, the standard set forth in *Berkeley County* is that a party opposing arbitration must unequivocally deny that an arbitration agreement exists "and '**show sufficient facts** in support' thereof." 944 F.3d at 234 (emphasis added). While Plaintiff has denied the existence of an arbitration agreement, he has not presented any evidence, let alone sufficient evidence, in support of his position.

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"Not just any factual dispute will do. Rather, the party requesting a jury trial under Section 4 must provide sufficient evidence in support of its claims such that a reasonable jury could return a favorable verdict under applicable law. The standard is akin to the burden on summary judgment. *See Oppenheimer*, 56 F.3d at 358 (comparing Fed. R. Civ. P. 56(c), (e) to the level of sufficient evidentiary facts needed for jury trial under 9 U.S.C. § 4)." *Chorley Enters. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 564 (4th Cir. 2015). "A party to an arbitration agreement cannot obtain a jury trial merely by demanding one. [citation omitted] The party resisting arbitration bears 'the burden of showing that he is entitled to a jury trial,'" and, in order to meet that burden, "must produce at least some evidence to substantiate his factual allegations." *Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 961 F.2d 1148, 1154 (5th Cir. 1992).[16] The requirement that the party opposing arbitration come forward with some evidence to substantiate his allegations that he did not agree to arbitrate his dispute is based on the important public policy objective that granting a party to a jury trial on the existence of an arbitration agreement solely on the basis of unsubstantiated allegations, "would frustrate the very policies that the FAA is meant to promote—the swift and inexpensive alternative resolution of disputes outside of the judicial forum." *Chorley Enters.*, 807 F.3d at 564 n.13.

Here, Plaintiff has come forward with no evidence whatsoever to support his claim that he did not agree to arbitrate his dispute with Defendants. Defendants have produced both affidavits attesting, among other things, that Plaintiff was handed the Release and Arbitration Agreement

[16] Furthermore, and as is discussed in detail in Defendants' Motion to Dismiss, Plaintiff must specifically challenge the existence of an agreement to arbitrate, not the existence of the contract as a whole. *Munoz*, 343 S.C. at 540, 542 S.E.2d at 364; *Prima Paint Corp. v. Flood & Conklin Mgf. Co.*, 388 U.S. 395, 403-404 (1967). Here, while Plaintiff asserts conclusory and, in some instances demonstrably false allegations, he has failed to present any evidence that he did not enter into a binding contract with the Corporate Defendants, let alone any evidence that he did not agree to arbitrate his dispute. *See Dillard*, 961 F.2d at 1154 n.9.

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turned to the first page and that he in fact read and asked questions about some of the provisions in the Agreement, (Exh. 2 ¶¶ 8, 9, 10, 12), as well as photographic evidence that Plaintiff could, at the very minimum, see the third page of the Agreement which contains the arbitration agreement. (Exh. 3). Given Plaintiff's failure to submit any evidence in opposition, he has failed to raise a legitimate dispute of material fact that he did not enter into an agreement to arbitrate his dispute.

Thus, for the reasons set forth herein and in Defendants' Motion to Dismiss, this Court should reconsider its Order and find that Plaintiff is not entitled to a jury trial on the issue of whether he entered into an agreement to arbitrate this dispute with Defendants.

e. The scope of the arbitration agreement is for the arbitrator to decide.

Plaintiff either misunderstands or misconstrues the issue of who decides the scope of the arbitration agreement and, to the extent this Court relied on Plaintiff's arguments in its denial, it is legal error. "The question of the arbitrability of a claim is an issue for judicial determination, **unless** the parties provide otherwise." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (emphasis added). Here, the parties have specifically and unequivocally agreed that "**ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS** …" (Exh. 1 ¶ 19).[17]

Furthermore, even assuming solely for the sake of argument but without conceding that the outrageous tort exception remains valid in South Carolina, the cases relied on by Plaintiff are

[17] In addition, Plaintiff misquotes and/or misconstrues a number of the cases on which he relies for the proposition that his claims are not subject to arbitration. For example, *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), involved whether an arbitration agreement could be enforced against nonsignatories to the contract. The quote included in Plaintiff's Opposition at p. 23 went to whether the nonsignatories could nonetheless be forced to arbitrate the plaintiff's claims against them. *Wilson* thus has no application here.

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wholly inapplicable because none of them contained a provision assigning the decision about arbitrability to the arbitrator, leaving that decision for the court to decide in those inapposite cases.[18] In *Chassereau v. Global-Sun Pools, Inc.*, 373 S.C. 168, 644 S.E.2d 718 (2007), for example, the arbitration agreement specifically provided that "the court shall decide whether an agreement to arbitrate exists or a controversy is subject to any agreement to arbitrate." *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 633, 611 S.E.2d 305, 307 (Ct. App. 2005). Similarly, in *Timmons v. Starkey*, 389 S.C. 375, 698 S.E.2d 809 (2010), the arbitration provision did not assign the task of determining the scope of the arbitration agreement to the arbitrator. *Timmons v. Starkey*, 380 S.C. 590, 594, 671 S.E.2d 101, 103-104 (Ct. App. 2008) (arbitration provisions at issue did not provide that the arbitrator was to determine the scope of the arbitration agreement). The opinions in *Hatcher v. Edward D. Jones & Co., L.P.*, 379 S.C. 549, 666 S.E.2d 294 (Ct. App. 2008), *Partain v. Upstate Auto. Group*, 386 S.C. 488, 689 S.E.2d 602 (2010), and *Aiken v. World Fin. Corp.*, 373 S.C. 144, 644 S.E.2d 705 (2007), do not contain the wording of the arbitration agreement but it safely can be assumed that they did not assign the issue of arbitrability to the arbitrator since the courts followed precedent, specifically including *Zabinski*, that holds that "[t]he question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." 346 S.C. at 597, 553 S.E.2d at 118.

In other words, even if the outrageous tort exception still maintains validity under South Carolina, which Defendants dispute, it only would apply if the court was determining the scope of the arbitration clause. Because the arbitration agreement here unequivocally assigns that

[18] *Ridgeway v. Litchfield Co.*, Unpub. Op No. 2004-UP-631 (Ct. App. Dec. 15, 2004) is an unpublished opinion by the South Carolina and, as such, carries no precedential weight. Even if it did, the arbitration provision in *Ridgeway* did not specify that the arbitrator was to determine the scope and/or applicability of the arbitration provision, (Exh. A hereto), and therefore is inapplicable to this case.

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determination to the arbitrator, *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118, all of the cases cited by Plaintiff for that point cases are inapposite.

In addition, Plaintiff's assertions that no rational person could reasonably have contemplated that he would be required to arbitrate any claims against the Defendants is meritless. (Plaintiff's Opposition, pp 25-26). In fact, had he read the Agreement carefully before signing it, as he was obligated to do, *see, e.g.*, *Burwell*, 288 S.C. at 39-40, 340 S.E.2d at 789-790, and as, in fact, he had an opportunity to do, (Exh. 1 p. 3; Exh. 2 ¶¶ 8, 9; Exh. 3), he would have been well aware of the provisions contained therein, which are clear and unambiguous. Furthermore, his suggestion that pursuant to the arbitration agreement he "would not be able to recover *any damages whatsoever*," (Plaintiff's Opposition p. 25), is not only misleading but plainly false.[19] The arbitration agreement simply requires Plaintiff to adhere to the terms of his agreement to pursue any claims for damages in the appropriate forum. (Exh. 1 ¶ 19).

Thus, for the reasons set forth above and in Defendants' Motion to Dismiss, this Court should reconsider its Order and find that the scope of the arbitration agreement is for the arbitrator to decide.

II. In the alternative, Plaintiff's Amended Complaint should be dismissed based on the valid and enforceable exclusive forum selection clause.

As discussed above and in Defendants' Motion to Dismiss, the forum selection clause is valid and enforceable. Plaintiff's arguments that the forum selection clause violates South Carolina public policy are based on cases that pre-date and are in conflict with *Albemarle Corp.*, 628 F.3d at 652, and thus are of dubious precedential value. In *Albermarle Corp.*, the Fourth

[19] For example, Plaintiff argues a release of claims for intentional wrongdoing is void as against public policy in many states (including New York notwithstanding Plaintiff's claims to the contrary). The release, which is separate and distinct from the arbitration agreement, expressly states that it should be interpreted only to the maximum extent permitted by law.

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Circuit found no evidence that that Section 15-7-120 "manifests a strong public policy of South Carolina," reasoning that "it can hardly be a strong public policy to countermand the very policy that the [U.S.] Supreme Court adopted in *The Bremen*," which "would have little effect if states could effectively override the decision by expressing disagreement with the decision's rationale. *Id.*; *see also T.R. Helicopters*, 2010 U.S. Dist. LEXIS 21923 at *12 (enforcing forum selection clause and concluding that "no South Carolina court has explicitly stated whether South Carolina has a strong public policy against forum selection clauses that would deprive a citizen of his choice").

Plaintiff relies on *Johnson v. Key Equip. Fin.*, 367 S.C. 665, 627 S.E.2d 740 (2006), which, in contravention of Fourth Circuit and United States Supreme Court precedent, states generally that South Carolina has a policy "disfavoring … forum selection clauses." *Id.* at 668, 627 S.E.2d at 741.[20] *Johnson* does not apply here but, instead, involved "the scope of a forum selection clause," *id.* at 666, 627 S.E.2d at 741, in a contract to lease a telephone marketing system that the defendant allegedly knew was illegal at the time it entered into the contract with the plaintiff. First, the Court held that the forum selection clause did not apply to causes of action "that were the product of misrepresentations prior to the lease agreement." 367 S.C. at 668, 627 S.E.2d at 741. However, as explained above and in Defendants' Motion to Dismiss, Plaintiff cannot prove fraudulent inducement or negligent misrepresentation because he cannot prove, among other things, one of the essential elements of those causes of action: that he had a right to rely and/or justifiably relied on any alleged statements made by the Corporate Defendants, either prior to or following the filming of the dinner. *See, e.g.*, *Turner*, 392 S.C. at 122-123, 708 S.E.2d at 769

[20] The United States Supreme Court has characterized states' reluctance to enforce valid forum selection clauses as "hardly more than a vestigial legal fiction," reflecting "something of a provincial attitude regarding the fairness of other tribunals." *The Bremen*, 407 U.S. at 12.

(setting forth the elements required to prove a claim for negligent misrepresentation and for fraud including, in both instances, justifiable reliance); *Burwell*, 288 S.C. at 39-40, 340 S.E.2d at 789-790 ("As early as 1924, [the South Carolina Supreme] Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it"). Second, the Court focused on the fact that the defendant knowingly induced the plaintiff into entering into the contract "by misrepresenting or hiding pertinent information" from the plaintiff. Here, Plaintiff has not and cannot demonstrate either misrepresentation or that pertinent information was hidden from him. (Exh. 2; Exh. 3). Finally, the Court ruled in *Johnson* that the forum selection clause was narrowly tailored to issues arising from the lease and not to all disputes between the two parties. 367 S.C. at 669, 627 S.E.2d at 742. Here, in contrast, the forum selection clause applies to "the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or [Plaintiff's] appearance on the Program." (Exh. 1 ¶ 20). Thus, *Johnson* is inapplicable to and does not control the outcome in this case.

Thus, for the reasons set forth above and in Defendants' Motion to Dismiss, this Court should reconsider its Order and find that, in the event the arbitration agreement is not enforced, Plaintiff's Amended Complaint should be dismissed based on the exclusive forum selection clause.

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CONCLUSION

For all of the reasons stated herein and set forth in Defendants' Motion to Dismiss, this Court should reconsider its Form 4 Order, dismiss Plaintiff's Amended Complaint and issue an Order compelling mediation and, if necessary, arbitration in New York. Alternatively, even if the court were to find the parties' arbitration agreement unenforceable, this Court should dismiss Plaintiff's Complaint based on improper venue pursuant to the valid, binding exclusive forum selection clause in the Release and Arbitration Agreement.

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ATTORNEYS FOR DEFENDANTS

July 16, 2020

2004-UP-631 - Ridgeway v. Litchfield Company

THIS OPNION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Lawrence M. Ridgeway, Respondent,

v.

The Litchfield Company of South Carolina Limited Partnership and The Litchfield Company Inc., Defendants, Of whom The Litchfield Company of South Carolina Limited Partnership is the, Appellant.

Appeal From Georgetown County
J. Michael Baxley, Circuit Court Judge

Unpublished Opinion No. 2004-UP-631
Heard October 12, 2004 – Filed December 15, 2004

AFFIRMED

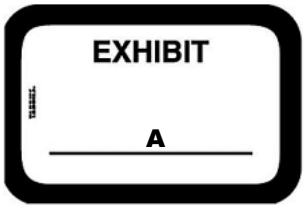
Joseph C. Wilson, IV, of Charleston, for Appellant.

Saul Gliserman, of Charleston, for Respondent.

HEARN, C.J.: The Litchfield Company of South Carolina Limited Partnership (Litchfield) appeals the circuit court's denial of its motion to compel arbitration. We affirm.

FACTS

The relevant facts are not in dispute. On September 18, 1999, Lawrence M. Ridgeway, as grantee, entered into a purchase agreement with Heritage-Litchfield, Inc., as grantor, to purchase condominium unit 20-101 in the Avian Forest development in Georgetown. [1] The purchase agreement contained an arbitration clause, which provided as follows:



> ARBITRATION In the event that a dispute or claim shall arise with respect to any of the terms or provisions of this Master Deed, or a dispute between the Grantor or any contractors employed by the Grantor, and any one or more Unit Owners, such claims to include but not be limited to claims for negligent or improper construction, failure to meet specifications, and other claims related to structural improvements, all disputes or claims shall be resolved by Binding Arbitration pursuant to Title 15, Chapter 48 (Uniform Arbitration Act) of the Code of Laws of South Carolina. All resulting awards and determinations made by the arbitrators pursuant to the provisions of this section shall be conclusively binding upon all parties hereto and judgment may be rendered thereon.

(Emphasis added.) Litchfield was involved with the sale of the unit solely as the real estate broker for Heritage-Litchfield and marketing company for the Avian Forest development.

Shortly after purchasing unit 20-101, Ridgeway discovered that the unit was infested with toxic mold. Ridgeway asserted the mold rendered the unit uninhabitable. Ridgeway further asserted that the development lacked several promised amenities and the grounds contained several abandoned or derelict buildings. According to Ridgeway, the mold infestation and other deficiencies have rendered the unit "without meaningful market value."

Ridgeway instituted an action against Litchfield alleging that he would not have purchased the Avian Forest unit but for the tortious conduct of Litchfield, which caused Ridgeway to believe that Litchfield, as opposed to Heritage-Litchfield, was the developer of the Avian Forest project. Ridgeway asserted causes of action arising from the marketing and promotion of Avian Forest, including unfair trade practices, negligent misrepresentation, constructive fraud, fraud, promissory estoppel, and civil conspiracy. Litchfield filed an answer and motion to compel arbitration based upon the arbitration clause in the purchase agreement entered into by Heritage-Litchfield and Ridgeway. Litchfield concedes that it was neither a party nor a signatory to the purchase agreement or arbitration clause. [2] The circuit court denied Litchfield's motion to compel arbitration. This appeal followed.

STANDARD OF REVIEW

"Whether a claim is subject to arbitration is an issue for judicial determination, unless the parties have agreed otherwise." Vestry and Church Wardens of Holy Cross v. Orkin Exterminating Co., 356 S.C. 202, 207, 588 S.E.2d 136, 138 (Ct. App. 2003) (citation omitted). In deciding whether the parties have agreed to submit a particular grievance to arbitration, the court should not rule on the merits of the underlying claims. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). "A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute." Id.

"Determinations of arbitrability are subject to *de novo* review." Vestry and Church Wardens of Holy Cross, 356 S.C. at 207, 588 S.E.2d at 138. However, the factual findings of the trial court will be overruled only if there is no evidence reasonably supporting them. Deloitte & Touche, LLP v. Unisys Corp., 358 S.C. 179, 182, 594 S.E.2d 523, 525 (Ct. App. 2004).

LAW/ANALYSIS

In the case before us, we are not asked to determine whether the arbitration clause would be valid and enforceable as between Ridgeway and Heritage-Litchfield because Heritage-Litchfield does not seek arbitration. Instead, Litchfield, a non-signatory to the arbitration clause, seeks to compel arbitration against Ridgeway.

Arbitration is contractual by nature. See Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001); Tritech Elec., Inc. v. Frank M. Hall & Co., 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct. App. 2000). Therefore, a party cannot be required to submit to arbitration any dispute that he has not agreed to arbitrate. See United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960); Zabinski, 346 S.C. at 580, 553 S.E.2d at 118. There is strong state and federal public policy favoring arbitration agreements; however, such agreements must not be so broadly construed as to encompass claims and parties that were not intended by the original contract. See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985); Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999). However, "arbitration rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement." Zabinksi, 346 S.C. at 596-597, 553 S.E.2d at 118. "In determining whether an agreement to arbitrate exists, 'the court should apply ordinary state-law principles that govern the formation of contracts.'" Towles, 338 S.C. at 37, 524 S.E.2d at 844 (citation omitted).

Litchfield argues the trial judge erred in refusing to compel arbitration because, despite its lack of contractual relationship with Ridgeway, it can compel arbitration: (1) as a "contractor" under the arbitration clause of the purchase agreement, and (2) as an agent of Heritage-Litchfield. We disagree.

I. Litchfield is a not "contractor" as intended by the arbitration clause.

The arbitration clause of the purchase agreement provides for arbitration of disputes between "any contractors employed by the Grantor, and any one or more Unit Owners, such claims to include but not be limited to claims for negligent or improper construction, failure to meet specifications, and other claims related to structural improvements." Litchfield asserts that the term "contractor," according to Black's Law Dictionary (4th ed. 1979), is "strictly applicable to any person who enters into a contract, but is commonly reserved to designate one who, for a fixed price, undertakes to procure the performance of works or services on a large scale. . . ." [3] Litchfield contends that it is a contractor by definition and therefore entitled to compel Ridgeway to arbitrate its dispute.

We agree with the trial court that the definition of contractor asserted by Litchfield is correct in the broadest sense of the term, but that it is not the definition intended by the parties in the arbitration clause. "The construction of a clear and unambiguous contract is a question of law for the court." Hawkins v. Greenwood Dev. Corp. 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) (citation omitted). "Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." Farr v. Duke Power Co. 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975) (citation omitted). "Common sense and good faith are the leading touchstones of the inquiry." Id. at 362, 218 S.E.2d at 434.

It is clear, considering the purchase agreement as a whole, that the term "contractor" found in the arbitration clause was intended to include only those parties to a contract responsible for furnishing labor and materials for the construction of Ridgeway's condominium unit. The entire body of the purchase agreement concerned only the sale of an Avian Forest condominium unit, and the agreement stated that Heritage-Litchfield "shall cause the Property to be constructed substantially in accordance with the Plan and Specifications previously reviewed by the purchaser . . . ." The arbitration clause lists the types of disputes between Ridgeway and contractors to include "but not be limited to claims for negligent or improper construction, failure to meet specifications, and other claims related to structural improvements . . . ." The purchase agreement did not contemplate any other type of contractor besides those responsible for furnishing labor and materials for construction. Therefore, Litchfield cannot enforce the arbitration clause as a contractor because it did not furnish labor or materials for construction.

II. Litchfield cannot compel arbitration solely as an agent of Heritage-Litchfield.

Litchfield argues that under the principles of agency, a non-signatory may invoke an arbitration clause as an agent of the signatory. South Carolina courts have yet to address the issue of whether a non-signatory can invoke an arbitration clause solely as an agent of the signatory.

Litchfield cites South Carolina Public Service Authority v. Great Western Coal, Inc., 312 S.C. 559, 437 S.E.2d 22 (1993) in support of the proposition that South Carolina allows non-signatories to an arbitration agreement to compel arbitration against a signatory. In Great Western Coal, the South Carolina Public Service Authority contracted with Great Western Coal, including an agreement to arbitrate. The Public Service Authority initiated an action against Great Western Coal and its president, Clyde E. Goings, in his individual capacity. The court held Goings was entitled to demand arbitration of the Public Service Authority's claims even though he did not sign the arbitration clause. Great Western Coal relies on the Sixth Circuit Court of Appeals in Arnold v. Arnold Corp., 920 F.2d 1269 (6th Cir. 1990) for this proposition, stating: "[A] party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint, or *signatory parties in their individual capacity* because this would nullify the rule requiring arbitration." Id. at 563, 437 S.E.2d at 24-25 (emphasis in original). Thus, Great Western Coal permits only non-signatories who are alter egos of a signatory to compel arbitration. In this case, Litchfield cannot compel arbitration because it is not an alter ego of the signatory, Heritage-Litchfield, Inc.

Moreover, the other jurisdictions that allow a non-signatory to compel arbitration under the agency theory have done so only in instances where the action against the agent is within the scope of the arbitration agreement as contemplated by the signing parties. See, e.g., Long v. Silver, 248 F.3d 309, 320-21 (4th Cir. 2001) (holding non-signatory could compel arbitration because the claims against the non-signatory parent corporation fell within the scope of the arbitration clause signed by the employee); Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc., 10 F.3d 753, 758 (11th Cir. 1993) (holding that because claims against the non-signatory were "intimately founded in and intertwined with" a contract containing an arbitration clause, signatory was estopped from refusing to arbitrate those claims); J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-21 (4th Cir. 1988) (holding that "when allegations against a parent company and its subsidiary are based on the same facts and are inherently inseparable, a court may refer claims against the parent to arbitration even though the parent is not formally a party to the arbitration agreement"); Norcom Elecs. Corp. v. CIM USA Inc., 104 F.Supp.2d 198, 203 (S.D.N.Y. 2000) (quoting Smith/Enron Cogeneration Ltd. P'ship. v. Smith Cogeneration Int'l, Inc., 198 F.3d 88, 97-98 (2d Cir. 1999)) ("[T]he U.S. Court of Appeals for the Second Circuit and other circuits 'have been willing to estop a signatory from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.'"); First American Title Ins. Corp. v. Silvernell, 744 So.2d 883, 887-88 (Ala. 1999) (holding that non-signatory real estate agent had no right to compel arbitration of purchasers' claim of conspiracy by agents because the arbitration clause defined arbitrable matters as controversies between the insurer and the insured purchaser, and the insurer was not part of the conspiracy).

In this case, the arbitration clause applies to disputes between Ridgeway and contractors responsible for furnishing labor and materials for construction. Thus, Ridgeway's claims for unfair trade practices, negligent misrepresentation, constructive fraud, fraud, promissory estoppel, and civil conspiracy against Litchfield would not fall within the scope of the arbitration clause. Accordingly, even if we were to apply an agency theory to allow a non-signatory to enforce an arbitration clause, Litchfield would not be permitted to compel arbitration because Ridgeway's causes of action do not fall within the scope of the arbitration clause. The order of the circuit court refusing to compel arbitration is therefore

AFFIRMED.

HUFF and KITTREDGE, JJ., concur.

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[1] Heritage-Litchfield has declared bankruptcy. There is on-going separate litigation between Ridgeway and the Heritage-Litchfield insurers.

[2] Subsequent to oral argument, the court received correspondence from counsel for Ridgeway stating for the first time that an agent of Litchfield was a signatory to the purchase agreement and therefore the arbitration clause. Contrarily, both parties asserted the exact opposite in front of the trial judge and in their briefs on appeal–that Litchfield was a non-signatory to the purchase agreement. Despite the revelations of counsel for Ridgeway following oral argument, we are bound by the record on appeal.

Rule 210(a), SCACR. Because the record on appeal conclusively determines that Litchfield was a non-signatory to the purchase agreement and arbitration clause for purposes of our review, we must treat Litchfield as such.

[3] We note that this definition has been amended to read "1. A party to a contract. 2. More specif., one who contracts to do work or provide supplies for another." Black's Law Dictionary (8th ed. 2004).

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2020-CP-10-00472
_____)
)
JOSEPH ABRUZZO,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
BRAVO MEDIA PRODUCTIONS,)
LLC, MADISON LECROY, and)
CHELSEA MEISSNER,)
)
Defendants.) DATE: June 30, 2020
_____)

B E F O R E:

THE HONORABLE BENTLEY PRICE

A P P E A R A N C E:

AARON ERIC EDWARDS
Attorney for the Plaintiff

HELEN F. HISER
Attorney for the Defendant

Original transcript ordered by:
Helen F. Hiser

Stenographically recorded and transcribed by:

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
Certified Shorthand Reporter

THE COURT: All right. So the way we are going to proceed is that we are going to hear from plaintiff first. If you will introduce yourself for the record, the parties in which you represent. And we will move on to defendants, if you introduce yourself and the parties you represent. And if it's your motion, indicate that it's your motion and what it is.

And we will begin with the plaintiffs.

MR. EDWARDS: Aaron Edwards for the plaintiff, Joseph Abruzzo.

THE COURT: All right. Ms. Hiser, who represents the defendant?

MS. HISER: Helen Hiser for the defendants, for both the corporate defendants and the individual defendants.

THE COURT: All right. And whose motion is it?

MS. HISER: It's our motion to dismiss the amended complaint and for an order ordering the parties to arbitration.

THE COURT: All right. Ms. Hiser, I'm going to mute myself. And I'll be happy to hear from you.

MS. HISER: Thank you, Your Honor. The issue before Your Honor this morning is really quite simple. It is whether the parties entered into an agreement to arbitrate disputes arising between them. It has to do simply with the arbitration agreement, not the larger agreement within which

the arbitration provisions are included.

The case law, both from federal courts and from South Carolina courts, are quite clear. In fact, the Court of Appeals on June 10th just issued this decision that went through the process for determining whether parties should be ordered to arbitration.

And following the U.S. Supreme Court case, *Prima Paint*, even though it does seem a little bit awkward, the arbitration agreement is pulled out of the agreement. And the Court then looks to see whether or not the parties entered into an agreement to arbitrate. If they did, that's the end of this Court's inquiry.

In part, in large part, due to the fact that the arbitration agreement here assigns to the arbitrator the issue of the scope of the arbitration agreement, case law holds that, in addition, it is for the arbitrator to determine whether the contract, as a whole, the other provisions of the contract, are enforceable or unconscionable.

Here, the plaintiff has done his best to broaden the inquiry before this Court. However, if you look at the *Damico v. Lennar*, Lennar Carolina's case that the Court of Appeals put out just last week, or earlier this month, that's not the proper inquiry. And the only time you look at the entire agreement to determine whether the arbitration agreement is unconscionable or unenforceable is where it intertwines with

the rest of the agreement.

The only case that the plaintiff has pulled up, *Smith v. D.R. Horton*, is easily distinguishable from the current case. In the *Smith* case, the arbitration provision was part of a longer paragraph of warranties and other relief provisions under a home building contract.

Here, as is the case in *Damico*, our arbitration agreement is an entirely separate provision of its own. So this Court needs to look simply at the arbitration agreement and determine whether it's enforceable, which it is.

Plaintiff also would like this Court to apply an incorrect analytical framework, saying that we have to accept all of his allegations as true and we can't look outside the four corners. Well, under 12(b)(3) motion, that is not the case. The factual allegations are not accepted as true. And this Court can look beyond the four corners of the complaint to determine whether the parties entered into a valid and enforceable agreement to arbitrate.

Here -- and that's based on a federal court case, *Tetrev*. The federal and state Rule 12(b)(3) are substantially similar. So the state can -- state courts can rely on that federal precedent. There aren't any South Carolina states dealing with 12(b)(3).

So the plaintiff has produced absolutely no evidence of any of the allegations in his complaint in terms of fraud

or misrepresentation. And he cannot prove that the arbitration agreement was obtained through fraud, fraudulent inducement or misrepresentation. His arguments on those points go to the agreement as a whole, instead of the arbitration agreement itself.

Furthermore, one of the elements of all of those causes of action is that he has the right to rely or that he justifiably relied on whatever the misrepresentations were that were made to him. And here, he can't prove that element because he alleges he didn't read the agreement. His allegation that he was handed the agreement, first he said he was handed it turned to the third page in his first complaint. And now in his amended complaint he says, I was given this to sign and all I was given to see was the signature block. Your Honor, that is patently false.

If you look at Exhibit 3 attached to our memorandum in support of our motion to dismiss, it's a photograph taken of Mr. Abruzzo after he signed the agreement. He is holding the agreement up. I can read provisions of the agreement in that photograph.

You can also tell the agreement has more than one page. So, you know, he's asking this Court, basically, to suspend rational judgment and commonsense by saying, all I could see was the signature block.

He could see, at a very minimum, the third page of

the agreement. And on that third page is the arbitration agreement.

There's some other key provisions on the third page, including his statement that he had a chance to read it, that he had a chance to consult counsel, and that he did, in fact, read it. He now says, I didn't read it, and I had a right to rely on whatever misrepresentations were made to me.

Well, he doesn't have that right. Under South Carolina law, a party owes the other party and the public a duty to read a contract before signing it. And if Mr. Abruzzo did not read this contract before he signed it -- we think he did. We have evidence and we submitted evidence that he did. But even if you accept that allegations as true, he had an obligation. He had a duty to read that contract before he signed it. So he cannot prove any of the fraudulent inducement or fraud or misrepresentation claims.

The other issue courts look at to see whether an arbitration clause is enforceable is whether it is unconscionable substantively. And what that entails is looking at the arbitration provision to see whether or not it is geared towards producing a fair result. Here, there is nothing in the arbitration agreement that is tilted to one side or the other.

Now, the corporate defendants are -- he's not authorized to seek an injunction to prevent airing of the

show, because of the commercial realities of reality television. The rule for that one-sided provision is explained in the arbitration agreement. And mutuality of remedy is -- the lack of compete mutuality of remedy is not grounds for finding an agreement is unconscionable. There are contracts all over the place where one side has the ability to do one thing and the other side doesn't.

I think in his memorandum, the plaintiff alleges he's not allowed to obtain money damages under the arbitration provision. That's just simply false. The plain reading of the arbitration provision will show that he's not limited in his remedies except for injunctive relief to prevent showing of the television program because of the commercial needs of reality television. It's just the reality of commercial TV.

So the plaintiff hasn't put forward any evidence at all. In fact, he suggests we should apply a summary judgment standard, which we don't agree with. But assuming that was the standard, we have put forward our motions. We have supported it with affidavits and other information. And he has come back with nothing other than his complaint. And that's insufficient to counter a properly pled motion for summary judgment.

The plaintiff would have this Court believe that he was somehow hoodwinked, that he was unwary and pressured to sign this contract. The only pressure exerted on him was from

his then-time girlfriend and his desire to appear on the television show.

At some point in his memo, he agrees that, had he not signed this agreement, the dinner wouldn't have been filmed. Well, other than the loss of the publicity he might have obtained by being a participant on a television show, he hasn't lost anything.

He compares his case and relies on cases where the plaintiff is purchasing an automobile for everyday use or purchasing a mobile home. And in those instances, the parties were fairly unsophisticated. The case involving a mobile home. The woman had a 6th grade education.

Mr. Abruzzo goes over 5 1/2 pages of his complaint chronologicalling his education, his credentials, his achievements. He not only works for the law firm, he's the director of government relations for a major Florida law firm. This is not someone who can't read. It's not someone who can't understand what he's getting involved in. Whether or not he watches reality television shows, they've been part of the mainstream sort of popular culture for over 10 years. So to claim ignorance of what the milieu of a reality TV show is -- just lacks any credibility.

You know, he's argued a lot of the other provisions of the larger agreement and that they are unconscionable and unenforceable. That's just not the question before this

Court. All this Court has to do is decide whether or not there's a valid and enforceable arbitration agreement. And this entire proceeding then goes to arbitration, which both federal and state courts have found is a valid method for resolving disputes. It's quicker. It's often less costly, and it's effective.

There's just absolutely no valid challenge to that provision. And we urge Your Honor to review the case law cited in our memo, and rule that a valid arbitration agreement exists between the parties. And Mr. Abruzzo, who had every opportunity to read the agreement and, in fact, signed right below a very large type, all cap, underlined, bold-faced statement, that he read it and had an opportunity to read it. He needs to be held to the bargain that he entered into.

And the defendants have relied on that agreement. We've already broadcast the show. They can't pull that back at this point, because they relied on his statement that he had read the agreement and that he agreed to the terms of it.

THE COURT: Mr. Edwards, I'll be happy to hear from you in response.

MR. EDWARDS: Yes, sir. Thank you. I submitted a memorandum yesterday afternoon. I just received notice a few minutes before this hearing that it was accepted. I did also e-mail you. So I trust that you received a copy of that memorandum. Judge?

THE COURT: Yes. I've had an opportunity to review everything.

MR. EDWARDS: So, counsel said the issue is whether the parties reached an agreement. And I agree with that. And that is a threshold issue. Whether or not there was a meeting of the minds and there was a formation of a valid agreement, that is to be determined by the Court, because it interpreted it, relies on state law, contract interpretation principles.

And that was recently in 2019 affirmed to be the case and the procedure for these types of issues by the 4th Circuit applying South Carolina law in holding -- and it's a Berkeley County case. I don't have the cite in front of me, but it's cited throughout my memorandum. And it held that when there's a threshold issue as to the formation of an arbitration agreement and there are material issues of fact, which we clearly have here, that is to be submitted to a jury to determine whether or not an arbitration agreement was, in fact, formed in the first place.

Now, the arbitration agreement here is not a single provision. It's four pages. It calls itself, at the very heading in its title, arbitration agreement. It is comprised of the entire thing. And the entire thing is pervasive with illegal and unenforceable provisions.

To redline through would be a hack job. There would be nothing but a mismatch of words left in it. It cannot

stand as a whole. Even arbitration provision, one specific clause itself, has at least two provisions that must be struck, which leads almost nothing to it. And it's probably three or four different provisions of that arbitration provision itself. Once you get through removing the unenforceable portions, there's nothing left.

The most appropriate remedy is to strike it altogether or have a jury flesh out these issues of fact.

Now, their motion is based on a Rule 12(b)(3), which is improper venue. There's no dispute that the individual defendants are Charleston County residents. There's no dispute that the actions occurred in Charleston County. Under the venue statutes, venue is proper here. There's no argument about that. On those grounds alone, you can deny it.

In addition to that, they rely on a forum-selection clause in order to enforce the arbitration agreement, which is a separate provision than the arbitration provision. It's paragraph 20, I believe.

The arbitration provision is paragraph 19. It calls for forum in New York, along with the arbitration provision calling for forum in New York City, specifically. That clause is unenforceable for two reasons. One, it was procured by fraud. The allegation is that he was provided only the signature block, did not have the opportunity, nor the time, to read it after being there for hours, interacting with the

Bravo employees and producers. They walked him through everything. They are putting him in makeup. They don't say anything to him about any agreement. They don't give it to him then, allow him to review it while doing all this stuff. They provide it to him the moment before they are ready to say, go. They got lights on. They got the cameras on. They got everyone in position. And then all of a sudden: Here, sign this. It's no big deal. It's a formality. It allows us to film this.

And Mr. Abruzzo is an educated man. That doesn't work against him. This agreement is so unconscionable and illegal that no sensient being would possibly conceive that it would grant the types of rights it purports to grant in it. They are not found in any contract of any kind involving anybody. There is absolutely no reason for him to suspect that it would include these types of provisions.

But back to the forum-selection clause. It's produced by fraud. The law is clear. And it's cited in the memorandum *Johnson v. Key Equipment Finance*. A question of first impression, the Supreme Court in 2006 said, when wrongs -- and it was almost identical to what we are dealing with here. It had a forum-selection clause in New York in a lease agreement. Supreme Court said, well, the lessees are alleging fraudulent inducement because you misrepresented or hided -- or you hid pertinent information from them.

And the Supreme Court said, when wrongs arise inducing a party to execute a contract, the remedies and limitations specified by the contract do not apply. It would not make logical sense to allow a forum-selection clause to operate to prevent suit in South Carolina where the acts alleged occurred prior to -- and that's key -- prior to the execution of the agreement.

But for the events leading to the signing of the contract, the agreement would not have been consummated. That's exactly what we have here. There would be no signature on that signature block had there been no fraud. Okay?

Second reason, that reason alone, forum selection, is unenforceable. And their motion should be denied.

Second reason is, South Carolina Code 15-7-120 says, specifically, notwithstanding a provision in a contract requiring it be brought somewhere else, the cause of action may be brought in a manner provided in this title. That means in Charleston County, because they're Charleston County residents and the acts and omission occurred in Charleston County.

The courts interpreting that, including the federal courts and the South Carolina Court of Appeals, have said this statute shows a strong public policy statement by the legislature. The law is clear you cannot have a provision in a contract that violates public policy. It's even more clear

whenever it's a statute that discusses and expresses that public policy.

District courts have found it. South Carolina Court of Appeals *Johnson v. Paraplane Corporation*, a case in Horry County, they explain not only did the statute apply to venue, but it applied to jurisdiction as well. And despite a venue and jurisdiction being assigned in the contract to New Jersey, the case was properly brought in Horry County.

And they cited Indianapolis Life Insurance Company of South Carolina District Court, which is also -- held the same thing also cited in the memorandum.

So the issue of venue is clear. It's properly here. Okay? So once you remove that, you are removing paragraph 20, the venue, the forum-selection clause.

You are also removing that portion requiring arbitration to be in New York City, because in that same statute, 15-7-120 says, arbitration outside of the state of South Carolina is also unenforceable. Okay?

So the same statute says not only can you bring the case in state, but you also can, and cannot require arbitration to be held outside of South Carolina. So now we are getting rid of New York altogether in the arbitration provision alone. That makes the arbitration provision calling for a New York lawyer to do it make absolutely no sense. We don't have New York lawyers here. If we do, it's going to

whittle it down to only a few. Whether or not they are qualified arbitrators, who knows? I don't know. So you can't enforce that.

Now, getting to the agreement itself. That's just venue and forum. The Court must accept as true the allegations of the author of the complaint. Berkeley County hears the case 944 F.3 225, Fourth Circuit, 2019. The Court must accept as true the allegations of the operative complaint that relate to the underlying dispute when determining a motion to compel arbitration. That's the standard.

I did not put forth, and the plaintiff did not put forth a summary judgment standard at all. It is clear from the submissions that the standard is just that. You've got to accept the allegation that it's true. And if it's true, all doubts in his favor. Doing that means that the affidavits that have been submitted, while improper, did not have anything to do with venue. All they do is attack substance of the allegations. All they do is create a material issue of fact. The plaintiff is saying one thing. These other people are saying something else.

It's not the Court's function, certainly not at this stage, to resolve that issue. And that's regardless of the fact that the affidavits they submitted don't even assert that they had personal knowledge of the situation. They don't say -- for example, Morgan Miller doesn't say that she

actually handed it to him or she actually responded to a question. It says generalities, such as, he was handed, he did ask, it was responded. I don't even know if she actually talked to him. There were dozens of people there, dozens at the time.

Under the agreement, the arbitration agreement, four-page agreement --

THE COURT: Mr. Edwards, you've got two minutes. Okay? This is a 30-minute hearing.

MR. EDWARDS: I understand. And I will whittle it down. I will whittle it down.

There are almost a dozen reasons for you to deny this motion. All of them are supported by the dozens of cases in the memorandum. The only way you grant this motion is to ignore all of the other provisions, which you cannot do. The released parties, the individual defendants and the other corporate defendants, that term was defined in paragraph 17. It's referred to in the arbitration provision. Those two things are tied.

The release provision of paragraph 17 is unenforceable as a matter of law. And it is throughout the majority of the country, except New York, where they want to go. It would violate South Carolina public policy to enforce this agreement or to allow another state's law when the case is properly brought in South Carolina, to allow another

state's law to invalidate South Carolina public policy. It's there for a reason. The release cannot be enforced at all.

Finally, in their brief, they say -- there's a few things. There's many cases that say these types of claims are not arbitrable because they are not enforceable. They arise outside the context of the agreement. And in the case of fraud, fraudulent inducement, the conspiracy in this case, it existed and arose prior to the execution of the agreement. The agreement itself only applies once he signs it. And there's law to support that as well. Those causes of action clearly are not within the scope of the agreement.

They say in their memorandum that the *Parsons* case overrules the outrageous torts exception. It does not. The opinion, which I'm reading to you, says, the majority of this court finds the outrageous torts exception to the arbitration remains viable.

It is the law of South Carolina. It is the binding law of South Carolina that parties normally don't expect outrageous things to happen when they enter into an agreement. That's exactly what has been alleged in this case.

One final point, and then I will yield it back to you. This provision, the arbitration provision, it cannot be separate from the rest of the agreement. It references New York City, which is unenforceable as a forum as a matter of South Carolina law.

It references the released parties, which is part of the release language, which is unenforceable as a matter of South Carolina law.

It wants to apply New York law, which is unenforceable as a matter of public policy under South Carolina law, because it would allow releases for intention of courts. It is a one-sided remedy. The injunctive relief is egregious when considered in the face of the remainder of the agreement, the release of intention of the courts.

The specific right granted to Bravo in the arbitration agreement under paragraph 12, that they shall be entitled to injunctive relief, not only that, but without posting bond, which also violates South Carolina law, Rule 65 requires bond, and is, therefore, unenforceable. But it says that. And it obligates the plaintiff, if he were to say anything to anybody about anything, to pay a penalty of $500,000 each to the producer and the network.

So the idea that the prevention of injunctive relief as to the plaintiff is fair, it is not. And the release does, in fact, release damages of all kinds. So he has no rights at all. Bravo has every right in the world to do anything they want, whenever they want, however they want, throughout the universe and in perpetuity.

Abruzzo, under this agreement, has no rights whatsoever.

And one final point. The agreement, arbitration agreement, which calls itself an arbitration agreement, says at -- the very first words is, this is an agreement. This, single, this one thing, this one four-page document, is the agreement.

I will be happy to answer any questions you have. I know that's a lot of information to digest. Briefs by both parties are long, well-researched. But I would urge you to read them and consider the effect of granting the motion to compel in light of all of these considerations.

THE COURT: All right. For the record, I will --

MS. HISER: Your Honor, could I just respond very briefly?

THE COURT: No, ma'am. We don't have enough time. We've got people waiting on the 10:30. What I was going to state for the record, I will rely on your briefs for that portion of it. And once I take a look at it, you will have my answer by the end of the day. Okay?

MS. HISER: Okay. Thank you.

THE COURT: Y'all have a wonderful day. If you need anything else, let us know. Happy to help.

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

ELECTRONICALLY FILED - 2020 Jun 22 4:19 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

Reply To
JAMES D. SMITH, JR.
Direct Dial: (843) 576-2904
jsmith@mgclaw.com

June 22, 2020

VIA E-MAIL AND SC E-FILE

The Honorable Bentley Price
Circuit Court Judge
100 Broad Street, Suite 432
Charleston, SC 29401

RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy
Civil Action No.: 2020CP1000472 (Charleston)
Carrier Claim No.: 170003678
MGC File No.: 21162.20001

Dear Judge Price:

We represent the Defendants in the above-referenced matter, and we filed a Motion to Dismiss Plaintiff's claims and compel binding arbitration, which we believe is required under a contract entered into between the parties. Our Motion was set on the hearing roster for this week, and we requested a hearing, which hearing has not yet been set. We filed our Memorandum in Support of our Motion on Friday pursuant to Your Honor's request. Shortly after filing our Memorandum, Plaintiff filed an Amended Complaint alleging additional factual allegations as well as several additional causes of action against the Defendants. Plaintiff's counsel also e-mailed Your Honor last Friday at around 5 p.m. to let Your Honor know that Plaintiff had filed an Amended Complaint and believed the Amended Complaint "mooted" the Defendants' Motion to Dismiss.

We do not believe the amendment to the Complaint in any way changes the issue before the Court, which is whether the arbitration provision in the executed contract between the parties requires arbitration of these claims. As a result of Plaintiff filing the Amended Complaint on Friday afternoon, we have filed a Motion to Dismiss Plaintiff's Amended Complaint for the identical reasons previously cited to in our prior Motion. The arbitration issue to be decided by Your Honor in no way changes with Plaintiff filing an Amended Complaint on Friday.

As a result, we would respectfully request that Your Honor allow this hearing to move forward and stay on the roster presently with Your Honor. As we have already mentioned, Your Honor has not scheduled a hearing date as of yet; therefore, we would ask that a hearing be set on our Motion to Dismiss. We look forward to hearing from you and hopefully moving forward with a hearing at some point in the near future.

Very truly yours,



James D. Smith, Jr.

JDS/caz
Enclosure
cc: Aaron E. Edwards, Esquire (via e-mail)

ELECTRONICALLY FILED - 2020 Jun 22 4:19 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

ELECTRONICALLY FILED - 2020 Jul 08 10:59 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

Reply To
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July 8, 2020

VIA E-MAIL AND SC E-FILE

The Honorable Bentley Price
Circuit Court Judge
100 Broad Street, Suite 432
Charleston, SC 29401

RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy
Civil Action No.: 2020CP1000472 (Charleston)
Carrier Claim No.: 170003678
MGC File No.: 21162.20001

Dear Judge Price:

We are in receipt of your Form 4 Order denying the Defendants Motion to Dismiss Plaintiff Abruzzo's Amended Complaint and Motion for order compelling arbitration. As you are aware, an order denying a motion to compel arbitration is immediately appealable. *See*, *e.g.*, *Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013). To that end, the Defendants respectfully request that you issue a detailed written order setting forth the reasons for your denial so that the appellate court can evaluate the reasoning behind and basis for your order.

We look forward to hearing back from you and appreciate your addressing this issue.

Very truly yours,

James D. Smith, Jr.

JDS/caz
cc: Aaron E. Edwards, Esquire (via e-mail)

ELECTRONICALLY FILED - 2020 Jul 09 10:06 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

EDWARDS FIRM, LLC
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MOUNT PLEASANT, SOUTH CAROLINA 29464

AARON E. EDWARDS, ESQ. aaron@edwardsfirmllc.com

July 9, 2020

Via email and SC e-file
The Honorable Bentley Price
Circuit Court Judge
100 Broad Street, Suite 432
Charleston, SC 29401

In re: Abruzzo v. Bravo Media Productions, LLC, et al.
Case No: 2020-CP-10-00472

Dear Judge Price:

I am writing in response to opposing counsel's letter yesterday requesting a "detailed written order setting forth the reasons" for the court's denial of their motion to dismiss the amended complaint and motion for order compelling arbitration. The letter does not cite to any authority which would compel the court to comply with the request, and I am not aware of any South Carolina authority requiring the court to do so.

The basis of the Defendants' motion was Rule 12(b)(3), SCRCP. In South Carolina, the denial of a rule 12 motion does not require findings of fact or conclusions of law. Rule 52(a), SCRCP; *Kinghorn as Trustee for the Mildred Ann Kinghorn Trust dated 28 April 2004 v. Sakakini*, 426 S.C. 147, 825 S.E.2d 748 (Ct. App. 2019) ("pursuant to Rule 52(a), SCRCP, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal"); *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014) (Although better practice is for trial judge to articulate relevant findings of fact and conclusions of law in an order granting summary judgment, such findings and conclusions are not required for appellate review).

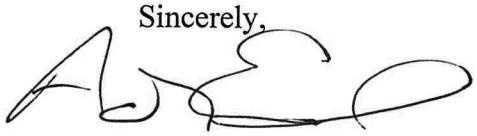
Even assuming, *arguendo*, that the denial of the Defendants' motion is appealable, questions of arbitrability are typically reviewed *de novo* based upon the record. *See, e.g. Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167; *Smith v. D.R. Horton*, 417 S.C. 42, 790 S.E.2d 1 (2016); *Aiken v. World Fin. Corp.*, 373 S.C. 144, 644 S.E.2d 705 (2007). Here, both parties submitted memoranda, which the court reviewed, and a hearing was held on June 30, 2020. The reasoning and basis for the court's decision can be found in Plaintiff's memorandum opposing the motion and oral arguments.

The undersigned acknowledges that some jurisdictions require findings of fact and conclusions of law in an order denying a motion to compel arbitration. *See, e.g. Cornelius v. Lipscomb*, 224 N.C. App. 14, 734 S.E.2d 870 (N.C. Ct. App. 2012); *Certegy Check Services, Inc.*

v. Fuller, 241 W.Va. 701, 828 S.E.2d 89 (W.VA. 2019). However, it does not seem in this instance that another written order in addition to the Form 4 order is required or necessary.

Of course, if the court would like to clarify that the motion was denied for the reasons set forth in Plaintiff's memorandum and oral arguments, or have undersigned to prepare a written order to that effect, Plaintiff leaves that to the court's discretion.

Sincerely,



Aaron E. Edwards

cc: counsel of record (via email and SC e-file)

ELECTRONICALLY FILED - 2020 Jul 09 10:06 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1000472

Helen Hiser

From: Price, Bentley Law Clerk (Juliana Beeks) <bpricelc@sccourts.org>
Sent: Wednesday, July 15, 2020 1:56 PM
To: Helen Hiser
Cc: 'Aaron Edwards'; JD Smith, Jr.; Danielle Payne; Cathy Zomer
Subject: RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., et al. (Civil Action No. 2020CP1000472)

Good Afternoon,

No, we did a form 4, and I believe it indicated that if the parties desired formal orders they could submit them to us. If it did not include that part I apologize. If you do file the motion to reconsider, please email me a copy.

Thanks,

Julie Beeks
Law Clerk to the Honorable Bentley D. Price
Circuit Court Judge, 9th Judicial Circuit
100 Broad Street
Charleston, South Carolina 29401
Phone: (843) 958-4449
Email: bpricelc@sccourts.org

From: Helen Hiser <helen.hiser@mgclaw.com>
Sent: Wednesday, July 15, 2020 1:53 PM
To: Price, Bentley Law Clerk (Juliana Beeks) <bpricelc@sccourts.org>
Cc: 'Aaron Edwards' <aaron@edwardsfirmllc.com>; JD Smith, Jr. <Jsmith@mgclaw.com>; Danielle Payne <danielle.payne@mgclaw.com>; Cathy Zomer <cathy.zomer@mgclaw.com>
Subject: RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., et al. (Civil Action No. 2020CP1000472)

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Price, We are writing to inquire whether you plan to issue a detailed, written order. Our Rule 59(e) Motion to Alter or Amend is due tomorrow, July 16, 2020, and we would like to know whether you plan to file a written order before filing our Motion.
Best regards,
Helen Hiser

From: Aaron Edwards <aaron@edwardsfirmllc.com>
Sent: Thursday, July 09, 2020 10:08 AM
To: Cathy Zomer <cathy.zomer@mgclaw.com>

Cc: bpricelc@sccourts.org; JD Smith, Jr. <Jsmith@mgclaw.com>; Danielle Payne <danielle.payne@mgclaw.com>; Helen Hiser <helen.hiser@mgclaw.com>
Subject: Re: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., et al. (Civil Action No. 2020CP1000472)

Judge Price:

Please see the attached letter in response to opposing counsel's letter yesterday, a copy of which has also been e-filed.

Aaron E. Edwards, Esq.
Edwards Firm, LLC
755 Johnnie Dodds Blvd., Ste 100
Mount Pleasant, SC 29464
phone: (843) 375-2008
fax: (843) 881-5899
www.edwardsfirmllc.com

On Wed, Jul 8, 2020 at 10:56 AM Cathy Zomer <cathy.zomer@mgclaw.com> wrote:

Dear Judge Price,

Attached please find correspondence from JD Smith regarding Your Honor's Form 4 Order denying the Defendants' Motion to Dismiss Plaintiff Abruzzo's Amended Complaint and Motion for order compelling arbitration. Plaintiff's counsel is also copied on this e-mail.

Respectfully,

Cathy Zomer

Legal Assistant to James D. Smith, Jr.

CELEBRATING 25 YEARS mgc INSURANCE DEFENSE

Cathy Zomer, *Legal Assistant*
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Main:843-576-2900 | **Direct**:843-576-2934 | **Fax**:843-534-0605
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

PROOF OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal filed in this matter contains all the material proposed to be included by the parties to this matter and does not include any other material. The undersigned further certifies that the Record on Appeal filed in this matter complies with the South Carolina Supreme Court's April 16, 2014 Order re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.

February 12, 2021



Helen F. Hiser, S.C. Bar No.: 76124
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Attorneys for Appellants Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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The Honorable, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

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Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

PROOF OF SERVICE

I certify that I have served the **Record on Appeal** on Joseph Abruzzo, by sending it to his attorney of record by email and U.S. Mail, as follows:

Aaron E. Edwards, Esq.
Edwards Law Firm
755 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, South Carolina 20464
(843) 375-2008
aaron@edwardsfirmllc.com

February 12, 2021

/s/Lisa Carducci
Legal Assistant to Helen F. Hiser
McANGUS GOUDELOCK & COURIE LLC
735 Johnnie Dodds Blvd., Suite 200
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(843) 576-2900

Attorneys for Appellants

Reply To
HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

February 12, 2021

Via S.C. One Drive Filing & U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy
Civil Action No.: 2020CP1000472 (Charleston)
Carrier Claim No.: 170003678
MGC File No.: 21162.20001
Appeal No.: 2020-001095

Dear Ms. Kitchings:

Enclosed for filing please find the final Brief of Appellants and Reply Brief of Appellants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, along with Appellants' Proof of Service of same. A bound version of each is being placed in the U.S. Mail.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Aaron E. Edwards, Esq. (via Email & U.S. Mail)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

BRIEF OF APPELLANTS

MCANGUS GOUDELOCK AND COURIE

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Attorneys for Appellants

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STATEMENT OF ISSUES ON APPEAL

I. WHETHER TO THE EXTENT THE CIRCUIT COURT LIMITED ITS REVIEW TO THE FOUR CORNERS OF THE AMENDED COMPLAINT, THAT WAS MANIFEST LEGAL ERROR?

II. WHETHER UNDER NEW YORK AND SOUTH CAROLINA LAW, PUBLIC POLICY STRONGLY FAVORS HOLDING PARTIES TO THE TERMS OF THEIR AGREEMENTS?

III. WHETHER THE CIRCUIT COURT ERRED IN FAILING TO ENFORCE THE PARTIES' VALID EXCLUSIVE FORUM SELECTION CLAUSE OF THE RELEASE AND ARBITRATION AGREEMENT?

IV. WHETHER, IN THE EVENT THIS COURT FINDS THAT THE PARTIES' ARBITRATION AGREEMENT IS NOT ENFORCEABLE, PLAINTIFF'S AMENDED COMPLAINT SHOULD BE DISMISSED BASED ON THE VALID AND ENFORCEABLE EXCLUSIVE FORUM SELECTION CLAUSE?

This appeal concerns the denial of Appellants' Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner and Madison LeCroy's, Defendants below,[1] Motion to Dismiss Plaintiff's Amended Complaint and for Order Compelling Arbitration, and their subsequent motion for reconsideration. Appellee Joseph Abruzzo, Plaintiff below ("Abruzzo" or "Plaintiff") is a well-educated, sophisticated, and self-proclaimed successful Florida politician and consultant, who resides in Florida and, at all times relevant to this appeal, was a director for public relations for a major Florida law firm. In the fall of 2018, Abruzzo pursued a romantic relationship with Kathryn Dennis ("Dennis"), one of the main cast members on the long-running hit reality television show, *Southern Charm* ("the Program" or "*Southern Charm*"), with full knowledge that Season Six of the Program was being filmed at the time. Prior to being filmed for the Program, Abruzzo voluntarily signed a three-page Appearance Release, Voluntary Participation, and Arbitration Agreement ("Release and Arbitration Agreement" or "Agreement"), which contains both a prominent and unambiguous agreement to arbitrate any disputes that arose out of the Agreement ("Arbitration Agreement") and a separate exclusive forum selection clause, both of which are valid and enforceable, and require dismissal of Plaintiff's claims in South Carolina state court.

STATEMENT OF THE CASE

Plaintiff filed a Complaint and Summons on January 28, 2020 ("Complaint") in the Charleston County Court of Common Pleas, alleging ten causes of action against Defendants, including: Outrage/Intentional Infliction of Emotional Distress; Fraud; Constructive Fraud;

[1] Where necessary for clarification, Appellants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, and Comcast Corporation are referenced herein as the "Corporate Defendants," and Appellants Craig Conover, Chelsea Meissner, and Madison LeCroy are referenced herein as the "Individual Defendants."

Negligent Misrepresentation; Fraudulent Inducement; Civil Conspiracy; Defamation; Violation of the South Carolina Unfair Trade Practices Act; Negligence; and, Unjust Enrichment. Plaintiff sought damages in excess of $10,000,000, treble damages and costs and fees. (Complaint, filed Jan. 28, 2020, R. pp. 7-37).[2]

Defendants filed a Motion to Dismiss on May 12, 2020, (R. pp. 38-51), and a corresponding Defendants' Memorandum in Support of Motion to Dismiss Plaintiff's Complaint and for Order Compelling Arbitration on June 19, 2020. (R. pp. 52-92). On that same date, Plaintiff filed a 50-page Amended Complaint, which realleged his earlier causes of action and added seven additional, and often duplicative, purported causes of action entitled: Wrongful Appropriation of Personality/Infringement on the Right of Publicity; Wrongful Publicizing of Private Affairs; Public Nuisance; Private Nuisance; Fraudulent Inducement of Arbitration Agreement/Unconscionability of Arbitration Agreement; and, Fraudulent Inducement of Release/Unconscionability of Release; and Rescission of "Release and Arbitration Agreement," again seeking damages in excess of $10,000,000, treble damages and costs and fees. (Amended Complaint, filed June 19, 2020, R. pp. 94-143). Plaintiff also filed a one-paragraph response to Defendants' Motion to Dismiss, arguing that that Motion was moot in light of his Amended Complaint. (Plaintiff's Response to Defendants' Motion to Dismiss, filed June 19, 2020, R. p. 93).

Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint and for Order Compelling Arbitration on June 22, 2020, (R. pp. 144-162), and a corresponding Memorandum in Support on June 29, 2020 ("Memo in Support"). (R. pp. 163-250). Plaintiff filed a Memorandum in Opposition to Defendants' Motion to Dismiss Amended Complaint also on June 29, 2020, (R.

[2] Plaintiff served the Defendants on different dates ranging from March 13, 2020 to April 13, 2020. Pursuant to the April 3, 2020 Order of The Supreme Court of South Carolina addressing Operation of the Trial Courts During the Coronavirus Emergency, the due dates for Defendants to respond were extended automatically.

pp. 251-285), and the parties were heard by the Honorable Bentley Price the following day, on June 30, 2020.

Judge Price issued a Form 4 Order on July 6, 2020, (R. pp. 4-6), ruling Defendants' "motion to Dismiss and Motion for order compelling arbitration are denied." Defendants first requested that the Circuit Court issue a detailed written order setting forth the reasons for its denial, (R. p. 334), which Plaintiff vociferously opposed. (R. pp. 335-336). Judge Price's law clerk advised, with respect to the initial Form 4 Order, "we did a form 4, and I believe it indicated that if the parties desired formal orders they could submit them to us. If it did not include that part I apologize." (R. pp. 337-339). Defendants then moved the Court for Reconsideration pursuant to Rule 59(e), SCRCP on July 16, 2020, (R. pp. 286-311), which the Court denied, again issuing a Form 4 Order on July 22, 2020 that simply stated, "The Defendant's Motion for Reconsideration is DENIED. A hearing is not necessary." (R. pp. 1-3).

Defendants timely appealed to this Court

BACKGROUND FACTS

A. Plaintiff's Amended Complaint.

Southern Charm (referred to herein interchangeably as "*Southern Charm*," or "the Program") is a hit, long-running reality television show that features the professional and personal lives of various Charleston residents "and reveals a world of exclusivity, money and scandal." Defendant Haymaker produces the Program. The Program airs on the Bravo network, which is indirectly owned by Defendant NBCUniversal.[3] The Individual Defendants are or were regular cast members on the Program. (R. pp. 94-96, 102-103, ¶¶ 2-10, 34).

[3] Defendant NBCUniversal is indirectly owned by Defendant Comcast.

The Amended Complaint details at length Plaintiff's education, extensive background in public office in Florida, and work in government relations, currently while employed at a major Florida law firm. After graduating from Lynn University with a Bachelors of Arts in International Communications and a Minor in International Business, Abruzzo served in the U.S. Coast Guard Reserve and then was elected to the Florida House of Representatives. Abruzzo served in various positions and boards, including but not limited to the Finance and Tax Counsel, the Economic Affairs Committee, the Business and Consumer Affairs Subcommittee, and has been a member of the Insurance, Business and Financial Affairs Policy Committee, the Economic Development & Community Affairs Policy Counsel, the Finance and Tax Counsel, and the Government Operations Appropriations Committee. Abruzzo presided over Palm Beach County Consumer Affairs cases involving alleged unfair and deceptive business practices. He alleges he received numerous awards and accolades. Abruzzo alleges that, for years he worked as a federal lobbyist for the Chesapeake Petroleum and Supply Company based in Gaithersburg, Maryland, for which service he was paid $15,000 per month. Abruzzo alleges he was terminated from that lobbying position "shortly after the airing of the Southern Charm episodes discussing and featuring Plaintiff Abruzzo." Although the Amended Complaint asserts that Plaintiff currently is "employed as a director of government relations for a major law firm in Florida," (R. pp. 96-102, ¶¶ 12-29), he is a nominee for and considered the presumptive winner of the race for Clerk of Court for Palm Beach County, Florida.[4]

Plaintiff alleges that *Southern Charm* is a "reality" television show that has aired nationally and internationally since 2014. (R. p. 102, ¶ 32). Plaintiff further alleges that, although promoted as a "reality" show, *Southern Charm* "consists of false conflict and scenarios that are fabricated and/or contrived by the Corporate Defendants," and that cast members "are directly provoked,

[4] https://gotowncrier.com/2020/06/abruzzo-likely-to-succeed-bock-as-county-clerk/

encouraged, instigated, and/or orchestrated by the Corporate Defendants, with the individual cast members[’] agreement, coordination, and cooperation, to elicit drama and conflict,” in order to promote a storyline. (R. pp. 102-103, ¶¶ 33-34). While earlier seasons depicted the relationship between long-time cast members Thomas Ravenel (“Ravenel”) and Dennis, Abruzzo alleges the “need for a new ‘storyline’ for Dennis became apparent,” after it was announced that Ravenel would not return to *Southern Charm* for the sixth season of the Program. According to Abruzzo, part of that “new storyline [for Dennis] was to include a new love interest.” (R. p. 103, ¶¶ 35-38).

Abruzzo alleges he met Dennis in the fall of 2018 at a Miami Dolphins game, after which they began a romantic relationship. (R. p. 104, ¶ 41). Abruzzo was aware that he was pursuing a romantic relationship with a current cast member on *Southern Charm* while the sixth season of the Program was being filmed, as “Dennis almost immediately began imploring Plaintiff Abruzzo to be on the show, telling Abruzzo that if she were to get married, she believed the Corporate Defendants would pay big money for rights to televise her wedding, honeymoon, an exclusive, and other things of that nature.” (*Id.* ¶ 42). Abruzzo agreed to be a voluntary participant on the Program and established the circumstances under which he would participate. He alleges that, although the Corporate Defendants wanted him to go on a “guy’s trip,” or to go on a dinner date with Dennis at a “public and crowded restaurant,” he “declined any such outing or event,” and “[u]ltimately Plaintiff decided he would allow a private dinner at Dennis’s residence in downtown Charleston to be filmed by the Corporate Defendants.” (R. pp. 104-105, 108-109, ¶¶ 43-44, 61). Abruzzo alleges that, prior to and following filming, certain verbal representations were made to him about how he would be portrayed on the Program. (R. pp. 105-106, ¶¶ 47-54).

Abruzzo has admitted that, prior to being filmed for the Program, he was given and signed a three-page Release and Arbitration Agreement. Although Abruzzo initially alleged that he was

presented with a document for his signature, "turned to the third page," (R. p. 21, ¶ 53), after Defendants filed their Motion to Dismiss and Supporting Memorandum, Abruzzo changed his story to allege that he was presented with a "partial piece of paper with only the signature portion of the page visible," which he nonetheless signed without reading based on purported representations by the Corporate Defendants and/or their agents that the document "simply authorized filming of [Abruzzo and Dennis's] dinner." (R. pp. 105-106, ¶¶ 48, 50-54). Abruzzo alleges that he felt pressure from both Dennis and the Corporate Defendants "to participate in the filming of the dinner" and "to begin filming" because "it would be a great thing for" his then girlfriend Dennis. (R. pp. 104, 106, ¶¶ 42, 52-53). The Amended Complaint alleges that there was no conflict between him and Dennis during the dinner and that the Defendants did not "state, suggest, or imply that he would be portrayed in a negative and/or false light." (R. pp. 105, 107-109, ¶¶ 49, 55, 61-62).

Abruzzo alleges that the relationship between himself and Dennis ended in early 2019, and that the Corporate Defendants "later falsely claim[ed] that Dennis ended the relationship with Plaintiff Abruzzo as a result of the concern expressed by other cast members about Plaintiff Abruzzo," which claim he asserts is false and was "designed and intended to defame, disparage, and/or portray Plaintiff Abruzzo as an unsafe, corrupt, abusive and/or otherwise unsavory individual in order to preserve and further Dennis's storyline and reputation at Plaintiff's expense." (R. pp. 111-112, ¶¶ 70-72).

In particular, Abruzzo alleges that false statements were made about him in episode three of *Southern Charm* "in order to further the storylines" for the Program, including a statement by Defendant Conover to the effect that Plaintiff is "'a disgraced politician in Florida' and 'He's not running for re-election because of his divorce. His wife is accusing him of being physically

abusive.'" Pursuant to the Amended Complaint, these statements were elicited by Defendant Meissner, who was "prompted and/or encouraged by" the Corporate Defendants for the purpose of disparaging, defaming and otherwise portraying him "in a false light in order to create and further the storylines involved in Southern Charm." (R. pp. 107-108, 112, ¶¶ 58-59, 72).

Abruzzo alleges that, in an episode following his dinner date with Dennis, Defendants LeCroy and Meissner, along with other individuals, falsely stated there were nude photographs of Plaintiff in the public domain. The Amended Complaint alleges that certain cast members "Googled" and discussed photographs of Plaintiff—photographs that had been posted online by third parties unrelated to Defendants and were publicly available at the time of filming. The Amended Complaint also notes that a photo of Abruzzo is shown during the episode with "the image blurred at the bottom of his torso." Plaintiff alleges the conversation about the photographs was prompted and/or encouraged by the Corporate Defendants "in order to falsely state, depict, or imply they were viewing a photo in which they could see Plaintiff Abruzzo's penis or 'pecker.' Such photos do not exist, nor are they in the public domain to be viewable simply by a Google Search," and that the blurring of the bottom of the photograph was malicious and was intended to imply falsely that "photos of Plaintiff Abruzzo's genitals exist, were viewed by the individual Defendants and/or Corporate Defendants." (R. pp. 109-111, ¶¶ 63-69).

Abruzzo alleges that all of the purportedly false statements about him were made on *Southern Charm* either in order to further a storyline and "create dramatic material for consumption by the viewers of the 'reality' show Southern Charm in the United States and worldwide," (R. pp. 107-113, ¶¶ 57-59, 65-66, 72, 74), or "to defame, disparage, or otherwise harm the Plaintiff." (*Id.* ¶¶ 59, 69, 75). As a result of these statements and other actions alleged to

have been taken by Defendants, Abruzzo filed his Amended Complaint in South Carolina state court.

B. The Appearance Release, Voluntary Participation, and Arbitration Agreement.

In connection with his appearance on *Southern Charm*, Plaintiff concedes that, on October 30, 2018, prior to being filmed, he signed the Release and Arbitration Agreement. (R. pp. 153-155). Pursuant to the Release and Arbitration Agreement, Abruzzo agreed to be a voluntary participant "[i]n exchange for the opportunity to be part of the program currently titled 'Southern Charm' (the 'Program')." All of the Defendants are parties to the Release and Arbitration Agreement. Pursuant to its terms, Defendant NBCUniversal Media, LLC, is designated as the Network, and Defendants Comcast Corporation and Bravo Media Productions LLC, as affiliated entities, are also parties to the Release and Arbitration Agreement; Haymaker Media, Inc is designated as the Producer; and the Individual Defendants are express intended third party beneficiaries of the Release and Arbitration Agreement. (R. pp. 154-155, ¶¶ 17, 21).[5]

In Paragraph 6 of the Release and Arbitration Agreement, Abruzzo agreed that he would "not be paid for any and all of the rights listed in this Agreement and waive any right I may have to any compensation. I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes the Materials in the Program …"

In Paragraph 8, Abruzzo agreed that he understood "that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such

[5] For purposes of resolving this appeal, the only relevant provisions of the Release and Arbitration Agreement are Paragraphs 19 and 20; however, given that Plaintiff improperly focused on other provisions of that Agreement in his attack on the Arbitration Agreement, they are set forth below for the Court's ease of reference.

information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort."[6] In addition, in Paragraph 9, Plaintiff acknowledged that, "[f]or dramatic or creative purposes, Producer and Network may make misrepresentations to me related to any and all topics, prior to and during the course of my participation. I consent to and assume all risks of such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim."

In Paragraph 12 of the Release and Arbitration Agreement, entitled "**CONFIDENTIALITY AND PUBLICITY**," Abruzzo promised he would not disclose any information or materials about Producer, the Network this Agreement, the Program, its participants, location(s), events and outcomes, that I learn from my Program participation (collectively, the 'Confidential Information'), unless such Confidential Information is specifically disclosed in the Program exhibition, if ever." It also provides that "[a]ny breach by me of any of these confidentiality and publicity provisions would cause Producer and Network irreparable injury and damage that cannot be reasonably or adequately compensated by damages in an action at law. I agree that Producer and Network will be entitled to injunctive and other equitable relief (without posting bond) to prevent or cure any such breach or threatened breach." Acknowledging the difficulty of proving damages for such a breach, Abruzzo agreed "to pay Producer and Network the sum of $500,000 per breach plus disgorgement of any income that I may receive in connection with any such breach as liquidated damages."

Paragraph 17 of the Release and Arbitration Agreement, entitled "**RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY**," provides, in pertinent part, as follows:

[6] In Paragraph 2, Abruzzo "waive[d] any right to object to any use (including any editing/dubbing/fictionalization) of the Materials by Producer or Network for any reason."

To the maximum extent permitted by law, I … agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the "Released Parties") for any claims, actions, damages, losses, costs, expenses or causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement."

Paragraph 19 of the Release and Arbitration Agreement contains the Arbitration Agreement, is entitled "**MEDIATION & ARBITRATION**," and provides, in pertinent part, as follows:

WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR ("JAMS")[7] IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, "JAMS RULES," HARD COPIES PROVIDED UPON REQUEST) …. ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES. I AGREE THAT GIVEN THE UNIQUE NATURE OF THE ENTERTAINMENT INDUSTRY, AND THE IRREPARABLE DAMAGE TO PRODUCER, NETWORK AND THEIR LICENSEES THAT WOULD RESULT FROM DELAYING OR PREVENTING THE EXHIBITION OF ANY PROGRAM PRODUCED HEREUNDER, I MAY NOT SEEK OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT.

Paragraph 20 of the Release and Arbitration Agreement, entitled "Governing Law," provides as follows:

[7] JAMS stands for Judicial Arbitration and Mediation Services, Inc.

> Without regard to the conflicts of law provisions, New York law shall govern the entire relationship between the parties, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

Paragraph 21 of the Release and Arbitration Agreement provides, in pertinent part, as follows:

> I acknowledge and agree that … each of the Released Parties is an express intended third party beneficiary of this Agreement, including, without limitation, with full standing to enforce each, every, any and all of its provisions as if it was an express party thereto.

Paragraph 22 provides, in pertinent part, that:

> This is the entire agreement between Producer and me, and it supersedes all prior oral or written communications. I am not relying on any promise or statement, express or implied, that is not contained in this Agreement. The illegality, invalidity or unenforceability of any specific provision shall in no way affect the remainder of this Agreement."

Immediately above the signature line is the following, in larger, bolded, all capitalized and underlined print:

> **I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**

C. Plaintiff's Appearance on *Southern Charm*.

Abruzzo appeared briefly on an episode of Season Six of *Southern Charm* as a result of his pursuit of Dennis, an original cast member of the Program, during filming for that season. The Defendants were not involved with Dennis's decision to begin dating Abruzzo. Dennis was free to date whomever she chose, and Abruzzo could have pursued a romantic relationship with Dennis without appearing on *Southern Charm*. (R. p. 157, ¶¶ 4, 5). Abruzzo knew, prior to traveling to

Charleston, South Carolina, that he was pursuing a relationship with a reality television cast member during active filming, (R. p. 104, ¶ 42), and that his dinner date with Dennis would be filmed. Indeed, Plaintiff alleges he had input, through Dennis, into the circumstances in which he was willing to be filmed and had declined to participate in two other possible outings, one being a "guy's trip" and the other a dinner date with Dennis in a busy restaurant. (R. pp. 104-105, ¶¶ 43-44) (R. p. 157, ¶ 7).[8]

Prior to filming, the Release and Arbitration Agreement was handed to Plaintiff turned to the first page, and he took time to review each of the three pages of the Agreement. In fact, he asked a question about Paragraph 5 of the Release and Arbitration Agreement—which concerns whether the voluntary participant is or will become a candidate for public office—which is located on the first page of Release and Arbitration Agreement. (R. pp. 157-158, ¶¶ 8, 9). That question was answered to Plaintiff's satisfaction. If Abruzzo had raised any other issues with the Release and Arbitration Agreement, they would have been addressed prior to filming. If Abruzzo had declined to sign the Release and Arbitration Agreement, his dinner date with Dennis simply would not have been filmed. (R. p. 158, ¶¶ 10, 11). Abruzzo seemed eager to appear on *Southern Charm*, and freely chose to sign the Release and Arbitration Agreement, which was documented with a photograph. (R. pp. 157-158, ¶¶ 7, 12) (R. p. 159). It is evident from the photograph that Plaintiff was aware that the document he was holding had more than one page and it is indisputable that he could see, at a minimum, all of the third page.

[8] Morgan Miller, who served as the Executive Producer for Season Six of *Southern Charm*, attests that neither the Producers nor any of the Defendants had any discussions with Plaintiff prior to his arrival in Charleston, South Carolina, for his dinner date with Dennis. (R. p. 157, ¶¶ 2, 6).

STANDARD OF REVIEW

Under South Carolina law, a denial of a motion to arbitrate a dispute is immediately appealable. *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013); *see also Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) ("'an order that favors litigation over arbitration—whether it refuses to stay the litigation in deference to arbitration [or] refuses to compel arbitration … is immediately appealable, even if interlocutory'").

An appellate court "reviews an arbitrability determination de novo." *One Belle Hall Prop. Owners Ass'n v. Trammell Crow Residential Co.*, 418 S.C. 51, 59, 791 S.E.2d 286, 291 (Ct. App. 2016). Where a circuit court has entered an order with findings of fact, an appellate court will not reverse them, "if any evidence reasonably supports the findings." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007). However, in this case, the Circuit Court has provided absolutely no findings of fact, reasoning or rationale to support its denial, leaving both Appellants and this Court to guess at the basis for both Orders. While this may be permissible under Rule 52, SCRCP, the South Carolina Supreme Court has advised that "it is better practice—and in most cases common practice—as well as beneficial to the judicial process for a trial judge to articulate relevant findings and conclusions of law in an order for summary judgment." *Woodson v. DLI Props. LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014). While *Woodson* admittedly addressed summary judgment, the rule is equally applicable in the context of a denial of a motion to compel arbitration, particularly given the applicable standard of review and in light of both South Carolina's and New York's robust public policy favoring enforcement of arbitration agreements. *See, e.g., Cape Romain,* 405 S.C. at 125, 747 S.E.2d at 466 ("There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration");

see also PromoFone, Inc. v. PCC Mgmt., 224 A.D.2d 259, 260, 637 N.Y.S.2d 405, 406 (N.Y. App. Div. 1996) (noting New York's strong public policy in favor of arbitration). Because the Circuit Court failed to make any findings of fact or set out any of its legal reasoning, this Court is free and, in fact, has no choice but to decide this matter entirely *de novo*.

ARGUMENTS

The Circuit Court erred in failing to dismiss the Amended Complaint for two separate and independent reasons. First, the Amended Complaint should be dismissed and the parties ordered to mediation and, if necessary, arbitration pursuant to the valid, enforceable Arbitration Agreement between the parties. Abruzzo, a highly educated, sophisticated, former Florida Congressman who currently is "employed as a director of government relations for a major law firm in Florida," (R. p. 96, ¶ 12), voluntarily signed the prominent and unambiguous Arbitration Agreement specifying that, in the event "any dispute in connection with this Agreement" arose, the parties would first "try to resolve such dispute through confidential mediation," and, if that failed, "all disputes, including the scope or applicability of this agreement to arbitrate, ***shall be*** resolved by final and binding arbitration administered by JAMS or its successor." (R. p. 155, ¶ 19) (emphasis added). Second, even if the Court were to decline to enforce those enforceable mandatory dispute resolution provisions, this case still should be dismissed because the parties' Agreement specifies that the exclusive venue for any dispute arising from the Release and Arbitration Agreement or Abruzzo's participation on *Southern Charm* is New York. (*Id.* ¶ 20).

Because the Circuit Court failed to make any findings of fact and failed to set forth any basis for its denial of Defendants' Motion to Dismiss, despite Defendants' request that it do so, this Court is free to not only review the denial *de novo*, but to make its own findings of fact. In light of his strenuous opposition to Defendants' request for the Court to set forth its reasoning, (R.

pp. 335-336), Plaintiff cannot now argue that this case should be sent back to the Circuit Court for further findings of fact. Appellate courts routinely reject parties' attempts to argue inconsistent positions on appeal. *See, e.g.*, *King v. Daniel Int'l Corp.*, 278 S.C. 350, 354, 296 S.E.2d 335, 337 (1982) (rejecting appellant's exception on appeal where it was inconsistent with its statement at trial); *see also Vaughan v. Kalyvas*, 288 S.C. 358, 362, 342 S.E.2d 617, 619 (Ct. App. 1986) (declining to allow the appellant to assert a position on appeal that is contrary to the position taken below).

To the extent the Circuit Court's denial is based on Plaintiff's Opposition, as set forth in detail below, it is grounded on numerous manifest legal and factual errors, and Plaintiff failed to establish any valid basis to justify the denial of Defendants' Motion to Dismiss. Based on the arguments presented to the Circuit Court and as is set forth herein, this Court should reverse the Circuit Court and order the parties to mediate and, if necessary, arbitrate their dispute pursuant to the terms of the parties' Arbitration Agreement. In the alternative, this Court should dismiss the Amended Complaint in light of the valid and enforceable exclusive forum selection clause in the Release and Arbitration Agreement.

I. To the Extent the Circuit Court Limited Its Review to the Four Corners of the Amended Complaint, That Was Manifest Legal Error.

To the extent the Circuit Court denied Defendants' Motion to Dismiss because it limited its review to the Amended Complaint, as was argued by Plaintiff below, it committed legal error. "When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) or 12(b)(3), the court does not have to accept the pleadings as true, and may go beyond the face of the complaint and consider evidence outside of the pleadings. In so doing, the court does not convert the motion to dismiss into one for summary judgment." *Tetrev v. Pride Int'l, Inc.*, 444 F. Supp. 2d 524, 528-529 (D. S.C. 2006) (internal citations omitted); *see also Argueta v. Banco*

Mexicano, S.A., 87 F.3d 320, 324 (9th Cir. 1996) ("Under the Supreme Court's standard for resolving motions to dismiss based on a forum selection clause, the pleadings are not accepted as true as would be required under a rule 12(b)(6) analysis").[9]

If the Circuit Court adopted Plaintiff's erroneous argument that *Berkeley County School District v. Hub Int'l Ltd.*, 944 F.3d 225 (4th Cir. 2019), holds that the review of a motion to compel arbitration is conducted pursuant to the same standard of review applied to a motion to dismiss for failure to state a claim for relief, it erred. Below, Plaintiff misconstrued *Berkeley County* in numerous respects. First, the law is clear that, in the context of a motion to dismiss in favor of arbitration, a court "***accept[s] as true*** the allegations of the Operative Complaint ***that relate to the 'underlying dispute between the parties."***" 944 F.3d at 233 (emphasis added); *citing Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 113 (2d Cir. 2012) (reviewing court accepting "as true for purposes of this appeal factual allegations in the plaintiff's complaint ***that relate to the underlying dispute*** between the parties") (emphasis added). However, allegations that go to the enforceability of an arbitration agreement itself, particularly where, as is the case here, they are wholly unsupported by any evidence whatsoever, are not accepted as true. If that were not the case, a party could defeat any motion to compel arbitration simply by amending his or her complaint to include conclusory allegations aimed at defeating arbitration, regardless of whether they have any evidentiary or legal support. That is precisely what Plaintiff has done in his Amended Complaint, particularly with respect to, but not limited to, causes of action Nos. 15, 16, and 17. (R. pp. 129-142, ¶¶ 167-223).

Consequently, in the context of a motion to dismiss in favor of arbitration, legal inferences and conclusions in a complaint relating to the existence and validity of an arbitration agreement

[9] Where the federal rules of civil procedure are substantively similar to the state rules of civil procedure, as is the case here, "federal cases interpreting the federal rule [are] persuasive." *Garrison v. Target Corp.*, 429 S.C. 324, 359, 838 S.E.2d 18, 36 (Ct. App. 2020).

are not accepted as true but, instead, must be supported by sufficient factual evidence. *Schnabel*, 697 F.3d at 113 (explaining that allegations as to whether the parties entered into a valid arbitration agreement "are evaluated to determine whether they raise a genuine issue of material fact that must be resolved by a fact-finder at trial"); *cf. Fireman's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 236, 394 S.E.2d 855, 856 (Ct. App. 1990) (while accepting well pleaded facts in the complaint as true under a Rule 12(c) motion, a court "does not admit the inferences drawn by the plaintiff from the facts nor does it admit conclusions of law").

Contrary to Plaintiff's argument below, "the court is obligated to conduct a trial under the Trial Provision" of the FAA ***only*** "when a party unequivocally denies 'that an arbitration agreement exists,' ***and*** '***show[s] sufficient facts in support***' thereof." *Berkeley County*, 944 F.3d at 234 (emphasis added); *see also Schnabel*, 697 F.3d at 118 ("a trial is warranted only if there exists one or more genuine issues of material fact regarding whether the parties have entered into such an agreement"). In other words, in determining "whether 'sufficient facts' support a party's denial of an agreement to arbitrate, the district court is obliged to employ a standard such as the summary judgment test. [citation omitted] In applying that standard, the court is entitled to consider materials other than the complaint and its supporting documents." *Berkeley County*, 944 F.3d at 234.

Here, Plaintiff failed to submit *any* evidence—not even an affidavit of his own—to support his conclusory claim that an agreement to arbitrate does not exist.[10] On the other hand, Defendants have submitted affidavits and objective, photographic evidence that shows, at a minimum, that

[10] In contrast, in *Berkeley County*—which involved an alleged insurance kick-back scheme—the plaintiff attached to its complaint "a total of twenty-three exhibits," including information concerning the indictment and conviction of one of the alleged perpetrators, emails and a spreadsheet. 944 F.3d at 231. The plaintiff also submitted additional information in response to the defendants' motion to compel arbitration by filing a declaration denying the existence of an agreement to arbitrate, as well as addressing the school's Chief Financial Officer's authority to bind the school. *Id.*

Plaintiff signed and could see the third page of a contract with a valid Arbitration Agreement. (R. pp. 157-159). Notably, when reviewing "the question of whether an arbitration agreement was formed, [appellate courts] interpret the record as a whole in the light most favorable to the defendants, the party against whom the district court resolved the motion to compel arbitration." *Schnabel*, 697 F.3d at 114.

In addition, in reviewing a contested arbitration provision, a court should not accept unsupported allegations as true in the face of concrete objective evidence to the contrary. *See Bridges v. United States*, No. 1:09CV4; 1:05CR244-1, 2009 U.S. Dist. LEXIS 42758 *5, 2009 WL 1035226 (M.D. N.C. April 15, 2009) ("the Court is not necessarily bound to accept [a statement in a pleading] but can reject it if it is 'frivolous or patently absurd on its face'"), *citing Raines v. United States*, 423 F.2d 526 (4th Cir. 1970); *see also Campbell v. Ashland Credit Union*, No. 3:10-1341, 2011 U.S. Dist. LEXIS 112387 *8, 2011 WL 4597356 (S.D. W.Va. Sept. 30, 2011) (a court "need not 'credit conclusory allegations or draw farfetched inferences'"). Exhibit 3 to the Memo in Support, (R. pp. 159, 210), is a photograph of Plaintiff, taken immediately after he signed the Release and Arbitration Agreement, and shows him holding the Agreement up with the third page facing the camera. Both the Arbitration Agreement and the forum selection clause are contained on the third page, which is clearly visible in its entirety to Plaintiff, as reflected in Exhibit 3. (R. pp. 159, 210). The provision above the signature line, in boldface font, underlined and in all capital letters, attesting that Plaintiff has had ample opportunity to read the entire Agreement, had an opportunity to review it with legal counsel of his own choice and had, in fact, read the Agreement, appears so prominently that it can be read in the photograph. (R. p. 159). Based on that photograph

alone, Plaintiff's revised allegation in the Amended Complaint that he was only able to see the signature line of the Agreement is demonstrably and patently false.[11]

In any event, even if Rule 12(b)(6) evidentiary standards did apply to Defendants' Motion (and they do not), the Court should still consider the contents of the Release and Arbitration Agreement because it both is expressly incorporated by reference into Plaintiff's Amended Complaint and is integral to several of his causes of action. *See, e.g., Patterson v. Witter*, 425 S.C. 213, 235, 821 S.E.2d 677, 689 (2018), *citing L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2nd Cir. 2011) ("A complaint is deemed to include … materials incorporated in it by reference, and documents that, although not incorporated by reference, are 'integral' to the complaint"). Plaintiff quotes extensively from various provisions of the Release and Arbitration Agreement in his Amended Complaint, and relies on it as the basis for several of his purported causes of action. Thus, the Court is not required to accept any of Plaintiff's allegations regarding the existence or validity of the Arbitration Agreement or the forum selection clause as true for purposes of Defendants' Motion to Dismiss and should consider the Exhibits to that Motion.

II. Under New York and South Carolina Law, Public Policy Strongly Favors Holding Parties to the Terms of Their Agreements.

The Release and Arbitration Agreement provides that New York's substantive law applies to this dispute. (R. p. 155, ¶ 20). The New York choice of law provision in the Release and Arbitration Agreement is based on the Corporate Defendants' substantive corporate connections to the State of New York. (R. pp. 213-214, ¶¶ 2-4; R. p. 212, ¶¶ 4, 5; R. p. 215, ¶ 2). On the other hand, Abruzzo is a Florida resident. (R. p. 94, ¶ 1). Given the clear and unambiguous choice of

[11] Plaintiff's strategic and internally contradictory amendment of his original allegation that he was handed the Release and Arbitration Agreement turned to the third page—on which the arbitration agreement and forum selection clause appear—is nothing more than "a thinly-veiled attempt to gerrymander [his] case to avoid arbitration." *Berkeley County*, 944 F.3d at 231. Such attempt should be roundly rejected.

law provisions in the Release and Arbitration Agreement, and the fact that "[c]hoice of law clauses are generally honored in South Carolina," *Team IA, Inc. v. Lucas*, 395 S.C. 237, 248, 717 S.E.2d 103, 108 (Ct. App. 2011), the internal substantive law of New York applies here. *Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 448-449, 814 S.E.2d 643, 652 (Ct. App. 2018) (holding that where "the parties to a contract specify the law under which the contract shall be governed, the court will honor this choice of law"); *see also Albemarle Corp. v. Astrazeneca UK Ltd*, 628 F.3d 643, 652 (4th Cir. 2010) ("for an action filed in South Carolina, South Carolina law would be consulted for its choice of law rules, and under those rules, South Carolina law would give effect to the parties' choice of law as specified in the contract").

The only exception to this general rule, which is not applicable here, is where application of foreign law would violate South Carolina public policy. *Skywaves*, S.C. at 449, 814 S.E.2d at 652. That exception does not apply here because "South Carolina's public policy regarding contracts focuses on holding parties to their contract provisions and the effect of those provisions." *Id.* at 450, 814 S.E.2d at 653. In fact, with respect to the enforceability of arbitration provisions and holding parties to the terms of their contracts, New York and South Carolina law is substantively consistent.

III. The Circuit Court Erred in Failing to Enforce the Parties' Valid Arbitration Agreement.

New York, South Carolina, and applicable federal law all strongly favor enforcing the parties' Arbitration Agreement. To overcome that strong public policy, Abruzzo must establish a valid basis to set aside the parties' agreement to arbitrate. Even limiting the analysis to the four corners of his Amended Complaint (which is improper for the reasons set forth herein), he cannot satisfy that showing.

A. Public policy strongly favors enforcing the parties' Arbitration Agreement.

The Arbitration Agreement, which requires any unresolved disputes, including this lawsuit, to be mediated and, if necessary, arbitrated in New York City, is valid and enforceable under New York and South Carolina law—as well as under applicable federal law. Under New York and South Carolina law, "[t]here is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Cape Romain,* 405 S.C. at 125, 747 S.E.2d at 466; *see also PromoFone*, 224 A.D.2d at 260, 637 N.Y.S.2d at 406 (noting New York's strong public policy in favor of arbitration).

Additionally, Plaintiff's claims clearly involve interstate commerce as contemplated by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), because all of Abruzzo's claims concern *Southern Charm*, and in his Amended Complaint, Abruzzo states as a factual matter that *Southern Charm* "has been airing on national and worldwide television, as well as streaming online, since March 2014." (R. p. 102, ¶ 32). As recognized in *Zabinski v. Bright Acres Assocs.*, the United States Supreme Court interprets the phrase "involving commerce" in the FAA as "the functional equivalent of 'affecting commerce,'" which typically indicates Congress' intent to exercise its commerce power in full." 346 S.C. 580, 591, 553 S.E.2d 110, 116 (2001).

Under South Carolina law, where interstate commerce is involved, "the United States Supreme Court [has] found that courts may invalidate arbitration provisions on general contract defenses, such as fraud, duress, and unconscionability, but courts may not invalidate arbitration agreements under state laws applicable only to arbitration provisions." *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 116; *see also Wilson v. Willis*, 426 S.C. 326, 336-337, 827 S.E.2d 167, 173 (2019) ("[a] state law that places arbitration clauses on an unequal footing with contracts generally . . . is preempted if the FAA applies"). Where a contract involves interstate commerce, "state law

regarding arbitration is supplanted by federal substantive law." *Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422, 425, 434 S.E.2d 281, 283 (1993). In other words, the U.S. Congress has "precluded states from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed 'upon the same footing as other contracts.'" *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 117.

New York law—the substantive law chosen in the Release and Arbitration Agreement—provides that, "in the absence of an established ground for setting aside a contractual provision, such as fraud, duress, coercion or unconscionability, a court must enforce the parties' arbitration agreement according to its terms." *Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 85 N.Y.2d 173, 182, 647 N.E.2d 1298, 1302 (N.Y. 1995). Similarly, under South Carolina law, a contract is enforceable unless grounds exist to revoke it, such as fraud, duress, and unconscionability. *See Simpson*, 373 S.C. at 24-25, 644 S.E.2d at 668.

Whether considered under federal, New York or South Carolina law, it is for a court to determine initially whether a binding arbitration agreement exists between the parties. "Generally, 'whether there is a clear, unequivocal and extant agreement to arbitrate the claims[] is for the court and not the arbitrator to determine.'" *Matter of Fiveco, Inc. v. Haber*, 11 N.Y.3d 140, 144, 893 N.E.2d 807, 809 (N.Y. 2008). "In determining whether an agreement to arbitrate exists, 'the court should apply "ordinary state-law principles that govern the formation of contracts."'" *Towles*, 338 S.C. at 37, 524 S.E.2d at 844. Here, the relevant inquiry must be limited to whether the Arbitration Agreement is itself valid and supported by adequate consideration—separate and apart from the larger Agreement in which the arbitration agreement is contained. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) ("Under the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the

substantive validity of the contract as a whole"), *citing Prima Paint Corp. v. Flood & Conklin Mgf. Co.*, 388 U.S. 395, 403-404 (1967).

B. Plaintiff has not and cannot establish a valid basis to set aside the Parties' agreement to arbitrate.

To overcome the strong public policy in favor of enforcing the Arbitration Agreement, Abruzzo was required, but failed to show that he entered into the Arbitration Agreement itself—separate and apart from the Release and Arbitration Agreement in general—as the result of fraud, misrepresentation, duress, unfair surprise or unconscionability. *See, e.g.*, *Munoz*, 343 S.C. at 540, 542 S.E.2d 364 (the validity of an arbitration clause is evaluated separately from the validity of the contract as a whole); *Prima Paint*, 388 U.S. at 403-404; *see also Matter of Monarch Consulting, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 26 N.Y.3d 659, 675, 47 N.E.3d 463, 474 (N.Y. 2016) ("courts treat an arbitration clause as severable from the contract in which it appears and enforce it according to its terms unless the party resisting arbitration specifically challenges the enforceability of the arbitration clause itself"). As is discussed in more detail below, Plaintiff has not even alleged fraud, misrepresentation, duress, unfair surprise or unconscionability relating to the Arbitration Agreement itself. Rather, Abruzzo's allegations focus on the circumstances of the execution of the Release and Arbitration as a whole and on his mischaracterization of several provisions of the Release and Arbitration Agreement that are unrelated to the Arbitration Agreement itself. That alone is fatal to his attempt to set aside the Arbitration Agreement.

i. Plaintiff has not and cannot show the Arbitration Agreement was induced by fraud, misrepresentation, mistake, duress or unfair surprise.

As discussed in detail below, Plaintiff has not even alleged that the Arbitration Agreement itself was the product of fraud, misrepresentation, mistake, duress, or unfair surprise, and that

failure is dispositive of those claims. Plaintiff's fraud, misrepresentation, mistake, duress, and unfair surprise claims fail for the separate and independent reason that he has not and cannot establish the necessary elements of those defenses. Under both South Carolina and New York law, in order to prove fraudulent inducement and/or negligent misrepresentation, Abruzzo must establish that he justifiably relied on the alleged misrepresentation and/or that the alleged misrepresentation related to a present fact or was made with a present intent to not perform. *See Turner v. Milliman*, 392 S.C. 116, 122-123, 708 S.E.2d 766, 769 (2011) (setting forth the elements required to prove a claim for negligent misrepresentation and for fraud including, in both instances, justifiable reliance); *Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 31 N.Y.3d 569, 578-579, 106 N.E.3d 1176, 1182 (N.Y. 2018) (the "required elements of a common-law fraud claim are 'a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury).

Even taking, solely for the sake of argument, the allegations contained in Paragraphs 47-54 and 62 of his Amended Complaint, (R. pp. 106, 109), regarding purported assurances made by the Corporate Defendants as true,[12] Abruzzo cannot prove justifiable reliance for numerous reasons. First, Paragraph 22 of the Release and Arbitration Agreement states unequivocally that "I am ***not relying*** on any promise or statement, express or implied, that is not contained in this Agreement." (R. p. 155, ¶ 22) (emphases added). Such a specific disclaimer "destroys the allegations in [a] plaintiff's complaint that the agreement was executed in reliance upon these contrary oral representations." *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317, 320, 157 N.E.2d

[12] In fact, Ms. Miller does not recall providing any assurances to Abruzzo regarding how he would or would not be portrayed on *Southern Charm* and was unaware of any other Producer giving him such assurances. As a matter of course, neither she nor the other Producers provide assurances to participants about how they will be portrayed on the shows they volunteer to appear on. (R. p. 157, ¶ 8).

597, 599 (N.Y. 1959); *see also Rissman v. Rissman*, 213 F.3d 381, 384 (7th Cir. 2000) (rejecting fraud argument in the face of a non-reliance clause, explaining that such provisions "ensure[] that both the transaction and any subsequent litigation proceed on the basis of the parties' writings, which are less subject to the vagaries of memory and the risks of fabrication"). Notably, Paragraph 22 appears on the third page of the Release and Arbitration Agreement, which Plaintiff initially alleged he saw, (R. p. 21, ¶ 53 ("Plaintiff Abruzzo was given a three page single spaced document, turned to the third page"))—a fact that the photograph attached as Exhibit 3 to Defendants' Memo in Support, (R. pp. 159, 210), confirms unequivocally. In fact, Paragraph 22, (R. p. 155), appears immediately above the bolded statement that Abruzzo had ample time to review the agreement and seek legal counsel, should he have chosen to do so, which, in turn, is right above the signature block where Abruzzo signed the agreement. In addition, Paragraph 9, (R. p. 153), of the Release and Arbitration Agreement states that, "[f]or dramatic or creative purposes, Producer and Network ***may make misrepresentations to me*** related to any and all topics, prior to and during the course of my participation. ***I consent to and assume all risks*** of such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim." (emphasis added).

Second, even if true (which it demonstrably is not), Plaintiff's strategically revised assertion that he was only presented with the signature portion of the Release and Arbitration Agreement and/or "a partial piece of paper"—suggesting he could not see the rest of the Agreement but signed it anyway, (*see* R. pp. R. pp. 105-106, 116, 130, 132-134, 136-137, 139-141, ¶¶ 48, 50, 52, 53, 54, 100, 170, 173, 182, 188, 191, 200, 209, 211, 212, 216, 221)—is legally inadequate to prove fraudulent inducement and/or negligent misrepresentation.[13] Contrary to

[13] Plaintiff's internally contradictory and revised allegation that he could not see any portion of the Agreement other than the signature block is demonstrably false, as is shown in the photograph attached to Defendants' Memo in Support. (R. pp. 159, 210). That photograph of Abruzzo, taken immediately after he signed the Release and Arbitration Agreement, visually and indisputably confirms that he could see, at a

Plaintiff's assertion, South Carolina does ***not*** hold that "if the party who signs a written contract in ignorance of its contents without reading it or having it read is induced to sign by conduct of the other party which amounts to actionable fraud, this gives the signer the right to avoid the contract as against him on the ground of fraud." (R. p. 138, ¶ 206). In fact, the opposite is true: "As early as 1924, [the South Carolina Supreme] Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it." *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 39-40, 340 S.E.2d 786, 789-790 (1986) (internal citations omitted); *see also Tetrev*, 444 F. Supp. 2d at 530 (even assuming the drafting party "made false representations" regarding a contract, the other party has "no right to rely on them when the truth of these representations [would] have been evident by an inspection of the contract").

While the rule set forth in *Burwell* "is subject to the exception that if the party is ignorant and unwary, his failure to read the document may be excused," that exception is, "very strictly interpreted by our Court. In determining whether a party can be classified as ignorant and unwary, an individual's education, business experience and intelligence are all considered." 288 S.C. at 40, 340 S.E.2d at 790. Given the five and a half pages of Plaintiff's Amended Complaint setting out his extensive education, numerous professional accomplishments and accolades—including as an

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minimum, all of the third page of that Agreement and that there were other pages attached to the signature page. As explained elsewhere herein, the key provisions relevant to this appeal—the Arbitration Agreement, the forum selection clause, the nonreliance clause and the affirmation that he had ample time and opportunity to read and consult legal counsel—all appear on the third page of the Agreement that Abruzzo could clearly see. (R. pp. 155, 159). Abruzzo's revised and demonstrably false allegation that he was presented only with the "the signature portion" is further belied by Ms. Miller's attestation that Abruzzo asked questions about a provision that is located on the first page of the Release and Arbitration Agreement, and that, as a matter of course, she hands such documents to volunteer participants turned to the first page. (R. pp. 157-158, ¶¶ 8, 9).

arbiter of cases involving unfair and deceptive business practices by individuals and businesses in Palm Beach County—and his current position as "a director of government relations for a major law firm in Florida," (R. pp. 96-102, ¶¶ 12-29), he cannot credibly claim that he is uneducated, ignorant or unwary.[14] Even if Plaintiff's allegations concerning purported representations were true, which they are not, the consequences of any failure on his part to read the Agreement—a duty he owed Defendants and the public—fall on him. There simply "is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003), *citing Florentine Corp. v. Peda I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985); *see also Schmauch*, 354 S.C. at 673, 582 S.E.2 at 445 ("It is largely because the law of fraud requires [a claimant] to prove his ignorance of the falsity of the representation and his right to rely on the falsity that the courts long ago established the rule that ordinarily one cannot complain of fraud in the misrepresentation of the

[14] Plaintiff's reliance below on and attempt to analogize his situation to that in *Allen-Parker Co. v. Lollis*, 257 S.C. 266, 185 S.E.2d 739 (1971), only serves to highlight the fact that any reliance on alleged statements made by the Corporate Defendants was not justified. In *Allen-Park*er, the plaintiff, who had only a sixth-grade education, signed a "blank contract" to purchase a mobile home that the authorized sales agent was to fill in later with the agreed-upon terms. Under these specific and narrow facts, where the parties had agreed upon terms and the plaintiff signed a blank contract relying on the defendant to fill in the agreed terms, the Supreme Court held that, "Where a person is induced to sign an instrument as a result of a false representation that it will be filled in or prepared as orally agreed upon, the intentional commission of terms required by the authorization to be included, or the inclusion of terms not so authorized, constitute fraud, invalidating the instrument as between the parties thereto, notwithstanding that the person signing it was negligent in relying on the misrepresentation." 257 S.C. at 276, 185 S.E.2d at 744. Even setting aside Plaintiff's extensive education and professional experience, he has not alleged that he was presented with a blank contract that the Corporate Defendants promised to "fill in" later based on a prior agreement. Thus, *Allen-Parker* neither applies to the facts of this case nor does it support Plaintiff's position. Similarly, *Baldwin v. Postal Tel. Cable Co.*, 78 S.C. 419, 59 S.E. 67 (1907), relied on by Plaintiff below, is also inapposite. There, the plaintiff produced evidence that he was illiterate and relied on the defendant's representation of what the contract involved. Here, at best, Plaintiff simply did not bother to read the contract carefully and now seeks to hold the Defendants accountable for his failure to do so.

contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering into a written contract must read it and avail himself of every reasonable opportunity to understand its content and meaning").

Additionally, as noted above, Abruzzo knew Dennis was a long-time cast member on a reality television program that focuses on the personal lives of its cast and "reveals scandal" and that his dinner date with her was going to be filmed and that his relationship with Dennis would be featured in the Program. Abruzzo's claim that he did not know and could not possibly be expected to have understood the medium in which he agreed to participate because he purportedly did "not watch reality television," (R. pp. 107, 131, 135, 139-140, ¶¶ 53, 177, 195, 216), is both inconsequential as a matter of law and misses the point. Abruzzo alleges that well before he had any discussions with the Corporate Defendants and prior to his agreement to appear on *Southern Charm*, Dennis immediately began "imploring [him] to appear on the show," (R. p. 104, ¶ 42), and he alleges he negotiated the scene for his "appearance" on the Program, rejecting suggestions from the Corporate Defendants that he was not comfortable with. (*Id.* ¶ 43). If Abruzzo did not watch any episodes of the Program or even do a quick Internet search to find a brief summary of the Program, in which his then girlfriend was a regular cast member, in order to see what he was agreeing to participate in, that, again, falls entirely on him.[15] As noted above, "[w]here there is no confidential or fiduciary relationship and an arm's length transaction between mature, educated people is involved, there is no right to rely. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Florentine Corp*, 287 S.C. at 386, 339 S.E.2d at 114; *Schmauch*, 354 S.C. at 672, 582 S.E.2d at 444.

[15] Of course, the fact that Abruzzo alleges that he personally does not watch reality television is not probative of whether he is generally familiar with the genre, which has been highly popular and widely discussed in the United States for almost well over a decade.

Alternatively, Plaintiff alleges that the Release and Arbitration Agreement should be rescinded based on unilateral mistake. (R. p. 138, ¶ 208). However, to be entitled to rescission of a contract based on unilateral mistake, Plaintiff must prove by clear and convincing evidence that his "unilateral mistake" was "induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or where mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement." *Truck South, Inc. v. Patel*, 339 S.C. 40, 49, 528 S.E.2d 424, 429 (2000). Abruzzo has not and cannot satisfy that showing.

First, even assuming, solely for the sake of argument, that he was presented only with the signature block, which is demonstrably false, (R. p. 159), Abruzzo cannot prove he was not negligent. As explained above, any failure to read the Agreement before signing it is entirely Plaintiff's fault. *Burwell*, 288 S.C. at 39, 340 S.E.2d at 789 ("every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it"); *Schmauch*, 354 S.C. at 663, 582 S.E.2d at 440 ("A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it"); *see also King v. Oxford*, 282 S.C. 307, 312, 318 S.E.2d 125, 128 (Ct. App. 1984) ("It is the policy of the courts not only to discourage fraud, but also to discourage negligence and inattention to one's own interests. Courts do not sit for the purpose of relieving parties who refuse to exercise reasonable diligence or discretion to protect their own interests. A party must avail himself of the knowledge or means of knowledge open to him") (internal citations omitted).

In addition, Abruzzo has not even alleged that he asked or attempted to review the document handed to him before signing and/or that he was prevented from doing so. He simply alleges that he was sitting down to dinner with his then girlfriend and that there were "bright lights." (R. p. 105, ¶¶ 46-48). Thus, even accepting his allegations as true, solely for the purposes of this Motion, he was negligent in failing to protect his interests, which precludes application of the unilateral mistake defense.

Second, and as set forth in detail above, Plaintiff cannot show that he was entitled to rely on any statements purportedly made by the Corporate Defendants, and thus, cannot establish that any unilateral mistake was induced by fraud, deceit or misrepresentation. *See Tetrev*, 444 F. Supp. 2d at 530 (even assuming the party that drafted a contract "made false representations" regarding the contract, the other party has "no right to rely on them when the truth of these representations [would] have been evident by an inspection of the contract"); *see also King v. Oxford*, 282 S.C. at 311, 318 S.E.2d at 127-128 (party had no right to rely on other party's representations where, among other things, she was a college-educated business woman and there was no fiduciary relationship between the parties). That too precludes application of the unilateral mistake doctrine.

Third, Abruzzo, a self-proclaimed successful and accomplished Florida politician who currently is "employed as a director of government relations for a major law firm in Florida," (R. pp. 96-102, ¶¶ 12-29), has not even pled facts, let alone clearly established through competent evidence, that any purported unilateral mistake was "accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement, sustained by competent evidence of the clearest kind." *King v. Oxford*, 282 S.C. at 313, 318 S.E.2d at 128. Even if he had, which he has not, rescission under these circumstances, where he cannot prove fraud, "is appropriate only if both parties can be returned to the status quo prior to the

contract." *Id.* at 313, 318 S.E.2d at 129. They cannot. Relying on Abruzzo's execution of the Release and Arbitration Agreement, the Corporate Defendants filmed and included Abruzzo's dinner with Dennis in one episode and discussions about their relationship in others, which were then distributed on multiple platforms. Under the circumstances, re-editing or withholding those episodes (which would then require substantial re-editing of other episodes that do not include Abruzzo) would cause Defendants to incur significant burden and expense. As such, they have "suffered a definite and substantial change of position in reliance on the contract." *Id.*, at 313-314, 318 S.E.2d at 129.

Abruzzo's misrepresentation claims fail for an additional reason. Any alleged misrepresentation must involve a misstatement of material fact or a promise made with a present but undisclosed intent not to perform, rather than a mere statement of future intent or action. *Turner*, 392 S.C. at 124, 708 S.E.2d at 770 ("to be actionable, a statement must relate to a present or preexisting fact, and cannot be predicated on unfulfilled promises or statements as to future events"); *Luckow v. RBG Design-Build, Inc.*, 156 A.D. 3d 1289, 1294, 128 N.Y.S.3d 549, 554-555 (N.Y. App. Div. 2017) (it is "nonactionable [to] promise to perform a future act" where "there is no indication that [a defendant] did not intend to carry out that duty when he made the statement"). Here, all of the alleged misrepresentations identified by Abruzzo go to future actions. (R. pp. 105-106, ¶ 49 (none of the Corporate Defendants "state[d], suggest[ed] or impl[ied] that Plaintiff Abruzzo would be disparaged, defamed or otherwise portrayed in a negative and/or false light"), ¶ 51 (alleging the Corporate Defendants "falsely represented to Plaintiff that he should have 'no worries in the world' because Plaintiff was Dennis's savior and 'knight in shining armor'"),[16] ¶ 52

[16] Note that, in his original Complaint, Abruzzo alleged that it was Dennis, not the Corporate Defendants, who "told Plaintiff Abruzzo that the Corporate Defendants were going to make him look incredible, and would portray him as Dennis's comforting knight in shining armor." (R. pp. 20-21, ¶ 52).

(alleging the Corporate Defendants represented to him that "not only would the filming be good for Plaintiff, but that it would also be helpful for Dennis and also for Defendant Conover because his storyline was in jeopardy"), ¶ 53 (alleging the Corporate Defendants "represented to Plaintiff Abruzzo that his appearance on Southern Charm would be a great thing for Kathryn Dennis, his girlfriend at the time, and her role on Southern Charm"). Even if they were actually made by Defendants (and they were not), all of these alleged statements relate to future actions, or relate to the portrayal of a party other than Abruzzo (Defendant Conover or cast member Dennis). Thus, Plaintiff has not and cannot establish any basis sounding in fraud or misrepresentation to set aside the parties' Arbitration Agreement.

Nor can Plaintiff establish duress, coercion, unfair surprise or, as set forth below, unconscionability with respect to the Release and Arbitration Agreement as a whole, let alone the Arbitration Agreement itself which, as discussed above, must be considered separate and apart from the broader Release and Arbitration Agreement. *Prima Paint*, 388 U.S. at 403-404; *Munoz*, 343 S.C. at 540, 542 S.E.2d at 364; *Monarch Consulting*, 26 N.Y.3d at 675, 47 N.E.3d at 474. Plaintiff was not required to sign the Release and Arbitration Agreement or appear in the Program in order to pursue a "romantic relationship" with Dennis, and he does not allege otherwise. Instead, Plaintiff merely alleges that he felt pressure to be a good boyfriend to Dennis because Dennis "began imploring Plaintiff Abruzzo to be on the show" because she believed the Corporate Defendants "would pay big money for rights to televise her wedding, honeymoon, an exclusive, and other things of that nature." (R. p. 104, ¶ 42). He further alleges that he felt pressure to sign the Agreement because he "and Dennis were actually sitting down for dinner," and that with "the film crews in place and bright lights shining on him" when he was "presented a piece of paper ..."

He alleges he was further under pressure because filming the dinner "would be 'a great thing' for his then girlfriend Dennis." (R. pp. 105-106, ¶¶ 47, 48, 52-53).

Even if true, Plaintiff's allegations fall far short of establishing duress, coercion or unfair surprise sufficient to render the Release and Arbitration Agreement, let alone the agreement to arbitrate, unenforceable. Duress has long between defined in South Carolina as "a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition." *Phillips v. Baker*, 284 S.C. 134, 325 S.E.2d 533 (1985), *quoting Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123 (1939). Plaintiff has not alleged and cannot show any set of facts that would demonstrate any pressure applied by Defendants, and certainly none "that practically destroy[ed his] free agency." Defendants did not require Plaintiff to participate on the Program in order to date Dennis, nor could they. (R. pp. 157-158, ¶¶ 4-6, 11). He was not obligated or forced in any manner to have his dinner with Dennis filmed for a reality television program or to enter into any agreement with Defendants but, instead, did so voluntarily, and as alleged, to please the reality television cast member he was pursuing. Had Plaintiff chosen not to appear on the Program or declined to sign the Release and Arbitration Agreement, the Corporate Defendants simply would not have filmed the dinner. (*Id.* ¶ 11). In addition, Plaintiff's claims of duress are belied by his own allegations. He alleges that he established the circumstances under which he would participate in any filming for the Program, declining to go on a "guy's trip," or on a dinner date with Dennis at a "public and crowded restaurant," and "ultimately agree[ing] to a private dinner at Dennis's residence in downtown Charleston." (R. p. 104, ¶ 43). Thus, for the reasons set forth in detail above, Plaintiff has not and cannot establish fraud, misrepresentation, mistake, duress or unfair

surprise as to the Release and Arbitration Agreement as a whole, let alone, as required, as to the Arbitration Agreement specifically.

ii. Plaintiff has not and cannot show the Arbitration Agreement is unconscionable.

Plaintiff has not satisfied his high burden to avoid enforcement of the Arbitration Agreement on the basis of unconscionability. Under New York law, "[t]he doctrine of unconscionability contains both substantive and procedural aspects, and whether a contract or clause is unconscionable is to be decided by the court against the background of the contract's commercial setting, purpose and effect." *Sablosky v. Edward S. Gordon Co.*, 73 N.Y.2d 133, 138, 535 N.E.2d 643, 647 (N.Y. 1989). With regard to substantive unconscionability, "courts consider whether one or more key terms are unreasonably favorable to one party," although New York does not require mutuality of remedy in arbitration clauses or in contracts in general. *Id.*, 73 N.Y.2d 137-138, 535 N.E.2d at 646-647. A contract is substantively unconscionable where it "is so grossly unreasonable or unconscionable in the light of the mores and business practices of the time and place as to be unenforceable according to its literal terms." Procedural unconscionability results from the contract formation process, and looks at "whether the party seeking to enforce the contract has used high pressure tactics or deceptive language in the contract and whether there is inequality of bargaining power between the parties." *Id.*, 73 N.Y.2d 139, 535 N.E.2d at 647; *see also Matter of Conifer Realty LLC (Envirotech Servs., Inc.)*, 106 A.D.3d 1251, 1254-1255, 964 N.Y.S.2d 735, 739 (N.Y. App. Div. 2013) (arbitration agreement that was on the back of a one-page agreement was nonetheless not unconscionable in light of the fact that the contract called "the reader's attention to those additional terms and conditions" and because the terms were not "unreasonably favorable" to one party over the other). "The unconscionability doctrine is not designed 'to redress … inequality between the parties but simply to ensure that the more powerful party cannot

surprise the other party with some overly oppressive term.'" *Conifer Realty*, 106 A.D.3d at 1255, 964 N.Y.S.2d at 740.

South Carolina follows similar principles. For example, in *Simpson*, the South Carolina Supreme Court explained that "unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." 373 S.C. at 25, 644 S.E.2d at 668. Finding no South Carolina cases on point, the *Simpson* Court looked to Ohio case law which had considered "numerous cases in the very recent past specifically addressing issues of unconscionability of arbitration clauses embedded in adhesion contracts between automobile retailers and consumers." 373 S.C. at 26, 644 S.E.2d at 669. The Court first noted that adhesion contracts "are not per se unconscionable."[17] However, in *Simpson*, the Court held that, because the arbitration agreement was embedded in paragraph 10 out of 16 paragraphs on the back of the purchase contract for a personal vehicle, and was not highlighted or conspicuous in any other way, it was unconscionable. 373 S.C. at 27-28, 644 S.E.2d at 670. Here, in contrast, the arbitration provision is not hidden or obscured but is prominently displayed in boldface and all capital letters, under the heading, "**MEDIATION & ARBITRATION**," on the very page of the Release and Arbitration Agreement that Plaintiff initially conceded he could see, (R. p. 21, ¶ 53), and that he is seen holding up to the camera in to the Memo in Support. (R. pp. 159, 210).

[17] Plaintiff's allegation, relying on *Simpson* below, that the Release and Arbitration Agreement is a contract of adhesion is thus irrelevant, as well as factually incorrect. Abruzzo was not required to appear on *Southern Charm* in order to date Dennis or for any other reason. Had he refused to sign the Release and Arbitration Agreement, his dinner date with her simply would not have been filmed. (R. pp. 157-158, ¶¶ 4, 5, 11). In any event, having a dinner filmed for possible inclusion on a reality television show or pleasing a new romantic partner, is a personal choice and not a necessity, in contrast to *Simpson*, which involved the purchase of "a vehicle intended for use as Simpson's primary transportation, which is critically important in modern day society." 373 S.C. at 27, 644 S.E.2d at 670.

For that and the other reasons discussed below, Plaintiff has not and cannot establish that the Arbitration Agreement should be voided based on unconscionability. Even if either were true—and both are demonstrably false (R. pp. 157-158, ¶¶ 8-9; R. p. 159)—Plaintiff's initial allegation that he was handed the Release and Arbitration Agreement "turned to the third page," (R. p. 21, ¶¶ 53, 54), as well as his strategically revised allegation that he was handed a partial piece of paper with only the signature block showing, (R. pp. 105-106, 116, 130, 132-134, 136-137, 139-141, ¶¶ 48, 50, 52, 53, 54, 100, 170, 173, 182, 188, 191, 200, 209, 211, 212, 216, 221), fall far short of establishing unconscionability. Plaintiff does not even allege, let alone offer evidence, that anyone told him that he could not review each page of the Agreement, that he was otherwise prevented from reviewing each page of the Agreement, that he requested additional time to review it, or that he asked to consult with a lawyer, such as any of the lawyers at the major law firm at which he was employed at the time. He simply alleges, without any foundation, that he was denied adequate time or opportunity to review the document and/or consult with an attorney. However, that allegation is directly contradicted by the terms of the Release and Arbitration Agreement. On page three of the Agreement—the page that Plaintiff is shown in Exhibit 3, (R. pp. 159, 210), holding up to the camera—right above the signature line, in large boldface type, underlined and capital letters is the statement:

> **I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**"

In addition, the Arbitration Agreement is ***on the third page*** under the heading "**MEDIATION & ARBITRATION**" in all capital letters, boldface type and underlined. It is not

hidden or obscured in any way but, instead, is prominent and conspicuous. The provision is clear, unambiguous and references the arbitration procedures issued by JAMS, which are publicly available. In addition, the title of the Release and Arbitration Agreement itself—which is at the top of the first page of the agreement and is also in boldface type, all capital letters and underlined—"**APPEARANCE RELEASE, VOLUNTARY PARTICIPATION, AND ARBITRATION AGREEMENT**," clearly and conspicuously put Plaintiff on notice that it contains an agreement to arbitrate. Thus, Plaintiff cannot argue credibly that he was unfairly surprised by or unaware of the Arbitration Agreement.

As set forth above, under both South Carolina and New York law, "a person who can read is bound to read an agreement before signing it." *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365; *see also Burwell*, 288 S.C. at 39-40, 340 S.E.2d at 789-790 ("One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it"); *Anderson v. Dinkes & Schwitzer, P.C.*, 150 A.D.3d 805, 806, 56 N.Y.S.3d 127, 128 (N.Y. App. Div. 2017) ("A party is under an obligation to read a document before he or she signs it, and a party cannot generally avoid the effect of a [document] on the ground that he or she did not read it or know its contents"). That is especially true here, where Plaintiff—as is alleged in the five and a half pages of background on his education, successes and credentials in the Amended Complaint—is a well-educated, successful, former Florida Congressman and current lobbyist who has worked at a major Florida law firm for years. (R. pp. 96-102, ¶¶ 12-29).

By way of contrast, *Higgins v. Superior Court*, 140 Cal. App.4th 1238, 45 Cal. Rptr.3d 293 (Cal. Ct. App. 2006), which involved a reality television program contract containing an arbitration agreement, is instructive. *Higgins* involved five siblings, ranging in age from 14 to 21, and the reality show *Extreme Makeover: Home Edition*, which refurbishes homes for "needy and

deserving" people. After the Higgins siblings lost their parents, a church family, the Leomitis, who had three children of their own, took the Higgins siblings in. The show's producers contacted Charles Higgins, the eldest of the siblings, through the church and, after several months of discussions, sent the Leomitis and the Higgins siblings a 24-page, single spaced agreement that contained an arbitration clause. Nothing in the agreement called attention to the arbitration clause, which was not highlighted in any way. 140 Cal. App.4th at 1242-1243, 45 Cal. Rptr.3d at 296-297. In addition, the agreement contained a release of claims that was in smaller print and had an arbitration provision embedded in the middle. After meeting with the producers, the Leomitis presented the agreements to the five Higgins siblings, told them to "flip through the pages and sign and initial," giving them about five minutes to review the documents.

After the Leomitis's home had been expanded and reconstructed, the Leomitis "informed petitioners [the Higgins siblings] that the home was theirs (the Leomitis'[s]), and the Leomitis ultimately forced petitioners to leave." 140 Cal. App.4th at 1245, 45 Cal. Rptr.3d at 298. Although the Higgins siblings contacted the show's producers, they were told the show could not help them and the episode featuring the Higgins siblings was rebroadcast.

When the Higgins siblings filed suit in California state court, the show's producers petitioned to compel arbitration. The Higgins siblings opposed arbitration on the grounds that the agreement was procedurally and substantively unconscionable. Explaining that arbitration clauses can be rescinded on the same grounds as other contracts in general, the court analyzed the contract and release signed by the Higgins siblings. The court first looked to see whether the agreement and release were contracts of adhesion, which it acknowledged "are routine in modern day commerce," and "are worthy of neither praise nor condemnation, only analysis." 140 Cal. App.4th at 1248, 45 Cal. Rptr.3d at 300. The court also explained that, "[u]nder the FAA, a court may not

consider a claim that an arbitration provision is unenforceable if it is a subterfuge for a challenge that the entire agreement (in which the arbitration clause is only a part) is unconscionable. That contention must be presented to the arbitrator." *Id.* at 1249, 45 Cal. Reptr. 3d at 301. The same is true here.

The court then explained that "[u]nconscionability has both a procedural and a substantive element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results. [citation omitted] The prevailing view is that ***both*** must be present in order for a court to refuse to enforce a contract or clause under the doctrine of unconscionability." *Id.* (emphasis added). As to surprise, the Court noted that "the arbitration provision appears in one paragraph near the end of a lengthy, single-space document … The television defendants knew petitioners were young and unsophisticated … [but] made no effort to highlight the presence of the arbitration provision in the Agreement. It was one of 12 numbered paragraphs in a section entitled 'MISCELLANEOUS.'" The text was neither bolded nor highlighted and, although boxes next to the other paragraphs required the siblings' initials, the arbitration clause did not. Based on these facts, the court found the arbitration clause was procedurally unconscionable. 140 Cal. App.4th at 1253, 45 Cal. Rptr.3d at 304.

As to substantive unconscionability, the court concluded the arbitration clause required only the siblings to submit their claims to arbitration because it repeatedly used the words "I agree" and only used the words "the parties" in connection with the parties' agreement that the producer had the right to seek injunctive or other equitable relief in court. *Higgins*, 140 Cal. App. 4th at 1253, 45 Cal. Rptr.3d at 304. The court explained, however, that "the fact that the injunction provision is one-sided does not necessarily mean that the clause is substantively unconscionable," but that any "'business realities' creating the special need, must be explained in the terms of the

contract or factually established." 140 Cal. App.4th at 1254 n.12, 45 Cal. Rptr.3d at 305 n.12. Other indicia of substantive unconscionability in the Higgins arbitration agreement included that only the television producers could seek appellate review of the arbitrator's decision with regard to the statutory claims, and the requirement that arbitration costs be shared equally between the parties, even though the lower court had shifted all the arbitration costs to the television defendants. 140 Cal. App.4th at 1254, 45 Cal. Rptr.3d at 305.

Unlike the *Higgins* siblings, here, as set forth in detail above, Plaintiff has not adequately alleged—let alone established—procedural unconscionability. Plaintiff simply alleges that he was "actually sitting down to dinner with Dennis for filming," when he was presented with a partial piece of paper that he willingly signed so that the Corporate Defendants could film the dinner, (R. p. 105, ¶¶ 47-48), and that there were bright lights and he felt pressure to be a good boyfriend to the reality television cast member he was dating. He does not allege that he was forced to pursue a romantic relationship with a cast member of a reality show during active filming, or that the Corporate Defendants forced him to sign the Arbitration Agreement, or even the Release and Arbitration Agreement in order to continue that romance, or even that he was forced to agree to have the dinner filmed. He was not.

Unlike the Higgins siblings. Plaintiff is a highly educated professional politician and lobbyist, who worked at a major law firm at the time he voluntarily signed the Agreement, (R. pp. 96-102, ¶¶ 12-29), previously served as an arbiter of alleged business and commercial-related misconduct, and, represented by two major law firms, currently is suing a major Florida newspaper.[18] Plaintiff is more than capable of protecting his own interests, has done so previously in declining certain filming locations for the Program, and he had the opportunity to do so again

[18] https://floridapolitics.com/archives/315360-joe-abruzzo-sues-tampa-bay-times-for-libel-defamation.

either by himself or through his counsel. The existence of "bright lights" on the filming location and his subjective desire to be a good boyfriend come nowhere near meeting the high standard required to establish procedural unconscionability under the applicable law. Thus, even as alleged, Plaintiff cannot establish procedural unconscionability under either New York or South Carolina law.

Nor has Plaintiff alleged—let alone established—substantive unconscionability. The Arbitration Agreement applies to both parties equally. (R. p. 155, ¶ 19 ("where any dispute in connection with this agreement arises, the parties agree to first try to resolve such dispute through confidential mediation," and "if mediation is unsuccessful, then all disputes … shall be resolved by final and binding arbitration"). Thus, both sides, Plaintiff and the Defendants, agreed to resolve any dispute in connection with the Release and Arbitration Agreement, first through mediation and, if that is unsuccessful, via binding, confidential arbitration. Additionally, the Arbitration Agreement provides that it is subject to the JAMS arbitration rules, which are publicly available and apply equally to all parties. (R. p. 155, ¶ 19) (R. pp. 225-250).

While the Arbitration Agreement allows the Corporate Defendants, but not Abruzzo, to seek injunctive relief in certain narrow circumstances that does not establish substantive unconscionability. Unlike in *Higgins*, the underlying business rationale for that provision, which is legitimate and based on the unique realities of the media industry, is spelled out in the Arbitration Agreement. In *Higgins*, the right to injunctive relief—which was only one of several aspects of the arbitration agreement on which the court's substantive unconscionability decision rested, which are not present here—merely provided that "[t]he parties hereto agree that, notwithstanding the provisions of this paragraph, Producer shall have a right to injunctive or other equitable relief as provided for in California Code of Civil Procedure [section] 1281.8 or other relevant laws." 140

Cal. App.4th at 1243, 45 Cal. Rptr.3d at 297. Here, in contrast, the Arbitration Agreement provides, "I agree that given the ***unique nature of the entertainment industry, and the irreparable damage to Producer, Network and their licensees that would result from delaying or preventing the exhibition of any program produced hereunder***, I may not seek or obtain injunctive relief in connection with this Agreement." (R. p. 155, ¶ 19) (emphasis added). Where, as is the case here, there is a legitimate need for a one-sided injunctive relief provision in an arbitration agreement, courts have upheld the agreement. *See, e.g.*, *Kaufman v. Sony Pictures TV, Inc.*, Civ. No. 16-12027-LTS, 2017 U.S. Dist. LEXIS 112938, at *19 (D. Mass. July 20, 2017) (enforcing, in the reality television context, arbitration clause with a one-sided injunctive relief provision because it "spell[ed] out the 'legitimate commercial need' for the lopsided provision"); *see also Sablosky*, 73 N.Y.2d 137-138, 535 N.E.2d at 646-647 (mutuality of remedy not required in arbitration clauses or in contracts in general).

Plaintiff's other unconscionability arguments are also meritless. Below, Plaintiff relied heavily on his erroneous interpretation of the other provisions of the Release and Arbitration Agreement in attempting to establish unconscionability. However, his numerous mischaracterizations of those provisions are irrelevant to the analysis of whether the Arbitration Agreement itself is unconscionable, specifically because "an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole." *Munoz*, 343 S.C. at 540, 542 S.E.2d at 364; *see also Prima Paint*, 388 U.S. at 403-404; *Monarch Consulting*, 26 N.Y.3d at 675, 47 N.E.3d at 474.[19]

[19] Although it does not constitute binding precedent, a recent decision by the South Carolina federal district court in *Ledwell v. Ravenel*, No. 2:19-2815-RMG, 2020 U.S. Dist. LEXIS 30534 (D. S.C. Jan. 2, 2020), is highly instructive. That case involved a challenge to two release and arbitration agreements, which are substantially similar to the one at issue here, brought by a voluntary participant on *Southern Charm* against the Corporate Defendants. There, the district court rejected Plaintiff Ledwell's—a nanny with significantly less experience and credentials than Abruzzo—unconscionability and duress arguments, as well as her

Plaintiff's argument that the Arbitration Agreement is inextricably intertwined with other provisions of the Release and Arbitration Agreement also fails. Below, Plaintiff relied exclusively on *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016), which is readily and factually distinguishable. There, the arbitration agreement was embedded as a subparagraph in a comprehensive warranty paragraph that the court construed as a single provision for several reasons, including because the text of the arbitration agreement was physically intertwined with the text of the larger warranty provision, all of those sections addressed the buyer's remedies, and they contained "***numerous cross-references*** to one another, intertwining the subparagraphs so as to constitute a single provision." 417 S.C. at 48, 790 S.E.2d at 4 (emphasis added); *see also Smith v. D.R. Horton, Inc*., 403 S.C. 10, 13-14, 742 S.E.2d 37, 39 (Ct. App. 2013) (describing in detail the various subparagraphs of the warranty paragraph). Here, in contrast, the various provisions Plaintiff argues are "intertwined" with the Arbitration Agreement are set forth in separate paragraphs of the Release and Arbitration Agreement and address entirely different and unrelated topics. The sole cross reference in the Arbitration Agreement to any other provision of the Agreement is a cross reference to the definition of the term "Released Parties." The fact that the Arbitration Agreement adopts the definition of "Released Parties" from the release provision—which is the first place that phrase is used and defined—rather than relist those individuals and entities again in the Arbitration Agreement, does not render those provisions "intertwined" under South Carolina law. *See One Belle Hall*, 418 S.C. at 64, 791 S.E.2d at 293 (finding the lower court "erred in finding the arbitration agreement was not separable from other allegedly unconscionable provisions that precede the arbitration agreement" in longer warranty provision). Here, by its terms and operation, the Arbitration Agreement stands on its own and must be evaluated separate and

argument that the release and arbitration agreements were void for lack of consideration. (R. pp. 217-224).

apart from the rest of the Agreement. *See, e.g.*, *Munoz*, 343 S.C. at 540, 542 S.E.2d at 364; *see also Prima Paint*, 388 U.S. at 403-404.

Finally, contrary to Plaintiff's argument to the Circuit Court, the fact that the Arbitration Agreement requires that arbitration take place in New York, (R. p. 155, ¶ 19), does not make it unconscionable. As is discussed in more detail below in Section IV, the continued viability of S.C. Code § 15-7-120[20] is highly questionable given the United States Supreme Court rulings in *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), and their progeny. In any event, because this case indisputably involves interstate commerce, Section 15-7-120 is preempted by federal arbitration law. In *Tritech Elec., Inc. v. Frank M. Hall & Co.*, this Court held that the trial court erred in "applying § 15-7-120 to the arbitration clauses *sub judice* because state law is preempted by the Federal Arbitration Act (FAA) under [similar] circumstances presented by this action. Where a contract evidencing interstate commerce contains an arbitration clause, the FAA preempts conflicting state arbitration law." 343 S.C. 396, 400, 540 S.E.2d 864, 866 (Ct. App. 2000); *see also Kiawah Island Util., Inc. v. Westport Ins. Corp.*, No. 2:19-cv-1359-DCN, 2019 U.S. Dist. LEXIS 182220 *17-18; 2019 WL 5394200 (D.S.C. Oct. 22, 2019) (same and, in addition, rejecting the argument that the forum selection clause was unenforceable because the chosen forum was a proper venue). To the extent that Section 15-7-120 remains viable in South Carolina, it conflicts with and is preempted by the FAA, which governs this appeal and strongly favors enforcing arbitration agreements, as agreed to by the parties, including any applicable forum selection provisions. Thus, for the reasons set forth above, Plaintiff has not and cannot establish either procedural or substantive unconscionability.

[20] Subsection (B) of that statute provides, in pertinent part, that "A provision in an arbitration agreement that arbitration proceedings must be held outside this State is not enforceable with respect to a cause of action, which, but for the arbitration agreement, is triable in this State." S.C. Code Ann. § 15-7-120(B).

C. Whether Plaintiff's claims are subject to arbitration is for the arbitrator to decide.

Plaintiff, in cursory fashion, also alleged below that the Arbitration Agreement "does not cover the torts alleged" in his Amended Complaint. (R. pp. 130, 134, 138, ¶¶ 169, 187, 205). However, once this Court has determined that the parties entered into an enforceable agreement to arbitrate their disputes, it need not resolve any other issues. Under New York, South Carolina and federal law, the court decides the scope of an arbitration agreement ***unless***, as is the case here, the parties have provided that the arbitrator decides whether the claims fall within the Arbitration Agreement. *See Zabinski v*, 346 S.C. at 597, 553 S.E.2d at 118 ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise"); *Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 208 n.1 (2d Cir. 2005) (the question of who determines arbitrability generally "is a question for the court unless there is 'a "clear and unmistakable" agreement to arbitrate arbitrability'").

Here, pursuant to the clear and unambiguous language of the Arbitration Agreement, the parties have undisputedly agreed that the question of arbitrability must be decided by the arbitrator: "If mediation is unsuccessful, then all disputes, ***including the scope or applicability of this Agreement to Arbitrate***, shall be resolved by final and binding arbitration …" (R. p. 155, ¶ 19) (emphasis added). Thus, it is for the arbitrator, not the Court, to decide whether Plaintiff's claims fall within the parties' agreement to arbitrate this dispute.

Additionally, where "parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator." *Contec Corp.*, 398 F.3d at 208. The streamlined JAMS rules, which, as set forth in the Arbitration Agreement, govern any mediation or arbitration between the parties, provide that the arbitrator is to decide the arbitrability of

disputes. "Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or ***scope of the Agreement*** under which Arbitration is sought, and who are proper Parties to the Arbitration, ***shall be submitted to and ruled on by the Arbitrator***. The Arbitrator has the ***authority to determine jurisdiction and arbitrability issues as a preliminary matter***." *JAMS Streamlined Arbitration Rules & Procedures*, effective July 1, 2014, Rule 8(b) (emphasis added) (R. p. 236). Thus, for this reason too, whether each of Plaintiff's causes of action falls within the scope of the Arbitration Agreement is for the arbitrator, not the Court, to decide in the first instance.

In any event, all of Plaintiff's claims clearly fall within the scope of the parties' broad Arbitration Agreement because they all arise in connection with Abruzzo's participation with the Program and/or the Release and Arbitration Agreement. (R. p. 155, ¶ 19). All of Plaintiff's causes of action are based on his allegations that the Corporate Defendants made or encouraged the Individual Defendants to make statements on the Program about him (and other participants on the Program) that were false, depicted Plaintiff in a false light and/or showed misleading photographs of him, all in order to promote a "storyline" for dramatic effect and/or profit, contrary to assurances purportedly made by certain Defendants in connection with Plaintiff's execution of the Release and Arbitration Agreement.

D. <u>All of the Defendants are entitled to enforce the agreement to arbitrate.</u>

All of the Defendants, including the Individual Defendants, are entitled to enforce the Arbitration Agreement. South Carolina courts routinely allow non-contracting parties to enforce arbitration agreements when a plaintiff names both signatories and non-signatories in a lawsuit. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (noting that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory

parties in his complaint … because this would nullify the rule requiring arbitration"); *citing South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993) (allowing non-signatory to enforce arbitration agreement). Thus, for the reasons set forth above, all of the Defendants are entitled to enforce the parties' agreement to arbitrate (and the exclusive forum selection clause).

In any event, by its terms, the Arbitration Agreement extends to the "Released Parties." (R. p. 155, ¶ 19). The Released Parties include Haymaker (as the Producer), NBCUniversal (as the Network), as well as "any of their ***parents***, ***subsidiaries***, assignees, licensees, affiliates ***or anyone associated with the Program***." (R. p. 154, ¶ 17) (emphasis added). Comcast Corporation is NBCUniversal's parent company, Bravo Media Productions, LLC is indirectly owned by NBCUniversal and is a subsidiary thereof, (R. p. 212, ¶¶ 4, 5), and the Individual Defendants indisputably are "associated with the Program." In addition, in Paragraph 21 of the Agreement, Abruzzo agreed that each of the Released Parties—including those Defendants that are not specifically named in the Release and Arbitration Agreement are—"express intended third party beneficiar[ies] of this Agreement," and have "full standing to enforce each, every, any and all of its provisions as if it was an express party thereto," (R. p. 155, ¶ 21), including the Arbitration Agreement.

Thus, under South Carolina law and under the terms of the Release and Arbitration Agreement, each of the Defendants is fully entitled to enforce the Arbitration Agreement, as well as other provisions of the Release and Arbitration Agreement.

IV. In the Event this Court Finds That the Parties' Arbitration Agreement is Not Enforceable, Plaintiff's Amended Complaint Should be Dismissed Based on the Valid and Enforceable Exclusive Forum Selection Clause.

Alternatively, and in the event the Arbitration Agreement is not enforced, this action still should be dismissed because the Release and Arbitration Agreement requires exclusive venue in the appropriate New York state or federal court. Specifically, the parties agreed to submit to the "in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York," waiving "any objections thereto." (R. p. 155, ¶ 20). As is the case with the Arbitration Agreement, this forum selection provision is located on the third page of the Release and Arbitration Agreement, above Plaintiff's signature on the page of the Agreement that Plaintiff can clearly see as reflected in the photograph attached to Defendants' Memo in Support. (R. p. 159). Thus, because Plaintiff agreed to ***exclusive*** jurisdiction of all court proceedings in the appropriate state and federal courts in New York, he has expressly and voluntarily waived his right to file this lawsuit in South Carolina state court and, consequently, the Circuit Court lacked in personam jurisdiction over his claims.

Pursuant to *Minorplanet Sys. USA Ltd. v. American Aire, Inc.*, 368 S.C. 146, 628 S.E.2d 43 (2006), and based on the Release and Arbitration Agreement's clear choice of law provisions, New York law should govern consideration of the forum selection clause. In *Minorplanet*, the contract designated that the agreement was to be "governed by and construed in accordance with the laws of the state of Texas." As a result, the South Carolina Supreme Court applied Texas law in its analysis of whether the forum selection clause, which required exclusive venue in Texas, was enforceable. 368 S.C. at 150, 628 S.E.2d at 45; *see also Loyd & Ring's Wholesale Nursery, Inc. v. Long & Woodley Landscaping & Garden Ctr., Inc.*, 315 S.C. 88, 94, 431 S.E.2d 632, 636 (Ct.

App. 1993) (looking to Florida law to determine whether a forum selection clause choosing Florida courts was enforceable).

Under New York law, "it is the well-settled 'policy of the courts of this State to enforce contractual provisions for choice of law and selection of a forum for litigation.'" *Sterling Nat'l Bank v. Eastern Shipping Worldwide, Inc.*, 35 A.D.3d 222, 222, 826 N.Y.S.3d 235, 237 (N.Y. App. Div. 2006). Forum selection clauses are "prima facie valid and enforceable unless shown by the resisting party to be unreasonable." *Brooke Group v. JCH Synd. 488*, 87 A.D.2d 530, 534, 663 N.Y.S.2d 635, 638 (N.Y. App. Div. 1996). "Although once disfavored by the courts, it is now recognized that parties to a contract may freely select a forum which will resolve any disputes," and such clauses are "enforced because they provide certainty and predictability in the resolution of disputes." *Id.* 87 A.D.2d at 534, 663 N.Y.S.2d at 638.

The result is the same under South Carolina law. It is well-established that a party can waive personal jurisdiction of South Carolina courts: "A party may always waive lack of personal jurisdiction …. It is not the function of courts to rewrite contracts between parties. Our function is limited to the contract's terms, and absent ambiguity, their plain meaning controls our inquiry." *Republic Leasing Co. v. Haywood*, 329 S.C. 562, 566, 495 S.E.2d 804, 806 (Ct. App. 1998); *see also Firestone Fin. Corp. v. Owens*, 309 S.C. 73, 75-76, 419 S.E.2d 830, 832 (Ct. App. 1992) ("It has long been the law of the State of South Carolina that lack of subject matter jurisdiction cannot be waived even by consent but lack of jurisdiction of the person may be waived," where a party consents in writing thereto). Here, Plaintiff, a Florida resident, consented in writing to the exclusive jurisdiction of New York state or federal courts.

To the extent the Circuit Court adopted Plaintiff's argument that S.C. Code Ann. § 15-7-120,[21] bars enforcement of the forum selection clause, the Court committed manifest legal error. First, as noted above, the Release and Arbitration Agreement contains a choice of law provision specifying New York substantive law. (R. p. 155, ¶ 20). Thus, New York substantive law should be applied to determine whether the forum selection provision is valid and enforceable.

Second, such a ruling would be inconsistent with the well accepted principle under South Carolina law that forum selection clauses are enforceable in general where they are not unreasonable or unjust. *Haywood*, 329 S.C. at 566, 495 S.E.2d at 806 (noting also that forum selection clauses "made at arms' length by sophisticated business entities" enjoy *prima facie* validity and enforceability). Plaintiff has not and cannot show that trying his case in New York is unreasonable or unjust; he has not even alleged any substantive contacts with the State of South Carolina.

Third, for the reasons set forth in Section III.B.ii above, the continued viability of Section 15-7-120 is in serious doubt. In *The Bremen*, the United States Supreme Court rejected state and federal courts' historical reluctance to enforce forum selection clauses. The Supreme Court explained that the reluctance to enforce valid forum selection clauses is "hardly more than a vestigial legal fiction," reflecting "something of a provincial attitude regarding the fairness of other tribunals." 407 U.S. at 12. Thus, they have "little place" in the current era. *Id.*

While the parties in *The Bremen* both were sophisticated business entities, the United States Supreme Court expanded its holding in *The Bremen* to individual purchasers of cruise line tickets

[21] That section provides, in pertinent part, that "Notwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action." S.C. Code Ann. § 15-7-120(A).

in *Carnival Cruise Lines*, where the Supreme Court explained that, "a clause establishing *ex ante* the forum for dispute resolution has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions." 499 U.S. at 593-594. The Court recognized that Carnival Cruise Lines had a "special interest in limiting the fora in which it potentially could be subject to suit." *Id.* As to whether the forum selection clauses at issue were fundamentally unfair, the Court noted that there was no indication the forum had been chosen as a means to dissuade passengers from bringing claims but, rather had a legitimate basis, namely, the cruise line had its principle place of business in the forum. 499 U.S. at 595. Furthermore, there was no evidence the defendants obtained the agreement to the forum clause, which was not hidden, by fraud or overreaching, and the plaintiffs had "the option of rejecting the contract with impunity." *Id.*

The same is true here. The forum selection clause is conspicuously set out under the heading "Governing Law" on the page of the Release and Arbitration Agreement that Plaintiff is holding up to the camera. (R. p. 159).[22] The Corporate Defendants have a legitimate, business reason for choosing New York as the forum to resolve disputes with Program participants. Having disputes arising out of its television programs resolved in a central location where their businesses and witnesses are headquartered is reasonable and based on valid business considerations. On the other hand, Plaintiff—a Florida resident—has not alleged any substantive connection to South

[22] For the reasons set forth in detail above, Plaintiff has not and cannot establish that the Release and Arbitration Agreement, as a whole, was obtained by "fraud or overreaching." Moreover, he has not even alleged—let alone established—that the governing law and exclusive venue provisions themselves were a product of fraud, which is required under applicable law. *See, e.g.*, *The Bremen*, 407 U.S. at 12 n. 14 (observing that the plaintiff had "neither presented evidence of nor alleged fraud or undue bargaining power in the agreement"); *Carnival Cruise Lines*, 499 U.S. at 595 (noting "there is no evidence that petitioner obtained respondents' accession to the forum clause by fraud or overreaching").

Carolina other than one short trip to visit Dennis at her home. Nor has Plaintiff alleged or provided any proof that litigating his claims in New York "will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court." *The Bremen*, 407 U.S. at 18.

The Fourth Circuit has questioned the continued viability of Section 15-7-120. In *Albemarle Corp.*, the Fourth Circuit considered a forum selection clause in a contract between a South Carolina corporation and a British corporation. The Fourth Circuit held that it saw no evidence that S.C. Code Ann. § 15-7-120(A) "manifests a strong public policy of South Carolina," noting that South Carolina courts "have enforced forum selection clauses in contracts, notwithstanding the existence of 15-7-120(A)." 628 F.3d at 652. In addition, the Fourth Circuit concluded that "it can hardly be a strong public policy to countermand the very policy that the [U.S.] Supreme Court adopted in *The Bremen*," which "would have little effect if states could effectively override the decision by expressing disagreement with the decision's rationale." *Id.*; *see also T.R. Helicopters, LLC v. Bell Helicopter Textron, Inc.*, No. 3:10-2250-JFA, 2010 U.S. Dist. LEXIS 21923, *12 (D.S.C. Nov. 17, 2010) (enforcing forum selection clause and concluding that "no South Carolina court has explicitly stated whether South Carolina has a strong public policy against forum selection clauses that would deprive a citizen of his choice").

Thus, even if the Court were to find the Arbitration Agreement unenforceable, the exclusive forum selection provision, which also is valid and enforceable, requires that the Amended Complaint be dismissed as having been filed in an improper forum: *i.e.*, South Carolina state court as opposed to a New York state or federal court.

CONCLUSION

For all of the reasons stated herein, Defendants respectfully request that this Court reverse the Circuit Court, dismiss Plaintiff's Amended Complaint and issue an Order compelling mediation and, if necessary, arbitration in New York pursuant to the valid, enforceable Arbitration Agreement. Alternatively, even if this Court were to find the parties' Arbitration Agreement unenforceable, it should dismiss Plaintiff's Amended Complaint based on improper venue pursuant to the valid, binding exclusive forum selection clause in the Release and Arbitration Agreement.

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In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Appellants Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy complies with Rule 211(b), SCACR.

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo, Respondent,

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Bravo Media Productions LLC, Haymaker Media, Inc., NBC Universal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Appellants.

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STATEMENT OF ISSUES ON APPEAL

1. Is the denial of a Rule 12(b)(3) motion to dismiss for improper venue immediately appealable? If so, did the trial court commit reversible error in denying Defendants' motion?

2. Was a valid agreement to arbitrate formed? If so, is it enforceable?

3. If a valid and enforceable agreement to arbitrate was formed, who is entitled to compel arbitration?

STATEMENT OF THE CASE

Respondent Joseph Abruzzo ("Plaintiff)" commenced this action on January 24, 2020. In his initial Complaint, Plaintiff alleged ten (10) causes of action against the Appellants ("Defendants").[1] Defendants did not file an Answer, but jointly filed a motion to dismiss pursuant to Rule 12(b)(3), SCRCP, on May 12, 2020. (R. pp. 38-51). A hearing was scheduled on Defendants' motion for June 22, 2020.

On June 19, 2020, Plaintiff filed an Amended Complaint. In his Amended Complaint, Plaintiff included another seven (7) causes of action against the Defendants.[2] Out of the

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[1] Outrage/Intentional Infliction of Emotional Distress (Individual Defendants and Corporate Defendants), Fraud (Corporate Defendants), Constructive Fraud (Corporate Defendants), Negligent Misrepresentation (Corporate Defendants), Fraudulent Inducement (Corporate Defendants), Civil Conspiracy (Individual Defendants and Corporate Defendants), Defamation (Individual Defendants and Corporate Defendants), Violation of the South Carolina Unfair Trade Practices Act (Corporate Defendants), Negligence (Individual Defendants and Corporate Defendants), and Quantum Meruit/Unjust Enrichment (Individual Defendants and Corporate Defendants). (R. pp. 7-37)

[2] Wrongful Appropriate of Personality/Infringement on the Right of Publicity (Individual Defendants and Corporate Defendants), Wrongful Publicizing of Private Affairs (Individual Defendants and Corporate Defendants), Public Nuisance (Individual Defendants and Corporate Defendants), Private Nuisance (Individual Defendants and Corporate Defendants), Fraudulent Inducement of Arbitration Agreement/Unconscionability of Arbitration Agreement (Individual

seventeen (17) causes of action, fifteen (15) allege some form of intentional, willful and/or reckless conduct or some form of misrepresentation. Defendants again did not file an Answer, instead filing a second, nearly identical motion, again seeking to a dismissal pursuant to Rule 12(b)(3), SCRCP. Defendants filed their joint motion to dismiss Plaintiff's Amended Complaint on June 22, 2020, and requested the Court hear the motion as scheduled that day. Plaintiff objected to that request, and a hearing was scheduled for June 30, 2020.

Plaintiff filed a memorandum in opposition to the Defendants' motion to dismiss on June 29, 2020, and a hearing on the motion was held on June 30, 2020 before the Honorable Bentley D. Price. On July 6, 2020, Judge Price electronically filed a Form 4 Order denying the Defendants' motion to dismiss and motion for order compelling arbitration. (R. pp. 4-6). On July 16, 2020, Defendants' filed a Motion for Reconsideration pursuant to Rule 59(e), SCRCP. Judge Price electronically signed another Form 4 Order denying that motion without a hearing on July 20, 2020, which was electronically filed on July 22, 2020. (R. pp. 1-3). Defendants then filed and served a Notice of Appeal on August 10, 2020.

SUMMARY

The detailed factual allegations are set forth in Plaintiff's Amended Complaint. The essence of the Amended Complaint asserts the Corporate Defendants perpetrated a fraud upon the Plaintiff to have him appear on the television show "Southern Charm" by materially misrepresenting to Plaintiff the nature of the show, his portrayal thereon, the substance of a document presented to him with only the signature portion revealed and the remainder of the

---

Defendants and Corporate Defendants), Fraudulent Inducement of Release/Unconscionability of Release (Individual Defendants and Corporate Defendants), and Rescission of "Release and

document concealed from view, the purpose for which the document needed to be signed, and the effect signing the document was intended to produce. The Amended Complaint further alleges the Corporate Defendants conspired with the Individual Defendants to knowingly, intentionally, and maliciously publish false and outlandish statements about the Plaintiff personally, his reputation, and his career to millions of people for the sole purpose of injuring the Plaintiff or otherwise causing him harm simply to promote the concocted and false storylines on Southern Charm, a television show that is marketed and distributed to millions of viewers as "reality."

The scheme orchestrated by the Defendants had its intended effect. A major consulting agreement for which Plaintiff was paid $15,000 per month from 2007 up until 2019, and which was reasonably expected to last for the foreseeable future under the circumstances then existing, was terminated as a direct result of the Defendants publication of the falsehoods about Plaintiff on Southern Charm. Moreover, the Plaintiff's previously otherwise impeccable reputation is now lost in the sea of disinformation and falsehoods now populating the internet by websites, bloggers, news organizations, and others republishing the Defendants' false statements and portrayal of him on Southern Charm in the aftermath of the broadcasts.

The sole basis of the Defendants' joint motion to dismiss was Rule 12(b)(3), SCRCP, improper venue. The Defendants' relied entirely upon a document entitled "Appearance Release, Voluntary Participation, and Arbitration Agreement" (hereinafter referred to as "Arbitration Agreement"), which Defendants' argued prohibited Plaintiff from filing suit in Charleston County or from litigating against any one of them in any judicial forum. Based on

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Arbitration Agreement" (Individual Defendants and Corporate Defendants). (R. pp. 94-143)

the arguments, Defendants also seemed to believe the trial court should simply adjudicate the case on its merits and resolve factual disputes in their favor when considering the motion, Plaintiff's response, and the Defendants submissions of several exhibits in support of their motion. These exhibits included affidavits from individuals that fail to assert personal knowledge of the facts and circumstances alleged in the Amended Complaint which directly conflicted the allegations contained in the Plaintiff's Amended Complaint, and an Order from a wholly unrelated case involving different parties, facts, allegations and causes of action.

In the alternative to dismissal, all Defendants sought an order compelling arbitration based on the Arbitration Agreement; that same document Plaintiff specifically alleged to be fraudulently depicted and procured in furtherance of their conspiracy. The entire document, by its own terms, is the "Arbitration Agreement" and not just a single arbitration clause. Plaintiff has specifically alleged fraud, fraudulent inducement, unconscionability, and rescission of the "Arbitration Agreement" - including the "release," "arbitration," and "choice of forum" provisions.

The arguments presented by the Defendants are ostensibly grounded in some form of freedom to contract theory. However, the agreement as a whole and these provisions individually are illegal, unenforceable, and/or otherwise void as against public policy. Defendants nevertheless seek enforcement of this pervasively illegal agreement from the state where all of the Individual Defendants live, all of the Corporate Defendants conduct substantial business, and in which all have availed themselves of the jurisdiction and protections afforded by the laws of South Carolina.

A cursory review of the Amended Complaint and Arbitration Agreement reveals the truth; the Defendants intend to do what they want, whenever they want, to anybody they choose, anywhere in the State of South Carolina, while simultaneously being untethered to the obligations and duties owed to others and imposed by the law. Defendants' assert no error of law or abuse of discretion that would warrant a reversal. Instead, they egregiously misrepresent the Plaintiff's pleadings and the evidence before the trial court and spend the vast majority of their argument simply disagreeing with the trial court's view of the pleadings and evidence submitted. Make no mistake about it, they are not seeking enforcement of a valid arm's length agreement; they are seeking to delay or avoid trial and retreat to a different venue, forum, and body of law that they believe will be more favorable and confidential. The facts, the trial court recognized, however, prevent this from happening.

There are many reasons set forth herein why the trial court's decision must be affirmed, any one of which are sufficient to do so. (*see, e.g.* R. pp 251-285). However, the analysis can be easily boiled down as follows: 1) the denial of a Rule 12(b)(3) motion to dismiss alleging improper venue is not immediately appealable and, even if it were, the trial court's decision to deny the requested relief is not reversible error, 2) a valid agreement was never formed between the parties, and 3) even if an agreement was formed, it is unenforceable. Accordingly, the trial court's decision must be affirmed.

STANDARD OF REVIEW

South Carolina appellate courts do not allow immediate appellate review of the denial of *any* Rule 12(b), SCRCP motion, including a Rule 12(b)(3) motion alleging improper venue. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2011)(holding the denial of

Rule 12(b)(3) motion to change venue is not immediately appealable). Accordingly, the Defendants' contention that the denial of their motion to dismiss based upon an alleged improper venue is at issue on appeal is incorrect, and the trial court's decision must be affirmed.

ARGUMENT

The denial of the Defendants' motion to dismiss based on improper venue is interlocutory and not immediately appealable. On this basis alone, the Defendants' appeal should be denied. Even if it were immediately appealable, the trial court correctly denied the Defendants' requested relief. To the extent the denial of a 12(b)(3) motion alleging improper venue is appealable, "[a] motion for a change of venue is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of discretion." *State v. Kelsey*, 331 S.C. 50, 67, 502 S.E.2d 63, 71 (1998); *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2D 417 (Ct. App. 2004). An abuse of discretion occurs either when the court is controlled by some error of law or where the order lacks evidentiary support. *Townsend v. Townsend,* 356 S.C. 70, 73, 587 S.E.2d 118, 119 (Ct.App.2003).

Here, the trial court's denial of the Defendants' 12(b)(3) motion based on improper venue was not controlled by any error of law nor was it without evidentiary support. There is no doubt the Individual Defendants reside in Charleston County, the Corporate Defendants have fully availed themselves of the laws and protection of the State of South Carolina as well as the County of Charleston, and the most substantial acts or omissions occurred in Charleston County.

Further, and despite the Defendants' assertions otherwise, the Arbitration Agreement's "venue clause" - to the extent it is enforceable at all - does nothing more than *confer* jurisdiction in New York. It does not *limit* jurisdiction to New York to the exclusion of any other proper

jurisdiction. Venue is therefore proper in Charleston County, and nothing in the Arbitration Agreement dictates otherwise. Moreover, this court cannot enforce provisions of an agreement that are antithetical to South Carolina law and public policy, nor can it enforce provisions of an agreement procured through fraud. Accordingly, the trial court's decision was without error and should therefore be affirmed.

I. VENUE IS PROPER IN CHARLESTON COUNTY.

Practice on a motion under Rule 12(b)(3) is relatively straight-forward. Although it appears South Carolina has not addressed this specific issue, federal courts have held, on a motion to dismiss under Rule 12(b)(3), the court is permitted to consider evidence outside the pleadings. *See Sucampo Pharm., Inc. v. Astellas Pharma, Inc.*,471 F.3d 544, 550 (4th Cir.2006). A plaintiff is obliged, however, to make only a prima facie showing of proper venue in order to survive a motion to dismiss. *Id.* In assessing whether there has been a prima facie venue showing, we view the facts in the light most favorable to the plaintiff. *Id* (citing *Global Seafood Inc. v. Bantry Bay Mussels Ltd.,* 659 F.3d 221, 224 (2d Cir.2011)).

a. The trial court employed the correct standard of review.

Contrary to the Defendants uncited proposition that the trial court "is obliged to employ a standard such as the summary judgment test" (Appellant's Initial Brief, p. 17), the clear weight of authority is that when objection to venue has been raised, the court must construe all reasonable inferences in Plaintiff's favor to determine whether the Plaintiff chose a proper venue. *Id; see also Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 366 (4th Cir. 2012)("In

assessing whether there has been a prima facie venue showing, [the court] view[s] the facts in the light most favorable to the plaintiff.")[3]

The Defendants did not assert any recognized statutory grounds for changing venue.[4] Instead, they sought dismissal of the Amended Complaint pursuant to a forum selection clause

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[3] *Accord* 5B Wright & Miller § 1352 (3rd ed. 2004)(A trial court may examine facts outside the complaint to determine whether its venue is proper and, as is consistent with practice in other contexts such as construing the complaint, the court must draw all reasonable inferences and resolve all factual conflicts in favor of the plaintiff); *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1138 (9th Cir.2004) (considering, in a case of first impression, how the court should consider disputed facts on a motion to dismiss for improper venue under Rule 12(b)(3) and concluding that "[a]fter reviewing the available authorities from outside of our circuit, we are persuaded that, in the context of a Rule 12(b)(3) motion based upon a forum selection clause, the trial court must draw all reasonable inferences in favor of the non-moving party and resolve all factual conflicts in favor of the non-moving party ..."); *Seariver Mar. Fin. Holdings, Inc. v. Pena,* 952 F.Supp. 455, 459 (S.D.Tex.1996)(When venue is challenged, "[a] court is not obliged to determine the 'best' venue for a cause of action pending before it, but rather must determine only whether or not its venue is proper."); *2215 Fifth St. Assocs. v. U–Haul Int'l, Inc.*, 148 F.Supp.2d 50, 54 (D.D.C.2001)(In considering a Rule 12(b)(3) motion, the court accepts the plaintiff's well-pled factual allegations regarding venue as true, draws all reasonable inferences from those allegations in the plaintiff's favor, and resolves any factual conflicts in the plaintiff's favor); *Gross v. Winter,* 876 F.2d 165, 166 (D.C.Cir.1989)(the court must accept all of the plaintiff's allegations as true and must resolve factual discrepancies in favor of the plaintiff); *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 84 F.3d 1408, 1410 (Fed.Cir.1996); *Dody v. Brown,* 659 F.Supp. 541, 544 n. 2 (W.D.Mo.1987) (determining that the plaintiff's factual assertions were sufficient to establish proper venue despite direct contradiction by the defendant); *Gibson v. Toyota Motor Sales, U.S.A., Inc.*, 2017 WL 4296723 (DSC Florence, Sep. 26, 2017)(When considering a motion under Rule 12(b)(3), the Court may consider evidence outside the pleadings, but the facts are viewed light most favorable to the plaintiff because a plaintiff need only make a *prima facie* showing of proper venue to survive a motion to dismiss); *Jeffers Handbell Supply, Inc v. Schulmerich Bells, LLC*, 2017 WL 3582235 (DSC Rock Hill, Aug. 18, 2017)(the plaintiff is obliged "to make only a prima facie showing of proper venue in order to survive a motion to dismiss."); *Brown v. Five Star Quality Care, Inc.*, 2016 WL 8710474 (DSC Charleston, Jan. 8, 2016)(When considering a motion under Rule 12(b)(3), the Court may consider evidence outside the pleadings, but the facts are viewed light most favorable to the plaintiff because a plaintiff need only make a *prima facie* showing of proper venue to survive a motion to dismiss).

[4] "The court may change venue if (1) it is a court in a county designated for that purpose in the

contained in the "Arbitration Agreement." (R. pp. 45-48). It is undisputed all of the individual Defendants are residents of Charleston County and the most substantial acts or omissions giving rise to the action occurred in Charleston County. South Carolina law mandates venue for the claims against the individual Defendants be in Charleston County. *See* S.C. Code § 15-7-30(C); S.C. Code § 15-7-30(G).

Nothing the Defendants submitted in support of their motion challenges or even addresses these facts. Nothing the Defendants submitted in support of their motion contends forum is improper in Charleston County, and the record does not support a conclusion the trial court did not consider the Defendants' submissions. Even if he didn't, the refusal to consider them would not be reversible error because the revelation from these documents is clear: there are significant and material facts that are disputed regarding the circumstances of the "Arbitration Agreement's" execution, the representations or omissions by the Defendants, and the substance of communications among the Plaintiff and the numerous agents/employees of the Corporate Defendants who interacted with the Plaintiff at the time of filming. Construing the facts alleged and all reasonable inferences in Plaintiff's favor, the trial court's refusal to resolve disputed issue of fact in the Defendants favor and denial of relief sought was correct.

b. The forum selection clause does is permissive, not mandatory.

Undeterred with the aforementioned facts and rules, Defendants repeatedly misrepresent the content of the "forum selection" clause and urge this Court, as they did the trial court, to put

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complaint, but the designated county is not the proper county pursuant to the provisions of the Code providing for the venue of actions; (2) there is reason to believe that a fair and impartial trial cannot be had there; or (3) the convenience of witnesses and the ends of justice would be promoted by the change." S.C. Code § 15-7-100.

the cart before the horse and enforce provisions of an agreement alleged to be illegal and void *ab initio* which was procured through fraud. Defendants further urge this Court, as they did the trial court, to enforce a forum selection clause that is contrary to South Carolina law and public policy. Neither is permitted.

As a general matter, courts enforce forum selection clauses unless it would be unreasonable to do so. *See M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972). This presumption of enforceability, however, only applies if the forum selection clause is mandatory rather than permissive. *See Albemarle Corp. v. AstraZeneca UK Ltd.*, 628 F.3d 643, 650–51 (4th Cir. 2010). A mandatory clause requires litigation to occur in a specified forum; a permissive clause permits litigation to occur in a specified forum but does not bar litigation elsewhere. *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin.*, 884 F.3d 463, 470 (4th Cir. 2018). A permissive forum selection clause does not justify dismissal on the grounds that the plaintiff filed suit in a forum other than the one specified in the clause.[5] *Id.*

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[5] In *Atlantic Marine Construction Co. v. U.S. District Court*, the Supreme Court held that a defendant seeking to enforce a forum selection clause that points to a foreign forum should move to dismiss pursuant to the common-law doctrine of *forum non conveniens* rather than Rule 12(b)(3). 571 U.S. 49, 134 S.Ct. 568, 580 (2013). This doctrine allows a court to dismiss a case when the original venue is highly inconvenient and an adequate alternative venue exists. In the typical case, the defendant invoking *forum non conveniens* "bears a heavy burden in opposing the plaintiff's chosen forum." *Sinochem Int'l Co. v. Malaysia Int'l Shipping Co.*, 549 U.S. 422, 430, 127 S.Ct. 1184 (2007). In particular, the defendant must prove that an alternative forum is available, adequate, and more convenient (in light of the public and private interests involved) than the forum selected by the plaintiff. *See DiFederico v. Marriott Int'l, Inc.*, 714 F.3d 796, 800–01 (4th Cir. 2013). But that framework is modified, the *Atlantic Marine* Court explained, in the context of a mandatory forum selection clause. Most importantly, a mandatory forum selection clause reverses the presumptions that would otherwise apply: instead of heavily favoring the plaintiff's chosen forum and placing the burden on the defendant, the forum

A forum selection clause is permissive unless it contains "specific language of exclusion." *Albemarle Corp. v. Astra Zeneca UK Ltd*, 628 F.3d at 651 (4th Cir. 2010) (quoting *IntraComm, Inc. v. Bajaj*, 492 F.3d 285, 290 (4th Cir. 2007)) (internal quotation marks omitted)). "[A]n agreement *conferring* jurisdiction in one forum will not be interpreted as *excluding* jurisdiction" in another unless the clause expressly sets forth "specific language of exclusion." *Id.*

The forum selection clause at issue here, Paragraph 20 of the Arbitration Agreement (the "forum selection" clause)(R. p. 47), does not contain any "specific language of exclusion." It states only "the parties submit to in personam jurisdiction" in New York and "waive any objections thereto." This clause differs significantly from forum selection clauses found to be mandatory, which provide that a particular place constitutes the "sole" or "only" or "exclusive" forum. *See BAE Sys. Tech.,* 884 F.3d at 470 (4th Cir. 2018)(holding forum selection clause that stated disputes "shall be resolved through litigation and the Seoul Central Court shall hold jurisdiction" was permissive). And, it says nothing to support the conclusion repeatedly, and falsely, asserted by Defendants that it is an *exclusive* venue for any action. (*See* App. Initial Brief, pp. 1, 14, 15, 47, 48, 49, 51, 52, 53). In fact, the word exclusive is nowhere to be found in the Arbitration Agreement, much less paragraph 20. The Defendants' assertions otherwise are simply false.

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selection clause is "given controlling weight in all but the most exceptional cases," and the plaintiff bears the burden of proving why it should not be enforced. *See* 134 S.Ct. at 581, 583 & n.8 (internal quotation marks and citation omitted). Accordingly, determination of whether the forum selection clause here is permissive or mandatory is critical. If it is permissive, then the traditional *forum non conveniens* analysis applies and Defendants bear a "heavy burden" in opposing Plaintiff's chosen forum.

Because the clause here is permissive, there is no presumption in favor of enforceability, and the court must proceed with a traditional *forum non conveniens* analysis. A *forum non conveniens* ruling is discretionary. *Mansour v. Mansour*, 296 S.C. 215, 371 S.E.2d 537 (1988); *Nienow v. Nienow,* 268 S.C. 161, 232 S.E.2d 504, (1977) (explaining it is axiomatic that a plaintiff's choice of forum "should not be disturbed except for weighty reasons"). Pursuant to that analysis, the Defendants bear the burden of proving, *inter alia*, that Plaintiff's chosen forum is improper. Defendants do not even attempt to do this. Even if paragraph 20 of the Arbitration Agreement were enforceable, the mere fact it permits venue in New York does not make venue in South Carolina improper. Accordingly, the trial court correctly rejected the Defendants' misleading arguments otherwise and the refusal to dismiss pursuant to Rule 12(b)(3) was correct.

c. The forum selection clause is unenforceable.

Forum selection clauses are generally enforceable unless shown by the resisting party to be "unreasonable" under the circumstances. *Insurance Products Marketing, Inc. v. Indianapolis Life Ins. Co.*, 176 F.Supp.2d 544 (D.S.C. 2001)(quoting *M/S Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 12-12, 92 S.Ct. 1907 (1972)). A forum selection clause is "unreasonable" if its formation was induced by fraud or overreaching. *Id* (*citing Jewel Seafoods Ltd. v. M/V Peace River,* 39 F.Supp.2d 628, 633 (D.S.C.1999).

In *Johnson v. Key Equipment Finance*, 367 S.C. 665, 627 S.E.2d 740 (2006), a case similar to the present matter, the S.C. Supreme Court held that a New York forum selection clause in lease agreement for telephone marketing system did not prevent suit in South Carolina when it was alleged the lessor fraudulently induced the contract by misrepresenting or hiding pertinent information from lessees. The Supreme Court explained as follows:

> The issue of whether a forum selection clause applies to causes of action alleging that a plaintiff was induced to enter into a contract or lease by the misrepresentations of the defendant is a question of first impression for this Court. Generally, when wrongs arise inducing a party to execute a contract and not directly from the breach of that contract, **the remedies and limitations specified by the contract do not apply**...it would not make logical sense to allow a forum selection clause to operate to prevent suit in South Carolina where the acts alleged occurred prior to the execution of the contract...But for the events leading to the signing of the contract, the agreement allegedly would not have been consummated.

367 S.C. at 668 (emphasis added)(internal citations omitted).

Here, the forum selection clause (Arbitration Agreement, ¶ 20)(R. p. 47) is unenforceable because it was induced by fraud and/or overreaching. *See, e.g.* (R pp. 94-143)(Am Compl. ¶¶ 47-54, 74-75, 77-104, 151-223). Plaintiff's causes of action for fraud, fraudulent inducement, constructive fraud, negligent misrepresentation, civil conspiracy, UTPA violations, public nuisance, private nuisance fraudulent inducement/unconscionability of release, fraudulent inducement/unconscionability of arbitration agreement, and rescission all allege acts or omissions forming their basis in events which occurred in whole or in part prior to execution of the "Arbitration Agreement." But for these events, the "Arbitration Agreement" would not have been signed. Therefore, the remedies and limitations contained therein, including the forum selection clause, do not apply and the trial court correctly denied the Defendants' motion.

d. The forum selection clause violates statutory law and public policy.

A forum selection clause is also unenforceable if enforcement would contravene the public policy of the forum in which suit is brought, whether declared by statute or a judicial decision. *Indianapolis Life Ins.*, 176 F.Supp.2d at 546 (quoting *M/S Bremen*, 407 U.S. at 15)).

South Carolina Code § 15–7–120(A) embodies just such a strong public policy. That statute reads:

> (A) Notwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action.

This statutory provision is controlling, *M/S Bremen*, 407 U.S. at 10, 92 S.Ct. 1907 (making clear that it is the public policy of the *forum* state that is controlling), and many courts have concluded the statute is evidence "South Carolina has a strong policy disfavoring forum selection clauses." *See Consolidated Insured Benefits, Inc. v. Conseco Medical Ins. Co.*, 370 F.Supp.2d 397, 401 (D.S.C 2004); *accord Indianapolis Life Ins. Co.*, 176 F.Supp.2d at 550 ("under the principles presented in *M/S Bremen,* the strong public policy pronounced by the legislature and courts of the State of South Carolina is sufficient, in and of itself, to render the forum selection clause here unenforceable").

Further, because the statute is applicable to all contracts generally, it is not preempted by any federal authority. "The fact that the statute is applicable to all civil cases across the board, rather than merely to cases involving some other limited subject matter, leads the court to conclude that the legislature of South Carolina did not agree with the federal courts' favorable view of forum selection clauses and desired to insulate South Carolina litigants from their effect." *Indianapolis Life Ins. Co.*, 176 F.Supp.2d at 550.

Indeed, this Court has interpreted § 15–7–120(A) in such a manner in *Johnson v. Paraplane Corporation,* explaining the statute applied to jurisdiction as well as venue and

holding case was properly brought in Horry County despite venue and jurisdiction being assigned to New Jersey in forum selection clause of contract. 319 S.C. 247, 460 S.E.2d 398 (1995), *vacated on other grounds,* 321 S.C. 316, 468 S.E.2d 620 (1996).

The reasoning for these decisions is sound. The statute embodies South Carolina's policy of disfavoring forum selection clauses through what it expressly allows. The statute does not *prevent* a plaintiff from bringing a case in the forum designated in a forum selection clause; rather, it simply *permits* a plaintiff to bring the case in South Carolina where possible under the South Carolina statutory laws and Rules of Civil Procedure. *See Spinks v. Krystal Co.*, 2007 WL 2822788 (D.S.C. 2007)("[the statute] is evidence of a strong public policy in South Carolina of non-enforcement of a forum selection clause that would deprive a litigant of his choice of forum...as such, the forum selection clause is 'unreasonable'").

Defendants cite *Albemarle Corp. v. Astra Zeneca UK Ltd.,* 628 F.3d 643 (4th Cir. 2010) to argue "the Fourth Circuit has questioned the continued viability of S.C. Code § 15–7–120(A)." (App. Initial Brief, p. 52). While there was a discussion by the *Aldbemarle* court regarding § 15–7–120(A) in dicta, those comments simply do not apply to the circumstances presented in this case.

The *Albemarle* court was applying federal law: "a federal court interpreting a forum selection clause must apply federal law in doing so" and rejected the notion that § 15–7–120(A) controlled the federal court's analysis. 628 F.3d at 650, 652. Regardless, the forum selection clause at issue in *Albemarle* provided the contract "shall be subject to English Law and the jurisdiction of the English High Court." *Id* at 646. Under English law, when the parties designate the English High Court as an appropriate forum, the designation is mandatory and

exclusive. *Id* at 652. But for this peculiarity, the *Albemarle* court would've held South Carolina was a proper forum for the very reason why the Defendants' forum selection arguments here must fail: "A general maxim in interpreting forum selection clauses is that 'an agreement *conferring* jurisdiction in one forum will not be interpreted as *excluding* jurisdiction elsewhere unless it contains specific language of exclusion.' " *Id* at 651. [6] A close reading of the *Albemarle* opinion reveals the shallow analysis set forth by the Defendants was properly rejected by the trial court and must also be rejected by this Court.

STANDARD OF REVIEW

Appeal from the denial of a motion to compel arbitration is subject to *de novo* review. *Simpson v. World Finance Corp. of South Carolina*, 367 S.C. 184, 623 S.E.2d 877 (Ct. App 2005). The factual allegations of Plaintiff's Amended Complaint must be taken as true when reviewing the denial of a motion to compel arbitration. *Berkeley County School District v. Hub International Limited*, 944 F.3d 225 (4th Circuit 2019)(noting court must accept as true the allegations of the operative complaint that relate to the underlying dispute when reviewing the denial of a motion to compel arbitration). A circuit court's decision will not be reversed on

[6] The other cases cited by Defendants regarding forum selection clauses are also irrelevant and inapplicable to the issue before this Court. The question before the courts in *Minorplanet Sys. USA Ltd. v. American Aire, Inc.*, 368 S.C. 146, 150, 628 S.E.2d 43, 45 (2006) and *Loyd & Ring's Wholesale Nursery, Inc. v. Long & Woodley Landscaping & Garden Ctr., Inc.*, 315 S.C. 88, 94, 431 S.E.2d 632, 636 (Ct. App. 1993) were **whether the courts in which the trials were held had jurisdiction.** The plaintiffs in those cases brought their actions in the forums delineated by the forum selection clauses. Accordingly, the South Carolina courts were not evaluating whether the plaintiff could bring the case in South Carolina (as in this case), but instead were evaluating whether the forums that already tried the cases had jurisdiction and whether the resulting decisions should be upheld.

appeal if any evidence reasonably supports the findings. *Aiken v. World Fin. Corp.*, 373 S.C. 144, 644 S.E.2d 705 (2007).

ARGUMENT

II. NO VALID AGREEMENT WAS FORMED.

"South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement." *Player v. Chandler,* 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989). The "meeting of minds" required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known. *Id.*[7]

Despite the Defendants somewhat bizarre statement otherwise (see App. Initial Brief pp. 23-24), Plaintiff's Amended Complaint clearly alleges fraud and fraudulent inducement of the

[7] In the absence of an enforceable contract, traditional choice of law rules apply. Under traditional South Carolina choice of law principles, the substantive law governing a tort action is determined by the *lex loci delicti*, the law of the state in which the injury occurred. *Boone v. Boone*, 345 S.C. 8, 546 S.E.2d 191 (2001)(citing *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct.App.1997); *Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct.App.1994). Moreover, because Plaintiff disputes the valid formation of an agreement at all, Plaintiff does not stipulate that the FAA applies. The South Carolina Uniform Arbitration Act (UAA) generally provides that where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. S.C.Code Ann. § 15–48–20(a)(2005). If no agreement is found to exist, the court must deny any application to arbitrate. *See Simpson,* 373 S.C. at 22, 644 S.E.2d at 667, fn 1(Even in cases implicating interstate commerce, the UAA governs where the validity of a choice of law provision is it issue).

"Arbitration Agreement," including the arbitration provision itself. These allegations are summarized as follows: [8]

Rather than presenting the Arbitration Agreement during any one of their prior discussions or upon his arrival at the residence for the filming, while he was sitting down at dinner, after many hours of preparation and discussion with Corporate employees or agents about the mechanics of filming, and with film crews in place and bright blinding lights shining on his face, he was presented a piece of paper with only the signature portion of the page revealed to him with the remainder of the document, including the arbitration provision, concealed from sight. It was falsely represented to Plaintiff that the signature was a mere formality of no consequence which authorized them to begin filming of the dinner.

At no time did any of the Corporate Defendants state, suggest, or imply that he was somehow authorizing them to lie, disparage, defame, or otherwise depict him in a false or misleading fashion, nor did he have any reason to so suspect. At no time did any of the Corporate Defendants state, suggest, or imply that he was somehow authorizing the Individual Defendants lie, disparage, defame, or otherwise cause him irreparable injury. At no time was arbitration ever discussed, nor was any language purporting to compel arbitration ever made visible to the Plaintiff.[9]

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[8] *See, e.g.* R. pp. 94-143, Am. Compl. ¶¶ 47-56, 64, 74-75, 80-91, 99-104, 121-127, 141-145, 167-223.

[9] A duty to disclose may be required when the circumstances of the case, including the nature of the parties' dealings or their position towards each other, necessarily implies a trust and confidence in the other with reference to the particular transaction in question. *Jacobson v. Yaschik,* 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967).

To the contrary, he was assured by the Corporate Defendants, falsely and with had no intention of abiding by those assurances, that he was only authorizing filming of the dinner and the would be portrayed fairly and accurately. He was presented only the signature portion of the document, given no time to read it, no time or encouragement to consult with an attorney regarding its substance, no time or encouragement to verify the accuracy of its contents, no time or encouragement to verify the parties and no explanation of its contents by any of the producers, employees, and/or agents of the Corporate Defendants other than the false representation that it simply authorized filming of their dinner. The language relied upon so heavily by the Defendants in their arguments saying otherwise was affirmatively concealed from the Plaintiff.

Plaintiff provided no photographs, videos, or depictions of his name, likeness, or voice at any time, nor did he authorize them to utilize any such thing other than to film the private dinner described. Plaintiff, who does not watch reality television, had no reason to suspect the Defendants would purport to grant themselves the illegal and outrageous rights contained therein or to acquire and alter images depicting the Plaintiff. Plaintiff did not and would not consent or otherwise knowingly, willfully, or voluntarily agree to the Defendants' false, misleading, deceptive, and fraudulent portrayal of him in what was a concerted and coordinated effort by the Defendants simply to create dramatic material for consumption by the viewers of the "reality" show Southern Charm in the United States and worldwide. Plaintiff did not and would not consent to be subjected to such conduct while also being precluded from exercising his legal rights in a judicial forum.

The Defendants acknowledge that the court must determine the threshold issues of whether an agreement to arbitrate was formed and, if so, whether the agreement to arbitrate is

enforceable. (App. Initial Brief pp. 22-44). Defendants fail, however, to allege the trial court's decision was controlled by an error of law or abuse of discretion. Instead, Defendants simply argue at length their disagreement with the Plaintiff's allegations and the trial court's decision. All of the Defendants' various disagreements with the existence, nature, and weight of the evidence, however, are properly resolved not by the trial court on a motion to dismiss but by a jury.

Moreover, as discussed below, Plaintiff specific claims of fraud and fraudulent inducement of the arbitration provision of the Arbitration Agreement itself lead to the conclusion the purported "agreement to arbitrate" was never formed. Consequently, it is invalid and incapable of being either interpreted or enforced to compel the parties to arbitrate. "After all, one cannot 'interpret' an invalid contract." *Doe v. TCSC, LLC*, 430 S.C. 602, 609, 846 S.E.2d 874, 877 (Ct. App. 2020). Accordingly, the trial court's decision must be affirmed.

a. Disputed facts are not properly resolved through a motion to dismiss.

Defendants seem to believe the trial court, and now this Court, should simply adjudicate the case on the merits by resolving in Defendants' favor their various assertions that contradict Plaintiff's allegations regarding the representations made, the circumstances and timing of the representations, Plaintiff's own knowledge of the falsity of the representations, and even whether Plaintiff was entitled or justified in relying upon those false representations. Defendants simply declare Plaintiff's allegations to be false or egregiously misrepresent them in a desperate attempt

to avoid accountability for their conduct and the inescapable conclusion that an agreement was never formed. [10]

However, the determination of the parties state of mind, intent and justifiable reliance are material issues of fact. *See Epstein v. Howell,* 308 S.C. 528, 530, 419 S.E.2d 379, 381 (Ct.App.1992) ("issues of reliance and its reasonableness, going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the triers of the facts"); *Unlimited Servs., Inc. v. Macklen Enters., Inc.,* 303 S.C. 384, 401 S.E.2d 153 (1991) (general rule is that questions concerning reliance and its reasonableness are factual questions for the jury); *Starkey v. Bell,* 281 S.C. 308, 315 S.E.2d 153 (Ct.App. 1984)("issues of reliance and its reasonableness going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the trier of facts"); *Slack v. James*, 364 S.C. 609, 614 S.E.2d 636 (2005)(neither a merger clause, non-

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[10] A sample of the Defendants' mirepresentations include:

- "Prior to filming, the Release and Arbitration Agreement was handed to Plaintiff turned to first page." *See* App. Initial Brief, p. 12.; *cf* R. pp. 94-143, Am Compl. ¶¶ 48, 54, 170, 173, 188, 191, 209, 212 (alleging only the signature block was presented).

- "Plaintiff has not even alleged fraud, misrepresentation, duress, unfair surprise or unconscionability relating to the Arbitration Agreement itself." *See* App. Initial Brief, p. 23 fn 3.; *cf* R. pp. 94-143, Am. Compl. ¶¶ 47-56, 64, 74-75, 80-91, 99-104, 121-127, 141-145, 167-223 (alleging among other things fraud, fraudulent inducement, misrepresentation and unconscionability of the Arbitration Agreement and/or the arbitration provision itself).

- "he has not even alleged...that the governing law and exclusive venue provisions themselves were a product of fraud." *See* App. Initial Brief, p. 51 fn 3.; *cf* R. pp. 94-143, Am. Compl. ¶¶ 47-56, 64, 74-75, 80-91, 99-104, 121-127, 141-145, 167-223 (alleging among other things fraud, fraudulent inducement, misrepresentation and unconscionability of the Arbitration Agreement and/or the arbitration provision itself.

reliance clause, nor the parol evidence rule precludes one from proceeding on tort theories of negligent misrepresentation and fraud.); *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 770 (2011)(a future promise is fraudulent if it was part of a general design or plan existing at the time to induce the signing of a paper or to make one act as he otherwise would not have acted, to his injury, and "where one promises to do a certain thing, having at the time no intention of keeping his agreement, it is a fraudulent misrepresentation of a fact, and actionable as such...[E]ntering into an agreement, with no intention of keeping such agreement, constitutes fraudulent misrepresentation."); *Moseley v. All Things Possible, Inc.*, 395 S.C. 492, 719 S.E.2d 656 (2011)(whether reliance upon fraudulent statements was reasonable was question for factfinder because purpose of constructive notice doctrine is to protect innocent people, not those committing fraud).

A jury normally decides whether a contract exists when there is conflicting evidence. *See Small v. Springs Indus., Inc.*, 292 S.C. 481, 483, 357 S.E.2d 452, 454 (1987)(noting "a trial court should submit to the jury the issue of existence of a contract when its existence is questioned and the evidence is either conflicting or admits of more than one inference"). The proper resolution of the disputed facts set forth in Plaintiff's Amended Complaint is not for the court to determine through a motion to dismiss; it is the role of the factfinder. *Id; see also Stevens and Wilkinson of South Carolina, Inc. v. City of Columbia*, 762 S.E.2d 696, 701 (2014)("The existence of a contract is ordinarily a question of fact for the jury"); *Towles v. United HealthCare Corp.*, 338 S.C. 39, 524 S.E.2d 839 (Ct. App 1999).

Even under the FAA, a jury trial on the existence of an arbitration agreement is warranted when there are genuine issues of material fact regarding the parties' agreement. *See Berkeley*

County School District v. Hub International Limited, 944 F.3d 225 (4th Circuit 2019)(trial was required to determine whether school district was required to submit claims to arbitration in light of genuine issues of material fact as to whether district was aware of agreements that contained arbitration clauses)(applying South Carolina law); *Avedon Eng'g, Inc. v. Seatex,* 126 F.3d 1279, 1283 (10th Cir.1997); *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd.*, 1980, 636 F.2d 51 (P.A. 1980)(Party who is contesting the making of an arbitration agreement has the right to have the issue presented to a jury); *Hopkins v. New Day Financial*, 643 F.Supp.2d 704 (E.D.Pa.2009)(Fact issue on motion to compel arbitration warranted jury trial regarding substantive unconscionability under Pennsylvania law of provision of arbitration agreement); *Southside Internists Group PC Money Purchase Pension Plan v. Janus Capital Corp.*, 741 F.Supp. 1536 (N.D.Ala. 1990)(Jury trial is available on genuine factual questions related to validity of arbitration clause when one party moves to compel arbitration); 9 U.S.C.A. § 4 (1999)(stating the party alleged to be in default may demand a jury trial when the making of the arbitration agreement is at issue).

Thus, the Defendants' conclusory assertions in contradiction of Plaintiff's allegations do not support an argument that the trial court should be reversed; they reveal that resolution of these issues of fact must be adjudicated through a jury trial.[11] Accordingly, the trial court's denial of the Defendants' motion was without error and must be affirmed.

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[11] Defendants repeatedly reference Exhibit 3 (R. p. 159), a photograph of Plaintiff submitted in support of their motion, apparently arguing this photograph somehow negates the allegation that only the signature block was presented with the remainder of the document concealed from sight. It does not. The photograph submitted is not authenticated, does not identify who took the photograph, and does not identify exactly where or when the photograph was taken. Plaintiff already alleged he signed a document presented to him immediately before filming began. (R.

b. Plaintiff's fraud in the factum claims prevent finding a valid contract was formed.

Defendants argue in their brief that there exists "a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *See, e.g.* App. Initial Brief, pp. 13, 21 (citing *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013)). Satisfied this is all that is required of them, Defendants seem to argue the trial court simply should've rubber stamped their motion to compel arbitration simply because they showed a piece of paper that says "arbitration" on it. Defendants fail, as they did with the trial court, however, to actually address whether a valid and enforceable agreement to arbitrate was formed in the first place. Instead, they simply declare it to be so and flagrantly misrepresent to this Court that "Plaintiff has not even alleged fraud, misrepresentation, duress, unfair surprise or unconscionability relating to the Arbitration Agreement itself." *See* App. Initial Brief, p. 23. Such statements cause one to wonder if any of the Defendants have even read the Amended Complaint. *See, e.g.* R. pp. 94-143, Am. Compl. ¶¶ 47-56, 64, 74-75, 80-91, 99-104, 121-127, 141-145, 167-223.[12]

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pp. 105-106, Am. Compl. ¶¶46-54). Filming then began. *Id.* Thus, a photograph of him with what he purportedly signed proves nothing of any consequence. Nor does it negate the fact that when it was presented for signature, the remainder of the document was actively concealed. To the extent the photograph goes to those issues, they are clearly material issues of fact. Moreover, the fact Defendants thought it necessary to photograph Plaintiff holding the Arbitration Agreement is so baffling it leads one to reasonably conclude they knew they'd been lying to him, intended to continue lying to and about him, and needed to document his possession of an agreement that purports to grant them such rights.

[12] Defendants further allege "all of the alleged misrepresentations identified by Abruzzo go to future action." (App. Initial Brief p. 31). As demonstrated herein, that is not true. Even if it were, "where one promises to do a certain thing, having at the time no intention of keeping his agreement, it is a fraudulent misrepresentation of a fact, and actionable as such…[E]ntering into

In *Granite Rock Co. v. International Broth of Teamsters*, the Supreme Court explicitly addressed and rejected the idea that arbitration should be ordered when the evidence suggests the agreement to arbitrate hasn't been formed, is invalid, or is otherwise unenforceable:

> [Plaintiff] interprets some of our opinions...to require arbitration of certain disputes...based on policy grounds even where evidence of the parties' agreement to arbitrate the dispute in question is lacking. That is not a fair reading of the opinions, all of which compelled arbitration of a dispute only after the Court was persuaded that the parties' arbitration agreement was validly formed and that it covered the dispute in question and was legally enforceable. That some of our cases applying a presumption of arbitrability to certain disputes do not discuss each of these requirements merely reflects the fact that in those cases some of the requirements were so obviously satisfied that no discussion was needed...As we have explained, this 'policy' is merely an acknowledgment of the FAA's commitment to 'overrule the judiciary's longstanding refusal to enforce agreements to arbitrate and to place such agreements upon the same footing as other contracts.' Accordingly, we have never held that this policy overrides the principle that a court may submit to arbitration 'only those disputes ... that the parties have agreed to submit' ... We have applied the presumption favoring arbitration in FAA and in labor cases only where it reflects, and derives its legitimacy from, a judicial conclusion that arbitration of a particular dispute is what the parties intended because their express agreement to arbitrate was validly formed and (absent a provision clearly and validly committing such issues to an arbitrator) is legally enforceable and best construed to encompass the dispute."

561 U.S. 287, 300-03, 130 S.Ct. 2847, 2858-60 (2010).

In other words, while there is a federal policy favoring the enforcement and broad interpretation of arbitration agreements, parties cannot be forced to submit to arbitration if they have not agreed to do so, if the agreement to arbitrate is invalid, or if it is otherwise unenforceable. *Accord Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020); *John Wiley & Sons, Inc. v. Livingston,* 376 U.S. 543, 547, 84 S.Ct. 909 (1964) (stating that "a

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an agreement, with no intention of keeping such agreement, constitutes fraudulent misrepresentation." *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 770 (2011).

compulsory submission to arbitration cannot precede judicial determination" that there is a binding and valid contract creating a duty to arbitrate).

"Because an arbitration provision is often one of many provisions in a contract covering many other aspects of the transaction, the first task of a court is to separate the arbitration provision from the rest of the contract." *Doe v. TCSC, LLC*, 430 S.C. at 607, 846 S.E.2d at 876 (noting "[t]his may seem odd, but it is the law, known as the *Prima Paint* doctrine.")(citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–04, 87 S.Ct. 1801 (1967)(if fraudulent inducement claim went to the arbitration provision specifically, claim would be for court because such a claim goes to the "making" of the arbitration agreement).

A distinction, however, is drawn between misrepresentations that go only to the "inducement" and misrepresentations that go to the "factum" or "execution." Misrepresentations of the latter kind are "regarded as going to the very character of the proposed contract itself, as when one party induces the other to sign a document by falsely stating that it has no legal effect. Such a misrepresentation is said to go to the 'factum' or the 'execution.'" E. Farnsworth, Contracts § 4.10 (2d ed. 1990). Fraud in the factum is "the sort of fraud that procures a party's signature to an instrument without knowledge of its true nature or content." *Langley v. Federal Deposit Ins. Corp.*, 484 U.S. 86, 93, 108 S.Ct. 396, 402 (1987). It occurs "when a legal instrument as actually executed differs from the one intended for execution by the person who executes it." Black's Law Dictionary (11th Ed. 2019).

If the misrepresentation is of this type, then "there is no contract at all, or what is sometimes anomalously described as a void, as opposed to voidable, contract." *Id.* at 235; *see Restatement (Second) Contracts* § 163, comment a (if misrepresentation of character or

essential term of contract, "no effective manifestation of assent and no contract at all"). In such cases, at no time was there a contractual obligation between the parties. *Id.*

Such is the case here with the false representation that the document was mere formality whose only purpose was to begin filming. To understand why, it is essential to analyze the specific claims of fraud made here. *See, e.g.* R. pp. 94-143, Am Compl. ¶¶ 47-56, 64, 74-75, 80-91, 99-104, 121-127, 141-145, 167-223. Specifically, Plaintiff asserts the Corporate Defendants presented the Arbitration Agreement for his signature as a mere formality authorizing them to begin filming, and affirmatively concealed from him the contents of the document including the arbitration provision. *See, e.g.* R. pp. 94-143, Am Compl. ¶¶ 48, 54, 80-91. Where such a "fraud in the factum" is alleged, the *Prima Paint* notion of the severability of the arbitration clause has no application. If no agreement ever arose between the parties, there can be no severable agreement to arbitrate.

Regardless, even if the arbitration provision is separated out, the fraud in the factum allegations directed specifically to the arbitration provision itself render the arbitration provision itself incapable of being formed, much less enforced. *See, e.g.* R. pp. 94-143, Am Compl. ¶¶ 48, 54, 80-91, 167-223. The trial court thus correctly declined to compel arbitration because it cannot be said a valid and enforceable agreement to arbitrate has been formed. *Granite Rock Co. v. International Brotherhood of Teamsters*, 561 U.S. 287, 296, 301 (2010). ("It is similarly well settled that where the dispute at issue concerns contract formation, the dispute is generally for courts to decide.")(citing *Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440, 443-45, S.Ct. 1204, (2006)("courts treat an arbitration clause as severable from the contract in which it appears

and enforce it according to its terms *unless the party resisting arbitration specifically challenges the enforceability of the arbitration clause itself*")(emphasis added).

c. Plaintiff's fraudulent inducement claims prevent finding a valid contract was formed.

As discussed above, Plaintiff has specifically alleged fraudulent inducement of the "arbitration" provision contained in the "Arbitration Agreement." In deciding whether a valid, enforceable and irrevocable arbitration agreement exists, general principles of state contract law are applied. *First Options*, 514 U.S. at 944, 115 S.Ct. 1920. "When wrongs arise inducing a party to execute a contract and not directly from the breach of that contract, **the remedies and limitations specified by the contract do not apply**." *Johnson v. Key Equipment Finance*, 367 S.C. 665, 668, 627 S.E.2d 740 (2006)(emphasis added).

South Carolina refuses to enforce contracts based on fraudulent conduct because "a party should not retain the benefits of an agreement that he knowingly and *intentionally* entered into though deceptive means." *Maybank v. BB&T Corporation*, 416 S.C. 541, 577, 787 S.E.2d 498, 517 (2016). This is the consistent, unaltered, and binding law in South Carolina for more than 120 years. "Beyond the patent unfairness inherent in enforcing a contract induced through intentional fraud, giving legal effect to such a contract violates a fundamental principle of contract law: there must be a meeting of the minds. By its very nature, there can be no union of purpose where one party is intentionally deceiving the other through fraud." *Id.* at 577-78, 517 (citing *Metro. Life Ins. Co. v. Stuckey*, 194 S.C. 469, 470, 10 S.E.2d 3, 5 (1940)("It is true that contracts may be avoided based on fraud" and "it is at the option of the party to be affected by

the fraud whether or not he will treat the contract as void and rescind it")(citing *Levister v. Southern Railway Company*, 56 S.C. 508, 35 S.E. 207, 209 (1900)("fraud avoids all contracts")).

The intent of the Defendants and justifiable reliance by the Plaintiff is not affirmatively shown by the mere assertion by the Defendants, nor are these issues properly resolved in Defendants' favor pursuant to a motion to dismiss. Rather, these defenses must be pleaded by way of answer and proven at trial. *Branham v. Miller Elec. Co.*, 237 S.C 540, 547, 118 S.E.2d 167, 170-71 (1961)(when there is an assertion in motion to dismiss that conflicts with allegations of complaint, resolution by motion to dismiss is improper). Accordingly, the trial court correctly declined to compel arbitration.

III. THE ARBITRATION AGREEMENT IS UNENFORCEABLE.

To the extent this Court concludes there has in fact been an agreement to arbitration formed between the parties, which Plaintiff denies, the "Arbitration Agreement" is nevertheless unconscionable and unenforceable as a matter of law. Simply finding the parties minds met does not end the review because a contract may be invalid—and courts may properly refuse to enforce it—when it is unconscionable. *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020). A court may invalidate an arbitration clause based on defenses applicable to contracts generally, including unconscionability. *Id*; citing *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1426, 197 L.Ed.2d 806 (2017). An unconscionable contract is not a valid contract. *Id.*

a. The Arbitration Agreement is unconscionable.

Taken as a whole and individually, the "Arbitration Agreement" in essence purports to allow the Defendants to engage in any type of conduct whatsoever, including lying to and about

the Plaintiff and committing illegal acts or intentional torts against the Plaintiff, while purporting to prohibit Plaintiff from taking any action whatsoever to prevent or repair the harm caused or from even discussing the "Arbitration Agreement" with anybody, at any place, at any time, in perpetuity, and "throughout the universe." *See, e.g.* R. pp. 45-48, Arbitration Agreement, ¶¶ 1, 8-9, 10, 11, 12-15, 17; R. pp. 94-143, Am Compl. ¶¶ 167-223. The terms are so one-sided and oppressive that no reasonable person would make them, Plaintiff included, and no fair and honest person would accept them. It does not seek to limit the Defendants' liability. It purports to completely exculpate the Defendants as well as unknown and ambiguous third parties "associated" with the show from any claim by Plaintiff arising out of any conduct whatsoever, including illegal and intentional acts, throughout the entirety of time and the cosmos themselves. It would be egregious error for this court to enforce such a clause.

Even the Federal Arbitration Act (FAA) "imposes certain rules of fundamental importance, including the basic [contract] precept that arbitration 'is a matter of consent, not coercion.' " *Stolt–Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 681, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010) (internal citations omitted).

This lopsided Arbitration Agreement places Plaintiff at a stunning disadvantage, for an objective reading of the Arbitration Agreement means it forever immunizes not just the Defendants, but their employees, agents, and any unknown third party throughout the universe who may be "associated" with any of them from being brought into the public judicial system by Plaintiff. *See, e.g.* R. p. 46, Arbitration Agreement ¶ 17.[13] Because these provisions are patently

[13] Paragraph 17 of the Arbitration Agreement purports to release and exculpate unknown third parties "associated with the Program" for all claims of any kind, including intentional or criminal

illegal and unconscionable the Defendants' motion to enforce the terms of the "Arbitration Agreement" was correctly denied and the trial court's decision must be affirmed.

i. The entire document entitled "Appearance Release, Voluntary Participation, and Arbitration Agreement" is the purported agreement to arbitrate.

Defendants contend this Court is bound to reviewing solely the terms of paragraph 19 of the Arbitration Agreement in determining its validity. *See, e.g.* App. Initial Brief pp. 22, 42-43 This is not true. The South Carolina Supreme Court has looked outside the language of the arbitration clause to determine its enforceability. *See Simpson,* 373 S.C. at 27, 644 S.E.2d at 670 (noting the arbitration clause was unconscionable partly because Simpson did not possess the business judgment necessary to understand the implications of the arbitration agreement, and Simpson did not have a lawyer present when she signed the agreement).

Moreover, despite asserting this Court is bound to reviewing solely the terms of paragraph 19 of the Arbitration Agreement in determining its validity, the Defendants rely upon at least nine (9) enumerated provisions and one non-enumerated provision to prop up their various theories of enforceability (R. pp. 45-48, Arbitration Agreement ¶¶ 6, 8, 9, 12, 17, 19, 20, 21, 22, and the last non-enumerated paragraph) and include all named Defendants and all claims

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acts. The term "anyone associated with the Program" is undefined in the Arbitration Agreement, but has been defined as "to be connected to another party or business." *See* Black's Law Dictionary (11th Ed. 2019). It is so vague and ambiguous that it is unenforceable. Taking this definition to its logical, and absurd, conclusion would mean Plaintiff released almost anyone for any reason: a police department that provided inadequate security when filming, a restaurant where filming took place who violated fire code capacities, a cab company that provided transportation to the cast or crew and got into an accident, a kitchen appliance maker depicted on the show that produced a faulty and dangerous product, a catering service that gave everyone food poisoning or overserved alcohol, an advertiser who aired misleading promotions on the network...the list goes on.

in their motion to dismiss. By doing so, the Defendants impliedly acknowledge the intertwined nature of the Arbitration Agreement. As a result, the unconscionable portions of the arbitration provision cannot be severed from the remainder of the agreement.

By its very own title ("Appearance Release, Voluntary Participation and Arbitration Agreement"), the entire four-page document as a whole constitutes the "Arbitration Agreement." The provisions cross reference one another and the Defendants rely on multiple provisions in their effort to enforce the entirety of the "Arbitration Agreement." see e.g. R. pp. 46-47, ¶¶ 17 (release language), 19 (mediation & arbitration), 20 (forum selection clause), and 21(third party beneficiary). When arbitration agreements are intertwined like the "Arbitration Agreement" here, the Supreme Court has declared they should be read together as a whole. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48–49, 790 S.E.2d 1, 4 (2016)(arbitration clause found in one section of a contract was so "intertwined" with other sections that the entirety constituted the arbitration provision and declaring arbitration agreement unconscionable and thus unenforceable merely because it attempted to disclaim implied warranty claims and prohibit *any* monetary damages).

Enforcement of the arbitration provision alone would mean not only preventing the Plaintiff from seeking injunctive relief (thereby permitting the Defendants to defame and disparage the Plaintiff in perpetuity) (see R. p. 47, ¶ 19), but also from recovering *any* monetary damages (R. p. 46, ¶ 17) while at the same time expressly permitting the Defendants to not only be *entitled to* "injunctive and other equitable relief (without posting bond)" (R. p. 46, ¶12), expressly permitting Defendants to "record Plaintiff's actions and statements "via concealed or hidden cameras and audio devices...including in areas in which a person might have a reasonable expectation of privacy" (R. p. 46, ¶11), "use for any purpose whatsoever" information

about Plaintiff (R. p. 46, ¶12), and also subjecting Plaintiff to a mandatory penalty of at least $500,000 (R. p. 46, ¶ 12) and subjecting him to liability for indemnity, attorney fees and costs (R. p. 46, ¶ 17) for no reason other than attempting to seek a remedy for his wrongs.

Enforcement of the arbitration provision would further require it be held in New York, again in violation of South Carolina law and public policy. See S.C. Code 15-7-120(B). Moreover, by piggybacking the Individual Defendants and other non-parties to the scope of the arbitration provision, enforcement would mean those provisions of the "Arbitration Agreement" outside of the isolated arbitration provision itself would be given effect, including the illegal and unenforceable "release" of intentional torts as well as the unenforceable forum selection and choice of law provisions which were procured through fraud. This cannot be not be permitted.

ii. The Arbitration Agreement is procedurally unconscionable.

In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. *Simpson,* 373 S.C. at 25, 644 S.E.2d at 668. Whether one party lacks a meaningful choice in entering the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process. *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013) (quoting *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669).

Procedural and substantive unconscionability need not be present in the same degree. essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation that creates the terms in proportion to the greater harshness or unreasonableness of the substantive terms themselves. 15 Williston on Contracts § 1763A, at

226-27 (3d ed. 1972). In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa. *See also Farnsworth on Contracts* § 29.4 at 4-212 (2020-1 Supp.); *see Corbin on Contracts* § 29.4 at 388 (2002 ed.) (noting "most cases do not fall neatly" into categorical boxes). Unconscionability is gauged at the time the contract was made.

"In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668–69 (citing *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999)). The *Hooters* decision struck down an arbitration clause because it incorporated rules so "warped" and void of due process that any arbitration under them would have been a "sham." *Simpson* cannot be interpreted, however, to mean an arbitration clause can never be unconscionable as long as it points to a neutral forum. To do so would be to apply South Carolina general unconscionability law differently in the arbitration context than in others. Such discrimination would run afoul of one of the prime directives of the FAA: that courts must place arbitration contracts on par with all other contracts. *Doe v. TCSC* (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 447, 126 S.Ct. 1204 (2006) (noting § 2 is "the FAA's substantive command that arbitration agreements be treated like all other contracts"); *Prima Paint*, 388 U.S. at 404 n.12, 87 S.Ct. 1801 (FAA was passed "to make arbitration agreements as enforceable as other contracts, but not more so")).

A lack of a meaningful choice is often found when the dispute involves an adhesion contract. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365

(2001) (defining adhesion contracts as "standard form contract[s] offered on a take-it or leave-it basis with terms that are not negotiable"). While adhesion contracts are not unconscionable per se, courts tend to look upon them with "considerable skepticism" because they give rise to "considerable doubt that any true agreement ever existed to submit disputes to arbitration." *Id.* at 26–27, 644 S.E.2d at 669–70 (quotation marks omitted).

In determining whether a contract was "tainted by an absence of meaningful choice" to arbitrate, courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. *See Carlson v. General Motors Corp.*, 883 F.2d 287, 295 (4th Cir.1989). *See also Holler v. Holler*, 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct.App.2005)("A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case." (quoting 17A AM.JUR.2D *Contracts* § 279 (2004)).

Here, Plaintiff lacked a meaningful choice in his ability to negotiate the arbitration clause of the "Arbitration Agreement." There is no indication in the record that Plaintiff enjoyed a substantially stronger bargaining position against the Defendants than any other person appearing on Southern Charm, or that he was represented by independent counsel.[14] Moreover, Plaintiff was but a single person to a collection of corporations that produce and broadcast television shows throughout the United States and the world. Thus, the Plaintiff also not a

[14] See also R. pp. 94-143, Am. Compl, ¶¶ 182, 200, 221, among others, explicitly disavowing these things.

substantial business concern of the Defendants and did not comprise a large portion of the Defendants clientele, staff, or other business interest.

The Defendants acknowledge that Plaintiff was required to sign the "Arbitration Agreement" or they would not be able to film the dinner. Had he chosen not to, they would not have filmed. Given the entirely false and fraudulent depiction of Plaintiff actually aired on the show, there is no reason to believe that Plaintiff would have had any success in negotiating or bargaining over its terms. While discovery has not yet been conducted, the undersigned would not be surprised to learn that not one person in Plaintiff's position has successfully negotiated the terms of any "Arbitration Agreement" with the Defendants.

Further, given the non-negotiable Arbitration Agreement here, concealed from sight and sprung on Plaintiff's in the midst of a chaotic filming session, the false representation that it was a mere formality that authorized them to begin filming, and the Defendants' acknowledgement that they would not have filmed anything if Plaintiff did not sign, it is entirely reasonable to infer Defendants were in fact executing an orchestrated scheme to defraud him. He had already authorized the filming of the dinner, flown to Charleston, and underwent hours of preparation. The true purpose in having him sign the Arbitration Agreement, immediately before beginning, was to ostensibly grant Defendants the illegal and outrageous rights purportedly enforceable therein and provide cover for the Defendants to avoid culpability in the very jurisdiction where the fraud was perpetrated. This cannot be tolerated. Accordingly, a finding that Plaintiff lacked a meaningful choice in their ability to negotiate the "Arbitration Agreement" is warranted.

iii. The Arbitration Agreement is substantively unconscionable.

Finding a contract to be one of adhesion or procedurally unconscionable is merely the beginning point in the analysis of whether the contract is unconscionable. *Lackey v. Green Tree Financial Corp,* 330 S.C. 388, 395, 498 S.E.2d 898, 902 (Ct. App 1998). Here, neither Plaintiff, nor any rational person, could have reasonably contemplated that by authorizing the Defendants to film his dinner with his then girlfriend, that he somehow was authorizing them to lie, disparage, defame, depict him in a false or misleading fashion, intentionally harm, or otherwise cause him irreparable injury. It is inconceivable Plaintiff, or any other rational person, could have reasonably contemplated that he was somehow authorizing the Defendants to engage in any type of conduct whatsoever while simultaneously being bound to complete secrecy. It is inconceivable Plaintiff, or any other rational person, could have reasonably contemplated that, should he try to prevent or mitigate his loss resulting from the Defendants' conduct by seeking judicial relief, that he could not do so and rather must arbitrate – again in complete secrecy - the false, fraudulent, and intentional harm perpetrated upon him by the Defendants or that he would not be able to recover *any damages whatsoever.*

It is further inconceivable Plaintiff could have reasonably contemplated that, should he dare to seek injunctive relief to prohibit continued harm caused by such unforeseeable conduct, he would be prevented from doing so and subject to a liquidated damages penalty of $500,000.00, along with payment of fees and expenses incurred by the Defendants – the very tortfeasors who caused the harm in the first place.[15] It is inconceivable Plaintiff, or any other

[15] Where a liquidated damages provision is not based upon contemplated actual damages but is intended to provide punishment for breach of the contract, it is a penalty. *Moser v. Gosnell,* 334

rationale person, could have reasonably contemplated those severe restrictions and penalties, all while the Defendants simultaneously are permitted to continue to publish the false content on television and online, in perpetuity and throughout the universe.[16]

Plaintiff acknowledges the state and federal policies favoring arbitration, where many courts view severing the offending provision and otherwise proceeding with arbitration to be the preferred remedy for an unconscionable provision in an arbitration clause. However, the present case is distinguishable from those cases prescribing severability such that the invalidation of the "Arbitration Agreement" in its entirety is the more appropriate remedy.

First, the paragraph 19 of the Arbitration Agreement itself (R. p. 47) contains at least two unconscionable provisions (location of arbitration and lack of mutuality of remedies) while arbitration clauses examined by courts prescribing severability generally contained only one offending provision. *See e.g. Simpson,* fn 9 (citing *Kristian v. Comcast Corp.*, 446 F.3d 25 (1st Cir.2006) (severing a provision in an arbitration clause that prohibited the award of treble damages); *Safranek v. Copart, Inc.*, 379 F.Supp.2d 927 (D.Ill.2005)(severing a provision in an arbitration clause that violated Title VII by requiring each party to bear its own attorney's fees and costs); *Ex parte Celtic Life Ins. Co.*, 834 So.2d 766 (Ala.2002) (severing a provision in an arbitration clause that was void as a violation of public policy by prohibiting the award of punitive damages)).

S.C. 425, 432, 513 S.E.2d 123, 126 (Ct.App.1999). The stipulation will be deemed a penalty if it "is so large that it is plainly disproportionate to any probable damage resulting from breach of contract." *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002).

[16] *See generally* R. pp. 45-48, Arbitration Agreement, ¶¶ 1, 6, 8-9, 10, 11, 12-15, 17, 19-21; Am Compl. ¶¶ 167-223.

The provision prohibiting Plaintiff from seeking or obtaining injunctive relief contravene state statutory and common law remedies otherwise provided to Plaintiff.[17] Further, the term "dispute" in paragraph 19 is undefined, it is unlimited in duration and, it appears, in scope, and purports to mandate an unenforceable clause requiring a New York forum. The fact that the Defendants explicitly rely upon the "release" provision of paragraph 17 to bootstrap the Individual Defendants into arbitration, which purports to exculpate the Individual Defendants and unknown third parties from any claims for damages *of any kind, even for illegal or intentional acts*, at any time, ever, illustrates the true effect and intent behind their desire to compel arbitration. It is *not* geared towards achieving an "unbiased decision by a neutral decision-maker." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668–69. It is designed as an escape valve the Defendants wish to flee through in their attempt to avoid being held accountable to the

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[17] *See, e.g.* S. C. Code 39-5-50 (authorizing the court to issue orders and injunctions to restrain and prevent violations of the Unfair Trade Practices Act); *Shaw v. Coleman*, 373 S.C. 485, 645 S.E.2d 252 (Ct. App, 2007)(finding permanent injunction appropriate remedy for nuisance); S.C. Code § 15-43-30 (authorizing temporary injunction for abatement of nuisance); S.C. Code § 15-69-90 (authorizing order restraining defendant from damaging, concealing or removing property); *Grosshuesch v. Cramer*, 367 S.C. 1, 623 S.E.2d 833 (2005)(temporary injunction proper for action alleging fraud).

The deprivation of Plaintiff's right to seek injunctive relief is contrasted by the Defendants explicit statement that they are "entitled to injunctive and other equitable relief (without posting bond)" and "[Plaintiff] agree[s] to pay Producer and Network the sum of $500,000 per breach plus disgorgement of any income that I may receive in connection with any such breach as liquidated damages." See ¶ 12. Because the posting of a bond is mandatory for injunctive relief in South Carolina, this provision violates statutory law and is also unenforceable. *See, e.g. AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009); Rule 65(c), SCRCP ("Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue **except upon the giving of security by the applicant**, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.")

common and statutory laws and the public policy of the State of South Carolina despite fully availing themselves of those same laws and protections since they began filming Southern Charm in Charleston in 2013.

The magnitude of unconscionability that pervades the Arbitration Agreement would effectively operate to prevent Plaintiff from vindicating his statutory and/or common law rights, and bar Plaintiff from recovery on all *seventeen* causes of action. Such a result is exactly what the Defendants desire, and exactly what *requires* this Court to give significant consideration to a remedy in this situation that best serves the interests of public policy. *Simpson*, 373 S.C. 14, 644 S.E.2d 663, fn 9 (citing *Graham Oil Co. v. ARCO Prods. Co.*, 43 F.3d 1244, 1249 (9th Cir.1994)(noting that severance of illegal provisions is inappropriate when the entire arbitration clause represents an "integrated scheme to contravene public policy" (citations omitted)). "If illegality pervades the arbitration agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts, the judicial effort begins to look more like rewriting the contract than fulfilling the intent of the parties." *Booker v. Robert Half Intn'l Inc.*, 413 F.3d 77, 84–85 (D.C.Cir.2005)(citations omitted).

The remedy that best serves the interests of public policy in this case is clear: non-enforcement of the entire "Arbitration Agreement." Because the arbitration provision of paragraph 19 itself does not contain a severability clause, the Court cannot simply strike unconscionable provisions from this provision, it must strike the provision in its entirety. To red line the "Arbitration Agreement" would result in the Court rewriting it in its entirety, something it cannot do. *See Simpson*, 373 S.C. at 34, 644 S.E.2d at 673 (citing *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir.2003); (finding arbitration agreement wholly unenforceable

because of an "insidious pattern" of unconscionable provisions, and therefore "any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter")); see also *In re Cotton Yarn Antitrust Litig.*, 406 F.Supp.2d 585, 604 (M.D.N.C.2005)("[W]here, as here, multiple provisions of the arbitration clauses are inconsistent with Plaintiffs' ability to effectively vindicate their statutory rights ..., the Court finds that the better course of action in this case is to excise the arbitration clauses altogether."). Accordingly, the whole four-page "Arbitration Agreement" should be struck as unconscionable, and the trial court's decision affirmed in its entirety.

iv. S.C. Code 15-7-120(B)

The circumstances described herein and in Plaintiff's Amended Complaint illustrate the procedural and substantive defects involved in the fraudulent procurement of Plaintiff's signature in the first place. In addition to the fraudulent procurement of the arbitration provision itself, paragraph 19 of the Arbitration Agreement says, "all such proceedings will be conducted in the city of New York." This provision runs afoul, again, of South Carolina statutory law and public policy. S.C. Code § 15–7–120(B) reads:

> A provision in an arbitration agreement that arbitration proceedings must be held outside this State is not enforceable with respect to a cause of action, which, but for the arbitration agreement, is triable in the courts of this State. The enforceability of the remaining provisions of the arbitration agreement and the method of selecting a forum for the conduct of the arbitration proceedings is as provided in this title, the Federal Arbitration Act, and any applicable rules of arbitration.

As discussed above, this statute has been held to evidence a strong public policy statement by the State of South Carolina and a substantial right the arbitration provision purports to deprive from

the Plaintiff. It does not render any valid arbitration agreement unenforceable, it simply permits arbitrations to be held in South Carolina if the claims would otherwise be triable here. Accordingly, it is not preempted by federal law. *See, e.g. Zabinski v. Bright Acres Associates,* 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001)(explaining that state procedural rules that do not undermine the enforceability of an otherwise valid contract to arbitrate are not preempted as the FAA will preempt any state law that "completely invalidates the parties' agreement to arbitrate").

Tritech Elec. Inc. v. Frank M. Hall & Co., cited by the Defendants for the position § 15–7–120(B) is preempted by the FAA, is easily distinguishable. 343 S.C. 396, 400, 540 S.E.2d 864, 866 (Ct. App. 2000). First, for the reasons set forth above, state law governs the determination of the validity of the Arbitration Agreement when it is challenged. Second, in *Tritech*, the validity of the agreement to arbitrate was not at issue, yet the trial court held § 15-7-120 rendered the arbitration agreement unenforceable in its entirety. It of course does no such thing.

To the contrary, §15-7-120(B) specifically declares valid agreements to arbitrate to remain enforceable; the arbitration must simply occur within the State of South Carolina if otherwise proper. Further, § 15-7-120(C) states the section applies to all contracts generally. Thus, when read as a whole, § 15-7-120 is not substantive, nor does it invalidate any otherwise enforceable agreement to arbitrate. Rather, it simply authorizes venue in South Carolina for causes of action and arbitrations which would otherwise be properly adjudicated in South Carolina regardless of the type, substance, or nature of the contract in question. Accordingly, it

is proper to consider in the analysis of whether the Arbitration Agreement is invalid or unconscionable.

IV. ALL DEFENDANTS CANNOT COMPEL ARBITRATION.

Even if this court were to determine there has in fact been an agreement to arbitration formed between the parties which is valid and enforceable, which Plaintiff denies, the Arbitration Agreement would authorize only Defendant Haymaker to compel arbitration. "[T]he presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement *or to the identity of the parties who may be bound* to such an agreement." *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). Even the policy favoring arbitration "cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so." *Id.*

Whether an arbitration agreement may be enforced by or against nonsignatories, and under what circumstances, is an issue controlled by state law. *See Arthur Andersen LLP v. Carlisle,* 556 U.S. 624, 630–31, 630 n.5, 129 S.Ct. 1896, (2009) (observing state law is applicable to determine which contracts are binding and traditional principles of state law may permit a contract to be enforced by or against nonparties to a contract). South Carolina has recognized several theories that could enable nonsignatories to enforce arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel. *Malloy v. Thompson*, 409

S.C. 557, 561–62, 762 S.E.2d 690, 692 (2014).[18] Defendants presented none of these recognized grounds to the trial court, and present none of them of them now to this Court.

Instead, Defendants declare in conclusory fashion that all Defendants, including the Individual Defendants, are entitled to enforce the Arbitration Agreement because "South Carolina courts routinely allow non-contracting parties to enforce arbitration agreements when a plaintiff names both signatories and non-signatories in a lawsuit." (App. Initial Brief, p. 46). Incorporating and relying upon ¶¶ 17 and 21 of the Arbitration Agreement (R. pp. 46-47), Defendants further contend the Individual Defendants are therefore "Released Parties" and third-party beneficiaries entitled to enforce ¶ 19 of the Arbitration Agreement. See App. Initial Brief, p. 47 ("each of the Defendants is fully entitled to enforce the Arbitration Agreement, as well as other provisions").

Even assuming the Arbitration Agreement is valid and enforceable, which Plaintiff denies, a close reading of the Arbitration Agreement reveals the Individual Defendants cannot compel arbitration. The very first sentence of the Arbitration Agreement (R. p. 45) explicitly says it is one agreement between Plaintiff and Defendant Haymaker Media, Inc.:

> "[t]his is an agreement between [Plaintiff] and Haymaker Media, Inc. (including its licensees, successors and assigns, and each of their respective parents, subsidiaries, agents and affiliates, and each of their respective officers, directors, shareholders, employees, agents and representatives (collectively, the "Producer").

This sentence identifies the parties to the Arbitration Agreement as Plaintiff and Defendant Haymaker.[19] It is not alleged Defendants Bravo, NBC, or Comcast are licensees, successors, or

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[18] In *Malloy*, the Court noted that, in addition to the five theories enumerated above, some federal courts have also recognized that a third-party beneficiary of a contract containing an arbitration clause may be compelled into arbitration as a nonsignatory. *Malloy*, 409 S.C. at 562, 762 S.E.2d at 692.

assigns of Defendant Haymaker, nor are the Individual Defendants alleged to be employees or agents of any of the Corporate Defendants, their parents or subsidiaries (*see, e.g.* R. pp. 94-96, Am. Compl. ¶¶ 2-11), and the Defendants make no such claim.

"Released Parties" is defined in ¶ 17 as "Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program." (R. p. 46). Plaintiff alleges Defendants Bravo and Haymaker are owned in whole or part by Defendants NBC and Comcast. Thus, an objective reading of the Arbitration Agreement would include them as "Released Parties."

For the reasons set forth above, the identity of "anyone associated with the program" is so vague and ambiguous as to be unenforceable. If this is the case, the Individual Defendants would not fall within the definition of "Released Parties." Thus, they would not be third-party beneficiaries within the meaning of ¶ 21 who could be entitled to compel compliance with ¶ 19 of the Arbitration Agreement. Even if they all were "Released Parties" and therefore third-party beneficiaries, however, the explicit terms of ¶ 19 of the Arbitration Agreement do not entitle third-party beneficiaries to compel *arbitration*. The relevant language reads as follows:

> Where any dispute in connection with this agreement arises, **the parties** agree to first try to resolve such dispute through confidential mediation. If mediation is unsuccessful, then all disputes, including the scope or applicability of this agreement to arbitrate, shall be resolved by final and binding arbitration administered by JAMS or its successor ("JAMS") in accordance with its streamlined arbitration rules and procedures...**My agreement to mediate any and all disputes shall extend to the Released Parties.**

Arbitration Agreement ¶ 19 (emphasis added).

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[19] Defendant NBC is identified as the "Network" (Arbitration Agreement ¶ 1) but not as a "party" to the Arbitration Agreement.

The plain and obvious meaning of this provision is that the parties to the Arbitration Agreement (Plaintiff and Defendant Haymaker) are obligated to first mediate any dispute prior to arbitration. The agreement to *mediate* extends to the "Released Parties" but ¶ 19 says nothing of an agreement to *arbitrate* any dispute with anybody other than Defendant Haymaker, much less any "Released Parties." Such a glaring omission can only be interpreted to mean the parties intended to grant "Released Parties" the right to compel mediation, but not arbitration. "When the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." *Ellis v. Taylor,* 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). "The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Id.* Accordingly, even if this Court finds the Arbitration Agreement valid and enforceable, the only party to this litigation with any right to compel arbitration is Defendant Haymaker. Thus, the trial court's decision should be affirmed with that limited exception.

V. OTHER SUSTAINING GROUNDS

Plaintiff, as prevailing party in the trial court, may raise on appeal any additional reasons the appellate court should affirm the trial court's ruling, regardless of whether those reasons have been presented to or ruled on by the trial court, although basis for Plaintiff's additional sustaining grounds must appear in the record on appeal. *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. SCACR, Rule 220 (c). Accordingly, to the extent necessary, Plaintiff requests the court exercise its right to affirm the trial court's ruling on any ground appearing in the record including, but not limited to, the grounds set forth herein.

a. The Arbitration Agreement has been terminated.

Even if this court find the parties here had a meeting of the minds as to the essential and material terms of the Arbitration Agreement, it is silent as to the material element of its duration, making the contract terminable at will by either party upon reasonable notice to the other. *Doe v. TCSC*, (*citing Childs v. City of Columbia*, 87 S.C. 566, 572, 70 S.E. 296, 298 (1911)). The Supreme Court has held the initiation of a lawsuit is sufficient notice of the Plaintiff's termination and rescission of any agreement to arbitrate. *O'Quinn v. Beach Associates*, 272 S.C. 95, 249 S.E.2d 734 (1978)(citing 17A C.J.S. Contracts s 435, 17 Am.Jur.2d Contracts s 509 (commencement of lawsuit is sufficient notice of intent to rescind)).

Accordingly, the Plaintiff's filing and service of this lawsuit terminated any contract that existed between him and any of the Defendants, making the provisions therein no longer operative and unenforceable.[20]

CONCLUSION

For the reasons set forth herein, the trial court's decision should be affirmed in its entirety.

Respectfully submitted,

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[20] The Defendants statement of issues on appeal do not identify the formation of a valid agreement to arbitrate or the intertwined nature of the Arbitration Agreement as being presented for review. Accordingly, those issues are not properly preserved and Plaintiff further requests the court affirm the trial court's decision pursuant to SCACR Rule 208(b)(1)(B).

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Mt. Pleasant, South Carolina
Dated: May 18, 2021

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo, Respondent,

v.

Bravo Media Productions LLC, Haymaker Media, Inc., NBC Universal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Appellants.

CERTIFICATE OF COUNSEL

I certify that the **Amended Final Brief of Respondent** Joseph Abruzzo complies with Rule 211(b), SCACR.



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May 19, 2021

THE STATE OF SOUTH CAROLINA

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PROOF OF SERVICE

I certify that I have served the **Amended Final Brief of Respondent** on Appellants by emailing it to their attorneys of record as follows:

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May 19, 2021

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February 12, 2021

Via S.C. One Drive Filing & U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy
Civil Action No.: 2020CP1000472 (Charleston)
Carrier Claim No.: 170003678
MGC File No.: 21162.20001
Appeal No.: 2020-001095

Dear Ms. Kitchings:

Enclosed for filing please find the final Brief of Appellants and Reply Brief of Appellants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, along with Appellants' Proof of Service of same. A bound version of each is being placed in the U.S. Mail.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Aaron E. Edwards, Esq. (via Email & U.S. Mail)

THE STATE OF SOUTH CAROLINA
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STATUTES

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Although Plaintiff spends much of his Brief mischaracterizing various provisions of the Release and Arbitration Agreement that are unrelated to the Arbitration Agreement and speculating about Defendants' purported intent, certain facts are undisputed. Plaintiff chose to appear on a hit reality television show featuring "scandal" while romantically pursuing a cast member of that show during active filming. Prior to participating in filming, he voluntarily signed an Agreement setting forth the terms and conditions of his appearance on the Program, which contained a clear and conspicuous Arbitration Agreement requiring that Plaintiff mediate, and if necessary, arbitrate any claims relating to the Agreement or his appearance on the Program, in New York. Plaintiff now asks this Court to override well-settled precedent strongly favoring the enforceability of arbitration agreements based on his argument that he did not bother to read the Agreement.

Plaintiff's Brief relies on various unremarkable general propositions of law, generally outside of the arbitration context and often completely irrelevant, but he points to no case invalidating an arbitration agreement in circumstances that bear any similarity to the situation at hand. On the other hand, the District of South Carolina has recently enforced Defendants' substantially similar arbitration agreement with a different voluntary participant on *Southern Charm*, rejecting many of the same arguments that Plaintiff offers here. *See Ledwell v. Ravenel,* No. 2:19-2815-RMG, 2020 U.S. Dist. LEXIS 30534 (D. S.C. Jan. 2, 2020) (R. pp. 217-224). Defendants respectfully submit that this Court should do the same.

I. Initial Matters

First, the Circuit Court's Orders are immediately appealable. The cases cited by Plaintiff to the contrary, (Resp. Br. 5-6), go to typical "improper forum" disputes as

opposed to a motion to compel arbitration.[1] Indeed, Plaintiff relies on authority that clearly and unambiguously holds that denial of a motion to compel arbitration is immediately appealable. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) (denial of a motion to compel arbitration "is immediately appealable, even if interlocutory"). In addition, where an order involves an issue that is immediately appealable, all the matters decided in that order may be reviewed at the same time. *See Rice Hope Plantation v. S.C. Pub. Serv. Auth.*, 216 S.C. 500, 510-511, 59 S.E.2d 132, 135-136 (1950), *overruled on other gds, McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). Thus, the denial of Defendants' alternative argument regarding the forum selection clause is also properly before this Court.

Second, contrary to Plaintiff's arguments, in resolving a motion to compel arbitration, this Court is not required to accept as true Plaintiff's wholly unsupported factual assertions, especially where those conclusory allegations are unequivocally contradicted by evidence the Court is permitted to consider in resolving Defendants' Motion.[2] In other words, this Court is not required to suspend its common sense in order to accept frivolous, patently absurd and/or farfetched allegations and inferences.[3]

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[1] In a transparent attempt to avoid dealing with the merits of Defendants' arguments, Plaintiff repeatedly and erroneously asks this Court to treat Defendants' Motion as one for improper venue, rather than what it is and has always been—a motion to compel arbitration. Thus, Plaintiff's arguments that venue in Charleston County is proper based on contacts and residence pursuant to S.C. Code Ann. §§ 15-7-30 and 15-7-100 are wholly irrelevant.

[2] While Plaintiff asserts the Circuit Court applied the correct legal standards, and that Defendants failed to allege any error of law or abuse of discretion, neither the parties nor this Court knows what standard the Circuit Court applied since it only issued Form 4 orders without any findings of fact or legal rationale. In both the Circuit Court and this appeal, Defendants set forth multiple errors of law made by Plaintiff, which the Circuit Court may have adopted. (App. Br. 15-16, 20, 43, 44.) In any event, Plaintiff does not contest that this Court not only can but must decide this case entirely *de novo* and make its own findings of fact.

[3] *See Bridges v. United States*, No. 1:099-CV-4; 1:05-CR-244-1, 2009 U.S. Dist. LEXIS 42758 *5, 2009 WL 1035226 (M.D. N.C. April 15, 2009) ("the Court is not necessarily bound to accept [a

In addition, *Berkeley County School District v. Hub Int'l Ltd.*—upon which Plaintiff relies—explains that a court must accept as true facts that go to the "underlying dispute" between the parties, but must actually consider the evidence in determining whether an arbitration agreement exists. 944 F.3d 225, 234 (4th Cir. 2019) (explaining that when analyzing whether an arbitration agreement exists, a court is "obliged to employ a standard such as the summary judgment test," and "[i]n applying that standard, the court is entitled to consider materials other than the complaint and its supporting documents").[4] In the summary judgment context, "[i]t is well settled that the nonmoving party may not rely on mere allegations … but must present some evidence in the form of affidavits or otherwise in support of its proposition." *Board of Tr'ees for the Fairfield County Sch. Dist. v. State of S.C.*, 409 S.C. 119, 126, 761 S.E.2d 241, 245 (2014).

Plaintiff ignores the fact that, in most cases, "the court, rather than the jury, determines whether a valid arbitration agreement exists," and that a jury trial is warranted *only* where "there are genuine issues of material fact regarding the parties' agreement," and

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statement in a pleading] but can reject it if it is 'frivolous or patently absurd on its face'"), *citing Raines v. United States*, 423 F.2d 526 (4th Cir. 1970); *see also Campbell v. Ashland Credit Union*, No. 3:10-1341, 2011 U.S. Dist. LEXIS 112387 *8, 2011 WL 4597356 (S.D. W.Va. Sept. 30, 2011) (a court "need not credit conclusory allegations or draw farfetched inferences'"); *Electronics for Imaging, Inc. v. Coyle*, 340 F.3d 1344, 1349 (Fed. Cir. 2003) (in considering a motion to dismiss, a court must accept only "the uncontroverted allegations in the plaintiff's complaint as true"); *Liebl v. Mercury Interactive Corp.*, No. 06 C 5364, 2006 U.S. Dist. LEXIS 89814 *2, 2006 WL 3626764 (N.D. Ill. Dec. 12, 2006) ("In considering a motion to dismiss for improper venue, the court accepts all well-pleaded allegations as true, unless contradicted by the defendant's affidavits").

[4] Cases relied on by Plaintiff (Resp. Br. 21-22), *Epstein v. Howell*, 308 S.C. 528, 419 S.E.2d 379 (Ct. App. 1992; *Unlimited Servs. v. Macklen Enters.*, 303 S.C. 384, 401 S.E.2d 153 (1991); *Starkey v. Bell*, 281 S.C. 308, 315 S.E.2d 153 (Ct. App. 1984); *Moseley v. All Things Possible*, 395 S.C. 492, 719 S.E.2d 656 (2011), do not involve or address the standard applied to determine the existence of an arbitration agreement, and thus, are wholly inapposite. However, tellingly, *Granite Rock Co. v. Int'l Brotherhood of Teamsters*, 561 U.S. 287, 300 (2010), quoted at length (and somewhat misleadingly) by Plaintiff, makes clear that a court needs and is entitled to consider "evidence" regarding the existence of an arbitration agreement.

that he, as the party resisting arbitration, bears the burden of "produc[ing] some evidence to substantiate the allegations that the prevailing law would release him from a contractual obligation to arbitrate." *Towles*, 338 S.C. at 38 n.3, 524 S.E.2d at 844 n.3; *Oppenheimer & Co. v. Neidhardt*, 56 F.3d 352, 358 (2nd Cir. 1995) (the party opposing arbitration "may not rest on a denial but must submit evidentiary facts showing that there is a dispute of fact to be tried"); *Berkeley County*, 944 F.3d at 234 ("the court is obligated to conduct a trial under the Trial Provision" of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA") only "when a party unequivocally denies 'that an arbitration agreement exists,' and 'show[s] sufficient *facts* in support' thereof") (emphasis added); *Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 118 (2d Cir. 2012) ("a trial is warranted only if there exists one or more genuine issues of material fact regarding whether the parties have entered into such an agreement"); *Southside Internists Group PC Money Purchase Pension Plan v. Janus Cap. Corp.*, 741 F. Supp. 1536, 1538 (N.D. Ala. 1990) ("The party resisting arbitration has the burden of showing entitlement to a jury trial"). However, "[a] naked assertion … by a party to a contract that it did not intend to be bound by the terms thereof is insufficient to place in issue 'the making of the arbitration agreement' for purposes of Section 4" of the FAA. *See, e.g., Par-Knit Mills, Inc. v. Stockbridge Fabrics Co.*, 636 F.2d 51, 55 (3rd Cir. 1980).

Here, as discussed in detail in Defendants' opening Brief and below, there is no genuine dispute of material fact relating to the existence of an agreement to arbitrate because Plaintiff has failed to come forward with *any* evidence whatsoever, not even a sworn affidavit, to support his conclusory and internally inconsistent allegations.[5]

[5] For this reason, *Hopkins v. New Day Fin.*, 643 F. Supp. 2d 704 (E.D. Pa. 2009), which Plaintiff relies on, actually supports Defendants' position. In *Hopkins*, unlike here, the plaintiffs proffered sworn testimony, which was sufficient to raise a jury issue as to unconscionability.

Defendants, on the other hand, have proffered reliable evidence—which this Court is entitled to consider—that establishes the existence of a valid and enforceable Arbitration Agreement. (*See, e.g.*, R. pp. 153-159).

II. The Arbitration Agreement is valid and enforceable, and this Court should order the parties to arbitrate this dispute pursuant to its terms.

Although Plaintiff would like this Court to focus primarily on the forum selection provision of the Agreement (which provides an alternative basis for dismissal of Plaintiff's Amended Complaint), he has not established any basis to disregard the parties' valid and enforceable Arbitration Agreement. Plaintiff concedes, as he must, that the enforceability of the Arbitration Agreement (as well as the forum selection clause), must be considered separate and apart from the rest of the Agreement. *See, e.g.*, *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) ("Under the FAA,[6] an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole"), *citing Prima Paint Corp. v. Flood & Conklin Mgf. Co.*, 388 U.S. 395, 403-404 (1967); *2215 Fifth St. Assocs., LP v. U-Haul Int'l, Inc.*, 148 F. Supp. 2d 50, 55 (D. D.C. 2001) (the plaintiff "bears the burden of establishing duress or coercion, and 'fraud and overreaching must be specific to a forum selection [clause] in order to invalidate it'") (emphasis added). However, relying entirely on *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016), he asserts that the Arbitration Agreement is inextricably intertwined with several other separate provisions of

[6] While Plaintiff contends that he does not "stipulate" that the FAA applies, he has not disputed that the Agreement involves interstate commerce, nor has he disavowed his allegations that *Southern Charm* "has been airing on national and international television," and that the purportedly false and defamatory statements he alleges were "aired" or "published" on "national television." (R. pp. 102, 110-111, ¶¶ 31, 65, 66). Thus, the FAA governs this dispute.

the Agreement that he mischaracterizes and erroneously claims to be illegal.[7] Defendants have explained repeatedly why the significant factual differences between the arbitration agreement in *Smith* and the Arbitration Agreement at issue here render *Smith* inapposite, (App. Br. 43), and Plaintiff has not even attempted to counter those arguments. In short, contrary to Plaintiff's assertions, (Resp. Br. 31-33), the only reference in the Arbitration Agreement to any other part of the Agreement is the use of, to avoid redundancy, the defined term "Released Parties" from ¶ 17.[8] That falls far short of meeting the degree of intertwinement present in *Smith*, and Plaintiff has not proffered any authority to support his assertion that the use of a single previously defined term renders an arbitration agreement inextricably intertwined with the rest of the agreement.[9] There is none.

While Plaintiff purports to assert the Arbitration Agreement is unenforceable due to fraud, misrepresentation, duress, unfair surprise and/or unconscionability, the Amended Complaint plainly reveals that all of his arguments go to the entire Agreement, rather than the Arbitration Agreement itself. (*See* R. pp. 130-142, ¶¶ 169-184, 187-202, 205-222; *see also* ¶¶ 178, 183, 196, 217) (demonstrating that his theories of unconscionability and other

[7] For example, he ignores the fact that release of claims is limited by its own terms "to the maximum extent permitted by law." (*See, e.g.*, R. p. 154, ¶ 17). Thus, it does not and could not purport to release Defendants from illegal conduct.

[8] In an effort to misdirect the analysis, Plaintiff claims that Defendants rely on ten other provisions of the full Agreement "to prop up their various theories of enforceability." Leaving aside the fact that Plaintiff's assertion is demonstrably false, that is not the appropriate analysis. The analysis is whether the Arbitration Agreement incorporates and relies on other provisions of the Agreement, which are found to be illegal and so pervasive in and integral to the Arbitration Agreement that they are incapable of being severed. As set forth above, it does not. In addition, as set forth in Section II.D below, the issue of which Defendants are entitled to enforce the Arbitration Agreement is determined by case law, and is not dependent on the release.

[9] Plaintiff's arguments are inconsistent on this issue as well. Although he argues that the entire Release and Arbitration Agreement constitutes the Arbitration Agreement, for the purpose of severability, he limits the boundaries of the Arbitration Agreement to ¶ 19. (Resp. Br. 40) (arguing that that the Arbitration Agreement does not contain a severability clause because one is not contained in ¶ 19, even though ¶ 22 of the Agreement contains a severability clause).

challenges to the contract relate to the Agreement as a whole, and thus, are dependent on his erroneous argument that the Arbitration Agreement is "intertwined with the remainder of the document"). As was the case in *Buckeye Check Cashing, Inc. v. Cardegna*, here, "because respondent[] challenge[s] the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract," and challenges to the remainder of the Agreement "should … be considered by an arbitrator, not a court." 546 U.S. 440, 446 (2006).

A. The parties entered into a binding and enforceable Arbitration Agreement.

Without proffering any evidence whatsoever, not even a supporting affidavit, Plaintiff continues to paint himself as a hapless victim who, with "bright blinding lights shining on his face," was purportedly presented with a signature block, accompanied by alleged representations as to what he was signing, and that he signed what was represented to him to be a legal agreement governing his appearance on a reality television program, without reading it or attempting to negotiate it because he assumed he would not have any luck had he tried to negotiate it. Critically—and even accepting Plaintiff's farfetched and internally inconsistent allegations as true—all of Plaintiff's fraud, misrepresentation, mistake, duress and unfair surprise claims depend on him being entitled to rely on the Corporate Defendants' alleged statements concerning the document he signed which, as a matter of law, he was not. (App. Br. 24-34 (explaining why Plaintiff cannot establish justifiable reliance on any purported misstatement made by Defendants). Ignoring several of the arguments made by Defendants disproving justifiable reliance, Plaintiff suggests, without any explanation, that Defendants owed him a legal duty to disclose. (Resp. Br. 18 n.9). However, in contrast to *Jacobson v. Yaschik*, 249 S.C. 577, 155 S.E.2d 601 (1967),

no fiduciary relationship of any kind existed between Plaintiff and the Corporate Defendants.[10] Indisputably, Plaintiff is a well-educated, sophisticated former Florida politician who, at the time in question, was the "director of government relations for a major law firm in Florida." (R. pp. 96-102, ¶¶ 12-29). The Corporate Defendants had no obligation to "encourage" Plaintiff to read the Agreement before signing it—(*see* Resp. Br. 19)—it was an arm's-length business transaction and he is neither uneducated nor a child. Nor were the Defendants under any "duty to disclose" any facts to Plaintiff—particularly facts that would have been readily apparent to him had he satisfied his legal obligation to read the contents of the three-page document he was signing—or at least the single paragraph constituting the Arbitration Agreement.[11] *See Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 39-40, 340 S.E.2d 786, 789-790 (1986) ("every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it").[12] Thus, assuming, solely for the sake of argument, that he did not read the clear and conspicuous terms of the Arbitration Agreement prior to signing, that fact does not establish unfair surprise or

[10] *Jacobson* found a duty to disclose where "officers and directors of a corporation stand in a fiduciary relationship to the individual stockholders." 249 S.C. at 584-585, 155 S.E.2d at 605. No such fiduciary relationship exists here, and Plaintiff does not even attempt to explain how (because he cannot) a single business transaction involving a voluntary appearance on a reality show creates a relationship of trust and confidence between him and the Corporate Defendants.

[11] Plaintiff does not claim (nor could he) that he asked Defendants for additional time to review the contents of the Agreement or to consult with counsel, let alone that he asked and was denied.

[12] *See also Tetrev v. Pride Int'l, Inc.*, 444 F. Supp. 2d 524, 530 (D. S.C. 2006) (even assuming the drafting party "made false representations" regarding a contract, the other party has "no right to rely on them when the truth of these representations [would] have been evident by an inspection of the contract"); *Southside Internists Group*, 741 F. Supp. at 1539 ("absent a showing of fraud or mental incompetence, a person who signs a contract cannot avoid his obligations thereunder by showing he did not read what he signed").

provide any other basis to set aside the parties' agreement to arbitrate.[13]

Plaintiff's arguments regarding the purported absence of a "meeting of the minds" also fail. *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893-894 (1989), and other contract cases relied on by Plaintiff, (Resp. Br. 17), none of which involves an arbitration agreement, are readily distinguishable. For example, in *Player*, the purported modification to a written contract leasing real property was entirely oral, prompting the Supreme Court to explain that there can be no meeting of the minds "based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known." 299 S.C. at 105, 382 S.E.2d at 894. Here, the purpose and intent of the parties is clearly reflected in the terms of the Arbitration Agreement, which are unambiguous, conspicuous and in writing.

Plaintiff's newly proffered "fraud in the factum" argument also fails. First, *Langley v. FDIC*, 484 U.S. 86 (1987), cited by Plaintiff, holds that representations going to future actions do not serve as defenses against a contract because they are "promissory in nature." 484 U.S. at 89. Most, if not all, of Plaintiff's allegations regarding fraud and misrepresentation go to future actions or events, and thus, cannot serve as a basis to disregard the parties' agreement to arbitrate. (*See* App. Br. 31-32).

Second, pursuant to *South Carolina Pub. Serv. Auth.*, fraud in the factum consists of "ineffective assent to the agreement," and "there must be an allegation of fraud in the inducement of the arbitration agreement to avoid arbitration of the contract itself." 312 S.C. at 562, 437 S.E.2d at 24. Indeed, the South Carolina Supreme Court has joined other

[13] In fact, the evidence shows that he read the entire Agreement prior to signing and even asked for clarification about Paragraph 5 of the Agreement. (R. pp. 157-158, ¶¶ 8, 9, 10).

jurisdictions that hold that "the *Prima Paint* doctrine is not limited to rescission based on fraudulent inducement but extends to all challenges to a contract," including charges of fraud in the factum. *Id.* Here, Plaintiff's allegations of fraud and misrepresentation go exclusively to the entire Agreement, and not to the Arbitration Agreement separate and apart from the rest of the Agreement, and thus, Plaintiff's fraud in the factum argument fails for this reason too.

Finally, under South Carolina law, Plaintiff cannot establish the elements of fraud in the factum. *See, e.g.*, *Green v. Sparks*, 232 S.C. 414, 428, 102 S.E.2d 435, 442 (1958) ("fraud in the factum … relates to the matter of the manual signing of the paper, and if the plaintiff at the time [he] signed it had sufficient mental capacity to understand what [he] was doing, then there was no fraud in the factum"). Plaintiff has not even alleged that he was ignorant, illiterate, drugged or unconscious at the time he signed the Arbitration Agreement. He simply and inconsistently alleges that he was handed the Arbitration Agreement with only the signature block showing, which he knew was a legal agreement governing the terms of his appearance on a reality television show, but he does not allege that he lacked mental capacity to understand that he was signing it, or that he was prevented from reading the agreement or, in fact, that he even asked for additional time to read it prior to signing. It also should be noted that his strategically revised allegation is plainly false. R. p. 159 is objective indisputable proof that Plaintiff could see, at a minimum, the third page of the Agreement, which contains the full Arbitration Agreement.[14] Thus, there is no

[14] Plaintiff's attempt to avoid what R. p. 159 clearly proves is nothing more than a belated effort to persuade this Court to disbelieve obvious and indisputable evidence over his entirely unsupported insinuations and arguments. First, Morgan Miller's affidavit specifically attests that R. p. 159, (Exhibit A to her affidavit), the photo of Abruzzo holding up the Release and Arbitration Agreement, was "taken of Plaintiff Joseph Abruzzo immediately after signing" the Agreement, and that the Program's Producers "routinely photograph participants immediately after they sign an

genuine issue of material fact relating to fraud in the factum (or any other issue in dispute).

Nor can Plaintiff prove fraud in the inducement of the Arbitration Agreement for all the reasons set forth in Defendants' opening Brief. In sum, Plaintiff cannot prove he reasonably relied on any representations purportedly made to him—whether they addressed existing facts or future promises. *See Turner v. Milliman*, 392 S.C. 116, 122-123, 708 S.E.2d 766, 769 (2011) (setting forth the elements required to prove a claim for negligent misrepresentation and for fraud including, in both instances, justifiable reliance); *Regions Bank v. Schmauch*, 354 S.C. 648, 673, 582 S.E.2d 432, 445 (Ct. App. 2003) ("one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering into a written contract must read it and avail himself of every reasonable opportunity to understand its content and meaning"). Here, Plaintiff owed himself, Defendants and the public the duty to read the contents of the Agreement—or at least the Arbitration Agreement—prior to signing it. *Burwell*, 288 S.C. at 39-40, 340 S.E.2d at 789-790; *Tetrev*, 444 F. Supp. 2d at 530. For that reason, all of the cases on which Plaintiff relies, (Resp. Br. 21-22), are inapposite since none involves a situation in which the truth was readily ascertainable by reading the contract.[15] In fact, *Moseley* confirms that "one cannot rely upon misstatement of facts, if the truth is easily within its reach." 395 S.C. at

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appearance agreement so that they can readily identify participants later if needed." (R. p. 158, ¶ 12). Plaintiff has submitted no evidence to the contrary. Second, none of Plaintiff's arguments regarding R. p. 159 contradict the primary and critical point for which it was offered—that Plaintiff could see all of the last page of the Agreement, including all of the Arbitration Agreement.

[15] *See Epstein* (misrepresentation as to whether payroll and FICA taxes had been paid could have been discovered only by examining bank statements and books prior to sale); *Macklen* (oral misrepresentation outside of any contract as to whether road access to restaurant would be maintained); *Starkey* (misrepresentation regarding profit/loss numbers for sale of restaurant that had been "doctored" and were not part of the contract); *Moseley* ("fraud in connection with a real estate transaction, where the truth" was "discoverable in the public records").

496, 719 S.E.2d at 658, *quoting O'Shields v. Southern Fountain Mobile Homes, Inc.*, 262 S.C. 276, 282, 204 S.E.2d 50, 52 (1974).

Finally, Plaintiff's fraud claims fail, even as alleged (and accepting them as true), because all of his fraud claims must be proven by clear and convincing evidence, *Turner*, 392 S.C. at 124-125, 708 S.E.2d at 770; *Moseley*, 395 S.C. at 496, 719 S.E.2d at 658 (proof of fraud "must be by clear, cogent and convincing evidence"), *quoting Kiriakides v. Atlas Food Sys. & Servs., Inc.*, 343 S.C. 587, 594, 541 S.E.2d 257, 261 (2001), a standard he falls far short from meeting. Here, he has not proffered even an affidavit or any other objective evidence supporting his fraud (or any other) allegations.

On the other hand, Defendants have supported their position with sworn affidavits and other objective evidence, (R. pp. 204-216), whereas Plaintiff has proffered nothing but insufficient naked assertions denying the existence of an agreement to arbitrate. In sum, Plaintiff has fallen far short of meeting his burden to show sufficient facts to entitle him to a jury trial on the existence of an arbitration agreement, let alone to release him from his contractual obligation to arbitrate.

B. Plaintiff cannot show the Arbitration Agreement is procedurally unconscionable.

Plaintiff cannot satisfy the exacting standard required to establish the Arbitration Agreement is procedurally unconscionable. Although Plaintiff relies heavily on *Hopkins*, the facts of that case are in stark contrast to the instant case, where the only consequence Plaintiff would have faced had he not signed the Arbitration Agreement was that his dinner with his then-girlfriend would not have been filmed. In contrast, in *Hopkins*, the plaintiffs testified that defendant New Day made clear to each of them that they would lose their jobs immediately if they did not sign the arbitration agreements. 643 F. Supp. 2d at 718. Plainly,

the loss of one's livelihood bears no resemblance to not having a dinner filmed for a reality television program.

Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007), does not compel a different conclusion, and Plaintiff's attempts to compare his situation to that of the plaintiff in *Simpson* actually highlight the stark differences in terms of the consequences associated with declining to sign the contract at hand. Like the plaintiff in *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020), the plaintiff in *Simpson*, was purchasing "a vehicle intended for use as Simpson's primary transportation, which is critically important in modern day society." 373 S.C. at 27, 644 S.E.2d at 670. In contrast to the loss of livelihood as in *Hopkins* or of an automobile intended for use as primary transportation (which in turn would impact the plaintiff's ability to maintain a job and accomplish other necessities of life) as in *Doe* and *Simpson*, respectively, here, Plaintiff entered into the Arbitration Agreement in order to have a dinner with his then-girlfriend filmed for possible inclusion on a nationally-broadcast reality television show. Plainly, appearing on a reality television show as an unpaid voluntary participant is not "critically important in modern day society." As a result, Plaintiff cannot show either that the Arbitration Agreement is a contract of adhesion[16] or that the circumstances of its execution were so oppressive as to rise to the level of procedural unconscionability.

Additionally, unlike the plaintiff in *Simpson*, here, Plaintiff is a sophisticated and influential former Florida State Congressman who, at the time, was employed as the "director of government relations for a major law firm in Florida." In light of that, *inter*

[16] In any event, as explained in Defendants' opening Brief, even if an agreement is considered a contract of adhesion, a party seeking to avoid its contractual obligations still must establish procedural and substantive unconscionability. (App. Br. 35, 38).

alia, Plaintiff cannot satisfy the standard established by the case law he relies on, which instructs that courts "should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with facts such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract." *Gladden v. Boykin*, 402 S.C. 140, 145, 739 S.E.2d 882, 884-885 (2013).[17] As was the case in *Gladden*, where the plaintiff was educated and "directly engaged in sophisticated negotiations" with the defendant, 402 S.C. at 146, 739 S.E.2d at 885, here, Plaintiff cannot plausibly allege he lacks the education to understand the terms of a contract or to protect his own interests. Indeed, he alleges he successfully negotiated circumstances of his appearance on *Southern Charm*, (R. p. 104, ¶ 43), on which he was eager to appear. (R. p. 157, ¶ 7).

None of the other cases cited by Plaintiff bear any resemblance to the circumstances at hand here. Plaintiff was on notice of the clear and conspicuous Arbitration Agreement, (R. pp. 157-158, ¶¶ 8, 9, 10) (R. p. 159), and plainly had not only the ability but also the duty to read the papers prior to signing. *Burwell*, 288 S.C. at 39-40, 340 S.E.2d at 789-790. Thus, Plaintiff cannot satisfy his burden of establishing procedural unconscionability.

C. Plaintiff cannot show the Arbitration Agreement is substantively unconscionable.

Nor can Plaintiff establish that the Arbitration Agreement is substantively

[17] Plaintiff cites solely to the Dissent in *Gladden* without indicating this fact to the Court. There, the Majority found that the contract was *not* procedurally unconscionable, 402 S.C. at 146, 739 S.E.2d at 885, even though according to the Dissent, "[t]he parties clearly did not have equal bargaining power," the contract was not even presented to the plaintiff until after the home inspection had been performed, and the limitation of liability clause at issue in the case was not highlighted in any way. 402 S.C. at 148, 739 S.E.2d at 886 (Beatty, J., dissenting).

unconscionable. As Plaintiff concedes and as explained in detail above, an arbitration clause is separable from the contract in which it is embedded, and the issue of its validity is distinct from the substantive validity of the contract as a whole, the latter issue being determined by the arbitrator. *Buckeye Check Cashing*, 546 U.S. at 446 (challenges to the contract as a whole "should … be considered by an arbitrator, not a court"). Fatally, Plaintiff's arguments regarding substantive unconscionability turn exclusively on provisions of the Agreement as a whole (provisions he mischaracterizes) that are separate and apart from the Arbitration Agreement, ignoring the provisions of the Arbitration Agreement itself except for the exclusive New York venue provision, which is addressed below.[18] The provisions that he claims "are so one-sided and oppressive that no reasonable person would make them … and no fair and honest person would accept them," (Resp. Br. 30), are not part of the Arbitration Agreement, both by the terms of the Arbitration Agreement and its operation. As explained above, (Section I), the sole reference in the Arbitration Agreement to any other portion of the Agreement is the use of a term defined earlier in the Agreement for the sake of avoiding redundancy. Plaintiff has not and cannot point to any case in which such a minimal and inconsequential reference led to a finding that an arbitration agreement was inextricably intertwined not only with the provision containing the defined term but also several other separate provisions of a larger agreement. Defendants respectfully submit that this Court should not be the first.[19]

[18] For this reason, Plaintiff effectively concedes that the Arbitration Agreement itself is not substantively unconscionable.

[19] The fact that Plaintiff spends so much of his Brief trying to distract from the relevant analysis by mischaracterizing the effect of other completely unrelated provisions of the Agreement in inflammatory language is telling. And his claims that the terms of the Agreement "are so one-sided and oppressive" that "no fair and honest person would accept them" is directly belied by the fact that not only do hundreds of voluntary participants on *Southern Charm* and other shows routinely sign them (after actually reading and, often, successfully negotiating their terms), but courts,

Here, enforcement of the Arbitration Agreement would mean only that the parties resolve their underlying dispute, including the scope of any release of claims, in an arbitral forum as they agreed to do, as opposed to in court. *See, e.g., Graham Oil Co. v. ARCO Prods. Co.*, 43 F.3d 1244, 1247 (9th Cir. 1994) (arbitration provision "constitutes nothing more than an agreement to substitute one legitimate dispute resolution *forum* for another and involves no surrender of statutory protections or benefits"); *Southside Internists Group*, 741 F. Supp. at 1539 ("there is nothing inherently unfair or oppressive about arbitration clauses"). And, a fair and neutral arbitrator from a well renowned arbitration association will determine whether other parts of the Agreement are unconscionable or not.

In their opening Brief, Defendants explained why Plaintiff's arguments about mutuality of remedies does not establish substantive unconscionability under well settled case law. (App. Br. 34, 41-42). While the Arbitration Agreement grants only the Corporate Defendants the right to seek injunctive relief in certain limited circumstances, Plaintiff completely ignores authority repeatedly cited by Defendants finding that such provisions do not evidence unconscionability under the circumstances present here.[20]

Not only does Plaintiff fail entirely to respond to that case law, but he argues, without foundation, that enforcement of the Arbitration Agreement would preclude him from recovering "*any damages whatsoever*." (Resp. Br. 32, 37, 39). As explained above,

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including South Carolina federal district courts, also have enforced their terms. *See, e.g.*, *Ledwell*, 2020 U.S. Dist. LEXIS 30534. (R. pp. 217-224).

[20] *See Higgins v. Superior Court*, 140 Cal. App.4th 1238, 1254 n.12, 45 Cal. Rptr.3d 293, 305 n.12 (Cal. Ct. App. 2006) ("the fact that the injunction provision is one-sided does not necessarily mean that the clause is substantively unconscionable," but that any "'business realities' creating the special need, must be explained in the terms of the contract or factually established"); *Kaufman v. Sony Pictures TV, Inc.*, Civ. No. 16-12027-LTS, 2017 U.S. Dist. LEXIS 112938, at *19 (D. Mass. July 20, 2017) (enforcing, in the reality television context, arbitration clause with a one-sided injunctive relief provision because it "spell[ed] out the 'legitimate commercial need' for the lopsided provision").

the release of claims—upon which he relies for this argument—by its own terms, releases claims only "to the maximum extent permitted by law." Thus, for example, if Plaintiff were able to prove in an arbitration that he was injured as a result of Defendants' illegal conduct, no provision of the Agreement would preclude him from recovering money damages. Nor would it preclude the recovery of unwaivable statutory damages. (Resp. Br. 39).

Plaintiff's other arguments regarding substantive unconscionability fail for several reasons. The stark contrast between the Arbitration Agreement in this case and those at issue in *Graham Oil*, *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933 (4th Cir. 1999), *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165 (9th Cir. 2003), and *Hopkins*, all cited by Plaintiff, demonstrate the fatal failings of Plaintiff's substantive unconscionability arguments. In *Graham Oil*, the arbitration agreement *itself* barred, without exception, certain relief granted to franchisees under the Petroleum Marking Practices Act, 15 U.S.C. §§ 2801-2806, including the right to exemplary damages, the right to recover reasonable attorneys' fees, and the right to a one-year statute of limitation. 43 F.3d at 1247-1248. In *Hooters*, instead of adopting neutral arbitration rules such as those promulgated by the AAA and JAMS, the arbitration agreement itself reserved to Hooters the right to draft the arbitration rules which were "egregiously unfair" and were "so one-sided that their only possible purpose is to undermine the neutrality of the proceeding." 173 F.3d at 938. The *Ingle* arbitration agreement was contained in Circuit City's employment application form (and thus agreeing to arbitration was a condition of even applying for paid employment) and itself contained provisions limiting only the plaintiff (but not Circuit City) to arbitration, altered the statute of limitations, prohibited class actions, imposed filing fees or cost-splitting, and reserved a "unilateral power to modify or terminate the arbitration

agreement" to Circuit City. 328 F.3d at 1172-1173. The arbitration agreements under consideration in *Hopkins* deprived the plaintiffs of their statutory right to participate in a class action, and granted access to the courts only to the employer. 643 F. Supp. 2d at 719.

Here, in contrast, both parties are bound to arbitrate under the same rules in a fair and neutral forum. Plaintiff has not and cannot show that the Arbitration Agreement is geared toward achieving a biased and egregiously unfair result like the provisions at issue in *Graham Oil*, *Ingle*, *Hooters*, and *Hopkins*. In addition, Plaintiff's repeated denigration of the arbitral process, (Resp. Br. 37, 39-41), both flies in the face of decades of case law strongly favoring the enforcement of arbitration agreements and demonstrates Plaintiff's basic misunderstanding of the process and concepts involved. *Graham Oil Co.*, 43 F.3d at 1247 (arbitration is favored by the courts and "constitutes nothing more than an agreement to substitute one legitimate dispute resolution *forum* for another and involves no surrender of statutory protections or benefits"); *Booker v. Robert Half Int'l, Inc.*, 413 F.3d 77, 82 (D.C. Cir. 2005) (noting the U.S. Supreme Court has condemned the "suspicion of arbitration" as "far out of step with our current strong endorsement of … this method of resolving disputes").

In re Cotton Yarn Antitrust Litig., 406 F. Supp. 2d 585 (M.D. N.C. 2005), relied on by Plaintiff, actually supports Defendants' position. In *In re Cotton*, the district court decision was vacated and remanded by the Fourth Circuit, which found the plaintiffs failed to establish that the arbitration provisions at issue there were unconscionable. *Atlantic Textiles v. Avondale Inc., (In re Cotton Yarn Antitrust Litig.)*, 505 F.3d 275, 277, 286-287 (4th Cir. 2007).[21] In doing so, the Fourth Circuit instructed that the burden of proving that

[21] It seems as though Plaintiff may have copied and pasted language from *Simpson*, including the citation to *In re Cotton Yarn*, without actually reviewing *In re Cotton Yarn* or its procedural history.

an arbitration provision "would preclude [plaintiffs] from effectively vindicating their statutory rights … is a substantial one" and "proof must be concrete, not merely speculative." *Id.* Plaintiff has not and cannot meet this high burden.

Finally, the Arbitration Agreement does not violate South Carolina public policy because it contains a mandatory and exclusive forum selection provision, directing that mediation and arbitration "will be conducted in the City of New York," as Defendants already have addressed. (App. Br. 44). Because the FAA plainly governs this dispute and mandates that arbitration agreements be treated on the same footing as other contracts, and given that the continued viability of state statutes invalidating forum selection clauses, as S.C. Code § 15-7-120(A) purports to do, is in serious doubt, *Albemarle Corp. v. Astrazeneca UK Ltd*, 628 F.3d 643, 652 (4th Cir. 2010) (no evidence that S.C. Code Ann. § 15-7-120(A) "manifests a strong public policy of South Carolina"), a state statutory provision invalidating forum selection clauses in arbitration agreements, as S.C. Code 15-7-120(B) purports to do, is equally doubtful. This Court's ruling in *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 400, 540 S.E.2d 864, 866 (Ct. App. 2000) (the "trial court erred by applying § 15-7-120 to the arbitration clauses *sub judice* because state law is preempted by the [FAA] under [similar] circumstances presented by this action. Where a contract evidencing interstate commerce contains an arbitration clause, the FAA preempts conflicting state arbitration law"), is controlling and a failure to enforce the Arbitration Agreement based on S.C. Code § 15-7-120 would be reversible error.

In sum, Plaintiff offers nothing but naked and flatly disproved assertions of fact and general, and often irrelevant, conclusions of law. He points to no case from any jurisdiction

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The South Carolina Supreme Court's decision in *Simpson* was issued months prior to the Fourth Circuit decision overturning *In re Cotton Yarn.*

invalidating an arbitration agreement on even remotely similar facts. On the other hand, Defendants draw this Court's attention to *Ledwell*, where the South Carolina federal district court recently enforced a substantially similar arbitration agreement, rejecting similar arguments made by a different voluntary participant on *Southern Charm* against the Corporate Defendants, where the voluntary participant signed the agreement while working as a nanny for a cast member and had significantly less education and influence than Plaintiff. (R. pp. 217-224). Defendants respectfully submit that this Court also should find that Plaintiff has failed to show substantive unconscionability or to otherwise meet his high burden to avoid his agreement to arbitrate.

D. Plaintiff's Claims against all Defendants are subject to the Arbitration Agreement.[22]

Plaintiff's claim that only Haymaker is entitled to enforce the Arbitration Agreement is meritless. As set forth in detail in Defendants' opening Brief, (App. Br. 37-39), each of the Defendants is expressly included within the definition of "Released Parties"[23] and are also "express intended third-party beneficiaries" of the Agreement who have "full standing to enforce each, every, any and all of its provisions as if it was an express party thereto."[24] (R. pp. 154-155, ¶¶ 17 & 21).

In any event, Plaintiff completely fails to address the well-settled authority cited by Defendants providing non-signatories may compel arbitration when a plaintiff names both

[22] Plaintiff's asserts that Haymaker is owned by NBCUniversal and Comcast. That is not true. (R. pp. 161-162).

[23] For the reasons set forth above, the use of a single previously defined term to avoid redundancy does not warrant a finding that the Arbitration Agreement is inextricably intertwined with the release of claims, let alone several other entirely unrelated provisions of the Agreement.

[24] As the Network that broadcasts the Program (and its indirect parent corporations), and cast members of the Program, respectively, both the Corporate Defendants and the Individual Defendants plainly have a direct and intended interest in enforcement of the Arbitration Agreement.

signatories and non-signatories in a lawsuit, *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) ("a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint … because this would nullify the rule requiring arbitration"), and *South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 563, 437 S.E.2d 22, 24 (1993) (allowing non-signatory to enforce arbitration agreement, explaining that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint … because this would nullify the rule requiring arbitration"), *citing Arnold v. Arnold Corp.*, 920 F.2d 1269, 1281-1282 (6th Cir. 1990) (allowing individual non-signatories to enforce arbitration agreement); *see also Long v. Silver*, 248 F.3d 309, 320 (4th Cir. 2001) (requiring plaintiff to arbitrate claims against non-signatories due to the "intertwined" nature of the claims against both signatories and non-signatories).[25]

All of the Defendants are entitled to enforce the Arbitration Agreement.

E. The Arbitration Agreement has not been terminated.

Plaintiff's final arbitration argument—one never presented to the Circuit Court—that the Arbitration Agreement is silent as to its term and is, therefore, terminable at will, is not only specious but concedes that the entire Release and Arbitration Agreement does not "constitute the Arbitration Agreement." Paragraphs 1 and 12(a) of the Release and Arbitration Agreement state that those provisions continue "in perpetuity." If, as Plaintiff argues elsewhere herein, the entire Release and Arbitration "constitute[d] the Arbitration Agreement," then Arbitration Agreement itself would also continue in perpetuity.

[25] Plaintiff also misconstrues *Malloy v. Thompson*, 409 S.C. 557, 762 S.E.2d 690 (2014), which addresses only whether a non-signatory can be forced to arbitrate and does not involve whether a non-signatory can compel or enforce an arbitration agreement, here, an Arbitration Agreement that Plaintiff himself signed. (R. pp. 153-155, 159).

In any event, Plaintiff's argument that his filing of the lawsuit constitutes "notice of the Plaintiff's termination and rescission of any agreement to arbitrate" rests entirely on an unwarranted and illogical attempted extension of *O'Quinn v. Beach Assoc.*, 272 S.C. 95, 249 S.E.2d 734 (1978). In *O'Quinn*, the court rejected the defendant's argument that its attempt to cure a prior misrepresentation "cured" its breach, and therefore, bound the plaintiffs to the contract, because the plaintiffs had filed suit prior to the defendant's attempted cure, thereby rescinding the executory contract. *O'Quinn* does not even address or involve an arbitration agreement but, rather the circumstances under which a party is entitled to terminate an executory contract after a material breach. Pursuant to Plaintiff's illogical argument, any party seeking to avoid enforcement of an arbitration agreement could do so simply by filing a lawsuit in court after the services specified under the contract have been performed. That is obviously not the law.[26]

III. The forum selection clause is valid and enforceable.

Plaintiff misstates the standards applicable to enforcement of the forum selection provision of the Agreement, which provides an alternative and independent basis to grant Defendants' Motion. *Sucampo Pharms., Inc. v. Astellas Pharma, Inc.*, 471 F.3d 544, 550 (4th Cir. 2006),[27] does not hold, as Plaintiff claims, that a plaintiff need only make a prima facie case or that the facts are viewed in the light most favorable to the plaintiff when considering a forum selection clause. In fact, where a motion to enforce a forum selection

[26] *See Rouhi v. Comcast Ctr.*, No. GLR-19-703, 2019 U.S. Dist. LEXIS 235693 *10 (D. Md. Nov. 27, 2019) (broadly worded arbitration provision applied to claim brought after termination of cable service "because [the arbitration clause's] perpetuity is determined not by the duration of [plaintiff's] and Comcast's contractual relationship, but by the accrual of any claims arising thereunder").

[27] Plaintiff appears to have abandoned his argument that a court is limited to the "four corners" of his pleadings in analyzing enforcement of a forum selection clause, now agreeing that a court is allowed to "freely consider evidence outside the pleadings," *citing Sucampo*, 471 F.3d at 550.

clause is filed pursuant to Rule 12(b)(3), "the pleadings need not be accepted as true, [citation omitted] and the court may consider facts outside of the leadings." *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2003); *see also 2215 Fifth St. Assocs.*, 148 F. Supp. 2d at 54 ("a court need not accept plaintiffs' legal conclusions as true").

Indeed, Plaintiff relies on several cases that actually support Defendants' argument that the forum selection clause here is valid and enforceable. For example, Plaintiff relies on *Jeffers Handbell Supply, Inc. v. Schulmerich Bells, LLC*, which provides that a "valid forum-selection clause should be given controlling weight in all but the most exceptional cases." No.: 0:16-cv-03918-JMC, 2017 U.S. Dist. LEXIS 132084 *29, 2017 WL 3582235 (D. S.C. Aug. 18, 2017), *quoting Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 31, 33 (1988).[28] *Murphy* does not compel a different conclusion. There, the plaintiff, a blue collar worker without a high-school degree then surviving on disability benefits, submitted a sworn affidavit attesting that he was physically and financially unable to travel to the designated forum due to a physical injury, presenting the court with a bona fide factual dispute concerning whether enforcing the forum selection clause essentially would deprive the plaintiff of his day in court. Here, in contrast, Plaintiff—a Florida resident and former state congressman who held a lucrative position at a major Florida law firm—submitted no evidence whatsoever in his opposition to enforcement of the forum selection clause. Beyond that, he has not even alleged any connections to South Carolina other than traveling to Charleston for a single dinner with his then-girlfriend, which, if anything, shows that he has both the means and ability to travel at will. Thus, Plaintiff has not and cannot establish

[28] *See also 2215 Fifth St. Assocs.*, 148 F. Supp. 2d at 54 ("Forum selection clauses are to be considered 'prima facie valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable under the circumstances'").

even a genuine issue of material fact, let alone prove, that pursuing his claims in New York would present any greater hardship for him than it would be for him to pursue those claims in South Carolina.[29]

Finally, Plaintiff's argument that the forum selection clause should be ignored because it is not "mandatory" is meritless. As was the case in *Albemarle*—upon which he relies—here, the forum selection clause also includes a mandatory choice of law provision. Here, the pertinent provision provides:

> Without regard to the conflicts of law provisions, *New York law **shall** govern the entire relationship between the parties*, including, but not limited to, any breach of contract, tort or other claims relating to this Agreement or my appearance on the Program. The parties submit to the in personam jurisdiction of the Supreme Court of the State of New York located in New York County and the United States District Court for the Southern District of New York, and waive any objections thereto.

R. p. 155, ¶ 20 (emphasis added). As Plaintiff acknowledges, the use of the term "shall" is mandatory, such that New York law governs the relationship between the parties, including this dispute.[30] Under New York law, the law chosen to govern the entire relationship between the parties, the language in ¶ 20 of the Agreement creates a binding, mandatory forum selection clause.

For example, in *Babcock & Wilcox Co. v. Control Components*, 614 N.Y.S.2d 678 (N.Y. Sup. Ct. 1993), the court considered a forum selection clause that provided, in

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[29] To the extent Plaintiff is arguing that his unfounded allegations of fraud raise any inference that this issue should be resolved in his favor, as explained above, he cannot prove fraud or misrepresentation because he cannot show that he had a right to rely on any alleged misstatement(s) made by the Corporate Defendants. *Tetrev*, 444 F. Supp. 2d at 530 (a party has "no right to rely on [alleged misrepresentations] when the truth of these representations [would] have been evident by an inspection of the contract").

[30] Notably, Plaintiff's only argument regarding the governing law is that the entire Agreement is unenforceable and, therefore, traditional choice of law analysis for tort actions applies. (Resp. Br. 17 n.7). That argument is meritless for the numerous reasons set forth in detail in Defendants' opening Brief. (App. Br. 19-20, 48-49).

pertinent part, that the parties agreed "to submit to the jurisdiction of the Supreme Court of the State of New York and/or of the United States District Court for the Southern District of New York," appointed the Secretary of State for New York as the agent for service, and "waive[d] any other requirements of personal jurisdiction or venue." The Court concluded that, in light of N.Y. Gen. Oblig. § 5-1402—which addresses the enforceability of forum selection clauses choosing a New York forum "'in cases involving' a controversy in excess of $1,000,000"[31]—the above-referenced language constituted a mandatory and exclusive forum selection clause. 614 N.Y.S.2d at 641-643. ("[N]o magic words … must appear in a contract to create an effective designation of an exclusive forum").

Thus, the forum selection clause of the Agreement is valid, enforceable and provides an alternative and independent basis for denial of Plaintiff's Complaint.

CONCLUSION

This Court should dismiss Plaintiff's Amended Complaint and compel the parties to arbitrate this dispute pursuant to the Arbitration Agreement. Alternatively, this Court should dismiss Plaintiff's Amended Complaint pursuant to the forum selection clause.

MCANGUS GOUDELOCK & COURIE, LLC

February 12, 2021

By:_____

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[31] Plaintiff alleges damages of at least $10,000,000. (R. p. 142).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Reply Brief of Appellants Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy complies with Rule 211(b), SCACR.

MCANGUS GOUDELOCK & COURIE, LLC

February 12, 2021

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THE STATE OF SOUTH CAROLINA
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The Honorable, Circuit Court Judge

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Joseph Abruzzo,..... Respondent,

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PROOF OF SERVICE

I certify that I have served the **Brief of Appellants** and **Reply Brief of Appellants** on Joseph Abruzzo, by emailing and depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record, as follows:

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February 12, 2021

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July 26, 2023

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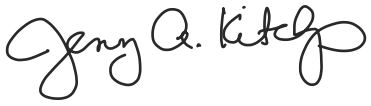
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Re: Joseph Abruzzo v. Bravo Media Productions, LLC, et al.
Appellate Case No. 2020-001095

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,



CLERK

cc: The Honorable Bentley Price

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Joseph Abruzzo, Respondent,

v.

Bravo Media Productions LLC, Haymaker Media, Inc., NBC Universal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Appellants.

Appellate Case No. 2020-001095

Appeal From Charleston County
Bentley Price, Circuit Court Judge

Opinion No. 6004
Heard June 5, 2023 – Filed July 26, 2023

REVERSED AND REMANDED

James David Smith, Jr., Helen F. Hiser, and Danielle F. Payne, all of McAngus Goudelock & Courie, LLC, of Mt. Pleasant, for Appellants.

Aaron Eric Edwards, of George Sink, PA Injury Lawyers, of North Charleston, for Respondent.

KONDUROS, J.: Bravo Media Productions, LLC, Haymaker Media, Inc., NBC Universal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy (Appellants) appeal the circuit court's Form 4 Order denying

their motion to dismiss Joseph Abruzzo's amended complaint and compel arbitration. Appellants assert the arbitrator should decide whether Abruzzo's claims are subject to arbitration. We reverse the circuit court's order and remand for an order compelling arbitration.

FACTS

In the fall of 2018, Abruzzo met Kathryn Dennis. At that time, Abruzzo was a Florida politician and Dennis was a cast member on the reality television show *Southern Charm*.[1] Shortly after meeting, Abruzzo and Dennis began a romantic relationship. According to Abruzzo, Dennis asked him to appear on season six of *Southern Charm*. Abruzzo claims that the show runners wanted him to go on a "guy's trip" with other cast members or have a dinner date with Dennis in a "public crowded restaurant." Instead, Abruzzo agreed to be a voluntary participant on the show for a private dinner at Dennis's house in downtown Charleston.

Abruzzo admits that he signed a three-page Release and Arbitration Agreement[2] before filming began. In paragraph 6 of the agreement, Abruzzo agreed that he would not be paid for any of the rights listed in the agreement. Abruzzo also acknowledged and agreed that "a significant element of the consideration" he received under the agreement was the opportunity for publicity.

In paragraph 8 of the agreement, Abruzzo agreed that he understood that "other parties may communicate private, factual, or fictional information" about himself that he could find "humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray [him] in a false light." Abruzzo consented to the inclusion of this information in the show "even to the extent such inclusion might otherwise constitute an actionable tort."

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[1] *Southern Charm* features the personal and professional lives of various Charleston residents.

[2] All of the appellants in this case are parties to the agreement. Pursuant to its terms, NBC Universal Media, LLC, is designated as the Network; Comcast Corporation and Bravo Media Productions LLC, are designated as affiliated entities; Haymaker Media, Inc is designated as the Producer; and the individual defendants are express intended third party beneficiaries of the Release and Arbitration Agreement.

Paragraph 19 of the agreement, entitled "**MEDIATION & ARBITRATION**," contains the arbitration clause.

> **WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS[3] OR ITS SUCCESSOR ("JAMS") IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES . . . . ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES.**

Additionally, the following is printed immediately above the signature line:

> **I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT.**

Abruzzo claims that prior to and following filming, Appellants assured him that the show would portray him in a good light. Abruzzo also asserts that he was under

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[3] JAMS stands for Judicial Arbitration and Mediation Services, Inc.

pressure to sign the agreement because he and Dennis had gone through hair and makeup and were sitting down for dinner, the film crew was ready to begin, and "bright lights" were shining on him.

Additionally, Abruzzo initially alleged that he was presented with a document for his signature "turned to the third page." Abruzzo then alleged that he was presented with a "partial piece of paper with only the signature portion of the page visible," and Appellants assured him that the document simply authorized them to film the dinner. However, the executive producer asserted that Abruzzo asked a question about paragraph 5 of the agreement, which is located on the first page. Additionally, the record contains a photograph that shows Abruzzo displaying the third page of the agreement and clearly depicts more than just a signature block.

Abruzzo claims that he ended his relationship with Dennis in early 2019, and Appellants "later falsely claim[ed] that Dennis ended the relationship . . . as a result of the concern expressed by other cast members . . . ." Abruzzo asserts these concerns were false and "designed and intended to defame, disparage, and/or portray [him] as an unsafe, corrupt, abusive and/or otherwise unsavory individual in order to preserve and further Dennis's storyline on the show."

Specifically, Abruzzo alleges that Conover made false statements during an episode of *Southern Charm* by saying that Abruzzo is "a disgraced politician in Florida" and "not running for re-election because of his divorce. His wife is accusing him of being physically abusive." Additionally, Abruzzo alleges that LeCroy, Meissner, and other individuals falsely stated there were nude photographs of him on the internet. Abruzzo asserts that such photographs do not exist, and Appellants intentionally showed a photograph with "the image blurred at the bottom of his torso" to imply the cast members were looking at his penis.

On January 28, 2020, Abruzzo filed a complaint in the Charleston County Court of Common Pleas, alleging ten causes of action against Appellants.[4] On May 12, 2020, Appellants filed a motion to dismiss. On June 19, 2020, Appellants filed a corresponding memorandum in support, and Abruzzo filed an amended complaint

[4] Abruzzo's claims were for Outrage/Intentional Infliction of Emotional Distress; Fraud; Constructive Fraud; Negligent Misrepresentation; Fraudulent Inducement; Civil Conspiracy; Defamation; Violation of the South Carolina Unfair Trade Practices Act; Negligence; and Unjust Enrichment.

that added seven additional causes of action.[5] Abruzzo also filed a one-paragraph response to Appellants motion to dismiss, arguing that it was moot in light of his amended complaint. On June 22, 2020, Appellants filed a motion to dismiss the amended complaint and to compel arbitration as well as a supporting memorandum. On June 29, 2020, Abruzzo filed a memorandum in opposition. The circuit court presided over a hearing between the parties on June 30, 2020.

On July 6, 2020, the circuit court issued a Form 4 Order denying Appellants' motion to dismiss and compel arbitration. Appellants requested that the circuit court issue a detailed written order setting forth the reasons for denying the motion. Abruzzo opposed that request. In response, the circuit court's law clerk responded: "[W]e did a [F]orm 4 [Order], and I believe it indicated that if the parties desired formal orders they could submit them to us. If it did not include that part I apologize." On July 16, 2020, Appellants filed a motion for reconsideration pursuant to Rule 59(e). The circuit court denied Appellants' motion on July 22, 2020, stating a hearing was not necessary. This appeal followed.

STANDARD OF REVIEW

"Arbitrability determinations are subject to de novo review." *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 47, 790 S.E.2d 1, 3 (2016). "However, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings." *Id.* at 48, 790 S.E.2d at 3.

LAW/ANALYSIS

Appellants argue that the circuit court erred in failing to enforce the parties' arbitration agreement. Appellants assert that the arbitrator should decide whether

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[5] Abruzzo's additional claims were for Wrongful Appropriation of Personality/Infringement on the Right of Publicity; Wrongful Publicizing of Private Affairs; Public Nuisance; Private Nuisance; Fraudulent Inducement of Arbitration Agreement/Unconscionability of Arbitration Agreement; and Fraudulent Inducement of Release/Unconscionability of Release; and Rescission of "Release and Arbitration Agreement."

Abruzzo's claims are subject to arbitration because Abruzzo's allegations focus on the agreement as a whole rather than the arbitration clause specifically. We agree.

"Due to the strong South Carolina and federal policy favoring arbitration, arbitration agreements are presumed valid." *Doe v. TCSC, LLC*, 430 S.C. 602, 607, 846 S.E.2d 874, 876 (Ct. App. 2020). The parties' contract is governed by the Federal Arbitration Act (FAA), which states the following:

> 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 . . . 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.

"Because an arbitration provision is often one of many provisions in a contract covering many other aspects of the transaction, the first task of a court is to separate the arbitration provision from the rest of the contract. This . . . is the law[] known as the *Prima Paint* doctrine." *Doe*, 430 S.C. at 607, 846 S.E.2d at 876 (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-04 (1967)). Accordingly, "[c]hallenges to the validity of arbitration agreements 'upon such grounds as exist at law or in equity for the revocation of any contract' can be divided into two types." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 (2006). "One type challenges specifically the validity of the agreement to arbitrate." *Id.* "The other challenges the contract as a whole, . . . *e.g.*, the agreement was fraudulently induced . . . ." *Id.*

Under the *Prima Paint* doctrine, "if the claim is fraud in the inducement of the arbitration clause itself—an issue which goes to the making of the agreement to arbitrate—the . . . court may proceed to adjudicate it." *Id.* at 445 (quoting *Prima Paint*, 388 U.S. at 403-404). However, "the statutory language [of section 4 of the

FAA[6]] does not permit the . . . court to consider claims of fraud in the inducement of the contract generally." *Id.* (quoting *Prima Paint*, 388 U.S. at 403-404).

In *Buckeye Check Cashing, Inc.*, the United States Supreme Court provided the following:

> First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts.

Id. at 445-46. The Court concluded that "a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator." *Id.* at 449.

Here, the arbitration clause is severable from the entire agreement. The clause is contained only in paragraph 19 of the agreement and is highlighted by the title appearing in bold, underlined, and capital letters. The rest of the arbitration clause is also highlighted by appearing in bold and capital letters, unlike the paragraphs around it. Additionally, the broad language of "any dispute in connection with this agreement" includes the enforceability and validity of the parties' agreement.

> [6] A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court [with jurisdiction] . . . for an order directing that such arbitration proceed in a manner provided for in such agreement. . . . [U]pon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

9 U.S.C. § 4.

Like the parties opposed to arbitration in *Prima Paint* and *Buckeye*, Abruzzo challenges the validity and enforceability of the entire contract rather than the arbitration clause specifically. Abruzzo alleges that producers assured him that he would be portrayed in a good light and that he felt pressure to sign the agreement due to the film crew and bright lights. These allegations do not specifically pertain to the arbitration clause; rather, they address how he felt about signing the entire agreement to both appear on the show and arbitrate any disputes. Therefore, Abruzzo has failed to specifically challenge the arbitration agreement independently from the rest of the agreement as required under *Prima Paint* and *Buckeye*. Accordingly, we reverse the circuit court's order and remand for an order compelling arbitration.[7]

CONCLUSION

Abruzzo challenges the validity and enforceability of the parties' agreement as a whole rather than the arbitration agreement specifically. Therefore, the circuit court's order is

REVERSED AND REMANDED.

VINSON, J., and LOCKEMY, A.J., concur.

[7] Because we remand on this issue, we do not address Appellants' other contentions. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting appellate courts need not address remaining issues when disposition of an issue is dispositive).

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo, Respondent,

v.

Bravo Media Productions LLC, Haymaker Media, Inc., NBC Universal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Appellants.

RESPONDENT'S PETITION FOR REHEARING *EN BANC*

---

s/ Aaron E. Edwards
George Sink, P.A.
7011 Rivers Avenue
Charleston, SC 29406
Phone: (843) 569-1700

ATTORNEY FOR RESPONDENT

A petition for rehearing shall be in accordance with Rule 240 and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. Rule 221, SCACR. Respondent hereby submits the following in support of his request for this Court to reconsider, rehear, or otherwise vacate its July 26, 2023, order reversing and remanding the trial court's order denying Appellant's Motion to dismiss and/or Compel Arbitration (Exhibit A)(See also Exhibit B Respondent's Amended Final Brief):

I. The Court misapprehended and/or overlooked Paragraphs 167-223 of Respondent's Amended Complaint, which challenge the arbitration provision specifically, as opposed to the conclusion otherwise as stated in the Court's July 26, 2023, order (Exhibit A). *See, e.g.* R. pp. 94-143, Am. Compl. ¶¶ 167-223; *See also* Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967);

II. The Court misapprehended and/or overlooked the unconscionable terms contained within the paragraph 19 of the arbitration provision itself. *See, e.g.* S.C. Code 15-7-120(requiring venue be in South Carolina in contradiction to the arbitration provision at issue); Lennar Carolinas, LLC, 437 S.C. 596, 879 S.E.2d 746 (2022) ("Pursuant to the Prima Paint doctrine…[t]he validity of the arbitration clause is a matter for the courts")(*citing* Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445–46, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (2006) (if the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the court in the first instance); Doe v. TCSC, LLC, 430 S.C. 602, 615, 846 S.E.2d 874, 880 (Ct. App. 2020); *see also* Simpson, 373 S.C. at 36, 644 S.E.2d at 674 (noting there is no specific set of

factual circumstances indicating when complete invalidation of the contract is a better option than merely excising the offending clauses));

III. The Court misapprehended and/or overlooked the application of Damico v. Lennar Carolinas, LLC, 437 S.C. 596, 879 S.E.2d 746 (2022)("Ordinarily, the question of unconscionability beyond the arbitration provision would be determined in the arbitral forum..[h]owever, in agreeing with the circuit court concerning the unconscionability of the arbitration provision, we note our additional agreement with the circuit court that unconscionability pervades the various agreements between the parties…[w]e find these and other terms of the contracts to be absurd, factually incorrect, and grossly oppressive");

IV. The Court misapprehended and/or overlooked the application of Smith v. D.R. Horton, Inc., 417 S.C. 42, 790 S.E.2d 1 (2016)(holding more than a single paragraph can constitute an arbitration agreement, and holding arbitration agreement unenforceable). Lennar Carolinas, LLC, 437 S.C. 596, 879 S.E.2d 746 (2022).

CONCLUSION

For the reasons set forth herein, the Court's July 26, 2023 order reversing and remanding the trial court's order denying Appellant's Motion to dismiss and/or Compel Arbitration should be vacated, and/or the petition for rehearing submitted herein should be granted with such other relief as the Court deems appropriate.

s/ Aaron E. Edwards
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Phone: (843) 569-1700

ATTORNEY FOR RESPONDENT

August 9, 2023

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo, Respondent,

v.

Bravo Media Productions LLC, Haymaker Media, Inc., NBC Universal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Appellants.

PROOF OF SERVICE

I certify that I have served **RESPONDENT'S PETITION FOR REHEARING *EN BANC*** on Appellants, by emailing it to their attorneys of record, as follows:

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August 9, 2023

The South Carolina Court of Appeals

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October 11, 2023

Mr. Aaron Eric Edwards, Esquire
7011 Rivers Avenue
Suite 105
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Re: Joseph Abruzzo v. Bravo Media Productions, LLC, et al.
Appellate Case No. 2020-001095

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,

Catherine Harrison, deputy

CLERK

cc: Helen F Hiser, Esquire
James David Smith, Jr., Esquire
Danielle F. Payne, Esquire
The Honorable Bentley Price

The South Carolina Court of Appeals

Joseph Abruzzo, Respondent,

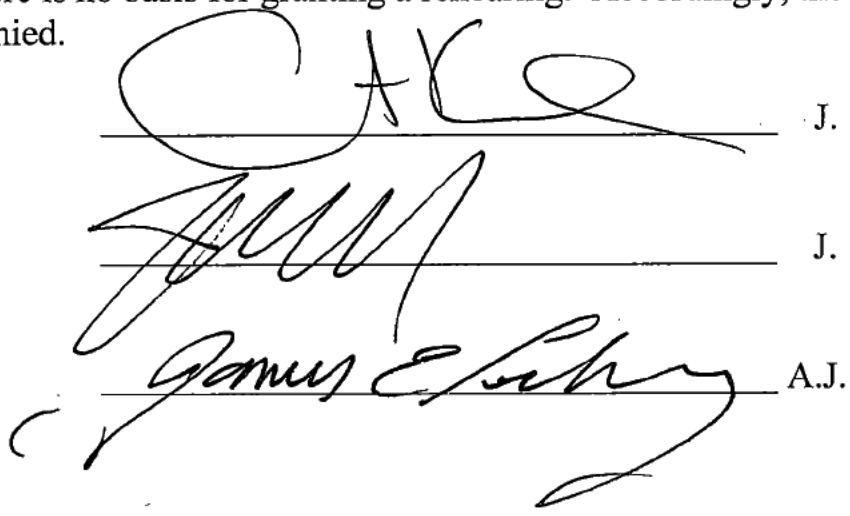
v.

Bravo Media Production LLC, Haymaker Media, Inc., NBC Universal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Appellants.

Appellate Case No. 2020-001095

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



_____ J.

_____ J.

_____ A.J.

Columbia, South Carolina

cc:
Helen F Hiser, Esquire
James David Smith, Jr., Esquire

FILED
Oct 11 2023

Danielle F. Payne, Esquire
Aaron Eric Edwards, Esquire
The Honorable Bentley Price

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STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-00472**
	)	
JOSEPH ABRUZZO,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	**AMENDED COMPLAINT**
	)	**(JURY TRIAL DEMANDED)**
BRAVO MEDIA PRODUCTIONS, LLC, HAYMAKER MEDIA, INC., NBC UNIVERSAL MEDIA, LLC, COMCAST CORPORATION, CRAIG CONOVER, CHELSEA MEISSNER, AND MADISON LECROY,	)	
	)	
Defendants	)	

Plaintiff Joseph Abruzzo ("Plaintiff" or "Abruzzo"), complaining of the Defendants, Haymaker Media, Inc., Bravo Media Productions, LLC, NBC Universal Media, LLC, Comcast Corporation (collectively referred to herein as "Corporate Defendants"), Craig Conover ("Conover"), Chelsea Meissner ("Meissner"), and Madison LeCroy ("LeCroy") (collectively referred to herein as "individual cast members") states, respectfully alleges and shows unto the Court as follows:

1. Plaintiff Joseph Abruzzo is a resident of the State of Florida.

2. Defendants Haymaker Media, Inc. and Bravo Media Productions, LLC are production companies incorporated in the State of New York responsible for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

3. Haymaker Media and Bravo Media Productions transact business in the State of South Carolina, contract to supply services in the State of South Carolina, and perform business in

whole or in part in the State of South Carolina through their respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

4. Defendant NBC Universal Media, LLC is a limited liability company organized and existing under the laws of Delaware; it owns Defendant Bravo Media Productions and is responsible, in whole or in part, for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

5. Defendant NBC Universal Media, LLC transacts business in the State of South Carolina, contracts to supply services in the State of South Carolina, and performs business in whole or in part in the State of South Carolina through its respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

6. Defendant Comcast Corporation is a corporation organized and existing under the laws of Pennsylvania; it owns Defendant NBC Universal and/or Defendant Bravo Media Productions and is responsible, in whole or in part, for the filming and production of the "reality" television show, Southern Charm, the filming of which is based predominantly in Charleston, South Carolina.

7. Defendant Comcast Corporation transacts business in the State of South Carolina, contract to supply services in the State of South Carolina, and perform business in whole or in part in the State of South Carolina through its respective association with Southern Charm. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants pursuant to S.C. Code Ann. § 36-2-803 (2016), and venue is proper in the County of Charleston.

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8. Defendant Craig Conover is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant Conover was a cast member of the "reality" television show Southern Charm but was not an employee, agent, or representative of the Corporate Defendants.

9. Defendant Chelsea Meissner is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant Meissner was a cast member of the "reality" television show Southern Charm but was not an employee, agent, or representative of the Corporate Defendants.

10. Defendant Madison LeCroy is a citizen and resident of Charleston County, South Carolina. At all times relevant, Defendant LeCroy was a cast member of the "reality" television show Southern Charm but was not an employee, agent, or representative of the Corporate Defendants.

11. The most substantial acts and/or omissions alleged herein occurred in Charleston County, South Carolina. This Court has subject matter jurisdiction, personal jurisdiction over the Defendants and venue is proper in the County of Charleston.

PLAINTIFF'S BACKGROUND

12. Plaintiff is currently employed as a director of government relations for a major law firm in Florida. Major corporations and individuals pay substantial sums of money for Plaintiff to lobby on their behalf on, for the time being, only federal legislative matters of interest.

13. Plaintiff has a long history of public service and accolades and review of his service and accolades is necessary to give context to the harm caused by the willful, intentional, and malicious conduct of the Defendants described herein.

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14. Plaintiff formerly served as a Democratic politician from Florida. He has served in the Florida House of Representatives from the 81st district from 2016-2018, representing part of Palm Beach County. Previously, Abruzzo served two terms in the Florida House from 2008-2012, representing District 85, and one term on the Florida Senate from 2012-2016, representing District 25, where he served as the minority whip.

15. Plaintiff moved to Florida in 1999, attended Lynn University where he was elected the university's first junior elected student body president. Upon graduation in 2003 with a B. A. in International Communications and Minor in International Business Representative Abruzzo was awarded the Count and Countess De Hoernle Humanitarian Award. Plaintiff Abruzzo also as a Port Security Specialist in the United States Coast Guard Reserve, serving for a total of eight years, receiving numerous awards and recognitions in honor of his service including the Governor Rick Scott's Veteran Services Medal.

16. Plaintiff was elected to the Florida House of Representatives at the age of 28 in 2008. In the Florida House, Plaintiff Abruzzo served on the Economic Development & Tourism Subcommittee, the Finance and Tax Council, the Economic Affairs Committee, the Federal Affairs Subcommittee, the Business and Consumer Affairs Subcommittee, and the Congressional Redistricting Subcommittee. Plaintiff Abruzzo is a past member of the Insurance, Business and Financial Affairs policy Committee, the Joint Legislative Auditing Committee, the Military and Local Affairs Committee, and the State University and Private Colleges Policy Committee, The Economic Development & Community Affairs Policy Council, the Finance and Tax Council, the Economic Development Policy Committee, the Government Operations Appropriations Committee and was the only freshman legislator that served on the Select Committee on Seminole Indian Compact Review.

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17. In Plaintiff Abruzzo's first term in office he passed a freshman record eleven bills through the House of Representatives. Plaintiff Abruzzo also worked as the Public Information Officer and Assistant Administrator for the Office of Criminal Conflict and Civil Regional Counsels fourth district.

18. Plaintiff Abruzzo is also a former member of the city of Boca Raton Education Board where he worked on establishing programs for continuing education for seniors. He is also a former member of the Palm Beach County Consumer Affairs hearing board, where he presided over cases of individuals and businesses that engaged in unfair and deceptive business practices.

19. Additionally, Plaintiff Abruzzo served as a member of numerous charitable causes and civic organizations, including being a founding member of the Martin Luther King, Jr. national memorial, a member of other organizations such as the Florida Alliance for Retired Americans, the National Center for Missing & Exploited Children, the Heroes' Circle U.S. Holocaust Memorial Museum, the National Center for Missing and Exploited Children, the Selfless Love Foundation, Autism Speaks, the Buoniconti Fund and was a founding member of the Washington, D.C. Martin Luther King, Jr. National Memorial.

20. Plaintiff Abruzzo is the recipient of many medals and awards including the 2012 National Association of Social Workers, Legislator of the Year, the 2012 Alzheimer's Community Care Award of Appreciation, the 2012 Progressive Caucus of Florida Middle Class Champion, the 2012 Fix Florida Top Dog Award, the 2011 Voices of Hope Legislator of the Year, the 2011 AIF Florida Maritime Council Legislator of the Year, the 2011 Delray Citizens for Delray Beach Police Award of Appreciation, the 2010 Palm Beach County Medical Society President's Award, the 2010 Florida Alliance for Retired Americans Legislator of the Year, the 2010 Restaurant and Lodging Association Legislative Award, the 2009 Florida Restaurant and Lodging Association Legislative

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Award, the 2008 U.S. Coast Guard Good Conduct Medal, the 2007 U.S. Coast Guard Presidential Unit Citation, the 2006 Global War on Terrorism Service Medal, the 2005 National Defense Service Medal, the 2005 U.S.C.G. Combat Veterans Association Physical Fitness Award, and the 2005 U.S.C.G. Port Security "A" School Honor Team, among other awards. [1]

21. Additionally, Plaintiff Abruzzo served as the Board Commissioner of the Health Care District Board of Palm Beach County from 2010-2013, the Chairman of the Palm Beach County Legislative Delegation from 2011-2012, and a Board Member of the Public Service Commission Nominating Council from 2010-2011, the Palm Beach County Consumer Affairs Hearing Board in 2008, as well as the City of Boca Raton, Education Advisory Board from 2002-2003.

22. From 2012 – 2016, Plaintiff Abruzzo was elected and served in the Florida Senate, serving on numerous committees including as vice chair of the Finance and Tax Committee, Community Affairs Committee, and alternating chair of the Joint Legislative Auditing Committee.[2] In 2018, after ten (10) years of service as a state legislator, Plaintiff Abruzzo announced that he would not to run for re-election, despite the fact that he was unopposed and there were no candidates running for his western Palm Beach seat at the time of his announcement. See, e.g. https://www.sun-sentinel.com/news/florida/fl-reg-joseph-abruzzo-retiring-20180228-story.html?outputType=amp

[1] From 2012-2018 Plaintiff Abruzzo accumulated dozens of other awards and honors, including two community streets named after him. In the interest of brevity, Plaintiff Abruzzo has omitted these and other awards and accolades that he has received. A full list can be provided if needed.

[2] In 2016, redistricting eliminated Plaintiff Abruzzo's Senate district. Plaintiff then was elected to the House of Representatives for a third term.

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23. During his tenure as state legislator, he passed at least 50 bills into law. Plaintiff Abruzzo brought hundreds of millions of state funds to his district and county over his time in office, securing millions in state funds for the impoverished, primarily African-American communities around the southeast side of Lake Okeechobee, including Belle Glade, South Bay and Pahokee. In Florida's 2017 budget, Abruzzo sponsored more than $4 million of water and street improvement projects for those towns, the largest of which was a $1.2 million marina improvement project in Pahokee. In a year in which the State of Florida cut almost $410 million in local projects, Abruzzo's survived.

24. One of his most significant pieces of legislation includes creating the Silver Alert system for missing adults, a grandparent's bill of rights and the termination of parental rights for rapists. He also pushed for several safety measures, including a successful helmet law for horse riders age 16 and younger — his district includes areas around Wellington's horse country. He was also a primary sponsor of legislation cracking down on pill mills in 2010, when the shady pain management clinics had become a state and national crisis. As a senator in 2016, Abruzzo sponsored the Competitive Workforce Act, which would ban workplace discrimination against LGBT workers.

25. When Plaintiff Abruzzo announced he would not run for re-election, his announcement was met with praise for his service and fondness for his character and reputation. (see https://thefloridachannel.org/videos/3-1-18-farewell-rep-joseph-abruzzo-d-district-81-boca-raton/).

26. Among the people Abruzzo came into contact and developed business relationships, as well as established an outstanding reputation with, was among others the chairman

and owner of Chesapeake Petroleum and Supply in Gaithersburg, Maryland, the country's largest privately held petroleum company.

27. Plaintiff met the chairman and owner in Wellington, Florida, about two years before he was elected, who educated Plaintiff on the equine issues of the State of Florida. When Plaintiff was elected, one of the first bills he worked on was the Horse Protection Act. It was one of the first laws in the nation making it a felony to abuse, neglect, or abandon an equine. It also said that if a Florida restaurant put horse meat on the menu, it would automatically be shut down. The Act passed unanimously, and it is now the law in the State of Florida.

28. Since that time, Plaintiff Abruzzo worked as the Chesapeake chairman and owner's Washington lobbyist, which paid Abruzzo a monthly fee of $15,000 per month for lobbying and consulting work on federal legislation and other matters of interest. This agreement was from 2007 until 2019, and would have continued for the foreseeable future, until the agreement was terminated shortly after the airing of the Southern Charm episodes discussing and featuring Plaintiff Abruzzo in which the Defendants' knowingly, falsely and maliciously depicted Plaintiff Abruzzo as a "disgraced" politician, and accused Plaintiff Abruzzo of being abusive, negatively comparing Plaintiff Abruzzo to a former cast member, Thomas Ravenel, who had recently been criminally charged with assault, and implying there were nude photos of Plaintiff Abruzzo in the public domain.

29. Plaintiff Abruzzo's ban on state lobbying ends in November 2020 and he is currently employed as a director of government relations for a major law firm in Florida. Major corporations and individuals pay substantial sums of money for Plaintiff to lobby on their behalf on federal legislative matters of interest. Plaintiff Abruzzo's ability lobby on state issues, which by law requires a two year waiting period after serving in office, expires in November 2020.

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However, as a direct and proximate result of the Defendants' intentional wrongdoing, a simple "Google" search for "Joseph Abruzzo" brings up almost nothing related to his years of public service and the various accolades described above, but instead results in links to the Corporate Defendants' websites for false and misleading depictions of Plaintiff Abruzzo, his relationship with Dennis as depicted on Southern Charm, and/or his appearance on Southern Charm.

SOUTHERN CHARM

30. The Corporate Defendants direct, film, air, and/or otherwise produce the television show "Southern Charm."

31. The individual Defendants Conover, Meissner, and LeCroy appeared regularly on Southern Charm but are not employees, agents, or representatives of the Corporate Defendants.

32. Southern Charm is a "reality" television show based in Charleston, South Carolina and has been airing on national and international television, as well as streaming online, since 2014.

33. While Southern Charm is promoted as a "reality" show, it in fact consists of false conflict and scenarios that are fabricated and/or contrived by the Corporate Defendants for the express purpose of creating dramatic and licentious material for television.

34. The dialogue between cast members of Southern Charm is not scripted, but events, interactions between cast members, topics of discussion, confrontations, and activities undertaken by the cast members, including those referenced herein, are directly provoked, encouraged, instigated, and/or orchestrated by the Corporate Defendants with the individual cast members knowledge, agreement, coordination, and cooperation, to elicit drama and conflict commensurate with Southern Charm's storyline as a show that "reveals a world of exclusivity, money and scandal dating back through generations of families in Charleston, S.C." (see e.g.

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www.afterbuzztv.com/southern-charm/). Alcohol and/or drugs are regularly consumed by the cast members to heighten the likelihood of drama and conflict with the encouragement, toleration, dispensing, and/or condonation of the Corporate Defendants.

35. The original main character at the inception of Southern Charm was Thomas Ravenel. During the filming of Southern Charm, Ravenel met Kathryn Dennis, another Southern Charm cast member and began a romantic relationship that resulted in the birth of two children.

36. A major storyline and ongoing theme in the Southern Charm series from 2014-2018 related to Ravenel and Dennis' relationship and conflict within their relationship, including Dennis losing custody of her children to Ravenel and Dennis undergoing rehabilitation for drug and/or alcohol abuse during the 2016-2018 timeframe. Dennis was often falsely portrayed as the victim of Ravenel's manipulation and/or abuse.

37. In the Summer of 2018, it was announced that Ravenel would not be returning to the cast of Southern Charm for its 6th season, scheduled to begin filming in the Fall of 2018.[3] Without Ravenel as a cast member, the need for a new "storyline" for Dennis became apparent.

38. After communicating with one another, Dennis and the Corporate Defendants framed her new role in Southern Charm as a rehabilitated single mother who regains custody of her children, and moves on and out from under Ravenel's abuse and/or manipulation. Upon information and belief, part of Dennis's new storyline was to include a new love interest.

39. In furtherance of this storyline, around the time filming for season 6 of Southern Charm began in the Fall of 2018, Dennis filed a modification of custody action against Ravenel in the Charleston County Family Court, basing her requested relief in large part upon the staged

[3] Around the same time, Ravenel was criminally charged with allegedly sexually assaulting his former nanny.

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scenarios filmed for Southern Charm in an attempt to classify the conduct depicted therein as "real-life" events justifying the Family Court's intervention.[4]

40. Plaintiff Abruzzo did not know at the time that Dennis initiated the custody suit with the express or implied encouragement, condonation, and/or permission of the Corporate Defendant producers of Southern Charm, for the purpose of providing dramatic material for the next season of Southern Charm.

PLAINTIFF'S RELATIONSHIP WITH KATHRYN DENNIS AND APPEARANCE ON SOUTHERN CHARM

41. Plaintiff Abruzzo met Kathryn Dennis in the fall of 2018 at a Miami Dolphins football game, shortly before filming for Southern Charm season 6 began. Thereafter, Plaintiff Abruzzo and Dennis began a romantic relationship.

42. Unbeknownst to Abruzzo at the time, but in furtherance of Dennis's storyline for season 6 and future seasons of Southern Charm, and with the express or implied encouragement, condonation, and/or permission of the Corporate Defendant producers of Southern Charm, Dennis almost immediately began imploring Plaintiff Abruzzo to be on the show, telling Abruzzo that if she were to get married, she believed the Corporate Defendants would pay big money for rights to televise her wedding, honeymoon, an exclusive, and other things of that nature.

43. The Corporate Defendants wanted Abruzzo to go on a guy's trip, go to a public and crowded restaurant on a dinner date with Dennis, and otherwise suggested group or public outings for Plaintiff Abruzzo's appearance. Plaintiff Abruzzo declined participation in any such outing or event.

[4] Plaintiff Abruzzo is informed and believes Dennis lost her custody case and now has less time with her children than she did before filing for a modification of custody, illustrating the fact that the narrative published by the Corporate Defendants on Southern Charm is based upon false and staged scenarios.

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44. Ultimately, after repeated requests and persistence from the Corporate Defendants and Dennis, Plaintiff decided he would allow a private dinner at Dennis's residence in downtown Charleston to be filmed by the Corporate Defendants.

45. Plaintiff Abruzzo flew to Charleston at his own expense from Florida to spend time with Dennis and have their private dinner filmed.

46. Upon arriving at Dennis's residence for the private dinner, Plaintiff Abruzzo was ushered into hair and makeup while bright lights were being set up and film crews were preparing to film.

47. After finishing Plaintiff Abruzzo's preparation for filming, declaring that they were set to begin the dinner, and as Plaintiff Abruzzo and Dennis were actually sitting down for dinner, the Corporate Defendants, by and through one or more of their employees, producers, and/or agents represented to Plaintiff Abruzzo that they were ready to begin but could not do so.

48. Plaintiff Abruzzo, with the film crews in place and bright lines shining on him, was then presented a piece of paper with only the signature portion of the page visible. At the time the partial piece of paper was presented, the Corporate Defendants, by and through one or more of their employees, producers, and/or agents falsely represented to Plaintiff Abruzzo that it was merely a formality and simply authorized the Corporate Defendants to film the dinner.

49. Despite interactions with multiple employees, producers, and/or agents of the Corporate Defendants, at no time did anyone state, suggest, or imply to Plaintiff Abruzzo that he would be disparaged, defamed or otherwise portrayed in a negative and/or false light.

50. To the contrary, at the time the piece of paper was presented, as well as after filming while wrapping up, the Corporate Defendants, by and through one or more of their employees,

producers, and/or agents, falsely represented to Plaintiff that he should have "no worries in the world" because Plaintiff was Dennis's savior and "knight in shining armor."

51. At the time the partial piece of paper was presented, as well as after filming while wrapping up, the Corporate Defendants, by and through one or more of their agents, falsely represented to Plaintiff Abruzzo that his portrayal on Southern Charm would do great things for him.

52. At the time the partial piece of paper was presented, as well as after filming while wrapping up, the Corporate Defendants, by and through one or more of their employees, producers, and/or agents, further represented that not only would the filming be good for Plaintiff, but that it would also be helpful for Dennis and also for Defendant Conover because his storyline was in jeopardy.

53. Based upon the false representations made by the Corporate Defendants, Plaintiff Abruzzo, who does not watch reality television and had no reason to suspect otherwise, while sitting under blinding spot lights and in the presence of multiple employees, producers, and/or agents of the Corporate Defendants ready to begin filming, signed the partial piece of paper, believing only that doing so would enable the dinner to be filmed and be "a great thing" for his then girlfriend Dennis.

54. Plaintiff Abruzzo was presented only the signature portion of the document, given no time to read it, no time to consult with an attorney regarding its substance, no time verify the accuracy of its contents, no time verify the parties and no explanation of its contents by any of the producers, employees, and/or agents of the Corporate Defendants other than the false representation that it simply authorized filming of their dinner.

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55. Nothing eventful or dramatic occurred during the dinner, and there was no conflict between Plaintiff Abruzzo and Dennis.

56. Plaintiff Abruzzo had no further contact with the Corporate Defendants and no knowledge of, or input on, the storylines, marketing, advertising or portrayals depicted on season 6 of Southern Charm.

57. Southern Charm season 6 first aired during the summer of 2019. In the promotional material released leading up to the season 6 premier, Dennis's storyline regarding Ravenel and her custody suit described previously herein was confirmed. Shortly thereafter, Dennis's storyline involving Plaintiff Abruzzo would be revealed.

58. In episode three (Exhibit A – filed separately), Defendant Conover, acting individually and as a co-conspirator with the Corporate Defendants, when asked by Defendant Meissner about Plaintiff Abruzzo, says "Well, he's a disgraced politician in Florida" and "He's not running for re-election because of his divorce. His wife is accusing him of being physically abusive." These statements are false, and Defendant Conover and the Corporate Defendants knew they were false at the time they were made and when they were published on national television. (See, e.g. https://www.sun-sentinel.com/news/florida/fl-reg-joseph-abruzzo-retiring-20180228-story.html?outputType=amp). These false statements were made knowingly and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise negatively portray him in a false light in order to further the individual and collective storylines involved in Southern Charm.

59. Defendant Meissner, acting individually and as a co-conspirator with the Corporate Defendants, was prompted and/or encouraged by producers, employees, and/or agents of the Corporate Defendants, and Defendant Meissner individually agreed to inquire about Plaintiff Abruzzo with Defendant Conover for the purpose of enabling Defendant Conover to disparage,

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defame, and otherwise negatively portray him in a false light in order to create and further the storylines involved in Southern Charm.

60. In episode six (Exhibit B - filed separately), entitled "A Salt and Battery", Plaintiff Abruzzo's dinner date with Kathryn Dennis aired. [5]

61. Plaintiff Abruzzo's dinner date with Kathryn Dennis is depicted as follows:

(Kathryn Dennis sets out Grandmother's silver & china prepping for Plaintiff Abruzzo coming over for dinner. She orders delivery.)

(Plaintiff Abruzzo arrives with flowers.)

Dennis: "Aren't you sweet."

Abruzzo: "You look – you look great."

Dennis: "You look great."

Abruzzo: "No, you look great."

Dennis: "I'm glad you're here."

(hugs & kisses)

Dennis: "Good to see you."

Abruzzo: "Good to see you, too."

(Dennis tries to cut flowers. Plaintiff Abruzzo steps in and assists.)

Dennis: "Thank you for helping – I'm not used to that in life."

Dennis: "When I first saw Joe, I was not attracted to him. Um…no. And it wasn't until he started to talk to me that day that I felt a sense of, like, us, being on somewhat of the same wave length."

(Plaintiff Abruzzo helps her carry food outside and pulls out her chair. She seems very surprised. He compliments her on the meal and they continue small talk.)

Dennis: "I'm not like most chicks from Charleston. I don't know how many you've dated

[5] Plaintiff Abruzzo is informed and believes the title of this episode which depicts Plaintiff's dinner date with Dennis is a reference to former cast member Thomas Ravenel's criminal assault charges.

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around these parts."

Abruzzo: "You would be my first."

Dennis: "Well, lucky you."

Abruzzo: "I think so, obviously."

(Continue more small talk….Plaintiff Abruzzo compliments the outdoor setting.)

Abruzzo: "I haven't spent much time in the deep south."

Dennis: "God, I love it though. It's the best thing about you."

(Kissing.)

62. As previously alleged, nothing eventful or dramatic occurred during the dinner, and there was no conflict between Plaintiff Abruzzo and Dennis, nor did any of the Defendants state, suggest, or imply that he would be portrayed in a negative and/or false light.

63. Nevertheless, in the following episode seven (Exhibit C – filed separately), entitled "Dick Moves and Dick Pics", The Corporate Defendants, Defendant LeCroy, Defendant Meissner, and others knowingly and falsely state and/or imply there were nude photos of Plaintiff Abruzzo in the public domain as follows:

(cast member Patricia Altschul is having a house party)

Altschul: "I had heard she (Kathryn) had a boyfriend."

Olindo: "Politician. Senator from Florida."

Altschul: "No, not a politician. Oh no. Oh dear."

Olindo: "I mean, I'm just going to go ahead and say it. I googled him and some, like, wild things came up like almost naked photos of him on the internet."

Altschul: "Let me get my big iPad in here."

Eubanks: "Does she know all this stuff?"

Olindo: "She must. Ya'll Google it, it's crazy."

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Defendant LeCroy (looking at her phone): "Oh. His penis looks like a Ken Doll. Like, it's just a bulge."

(a photo of Plaintiff Abruzzo is shown on screen with the image blurred at the bottom of his torso)

Defendant LeCroy: "Look at that, it's like a 'mangina.'"

(The girls take turns looking at the photos.)

Defendant Meissner: "She's (Kathryn Dennis) gonna walk in and Pat's (Altschul) gonna be looking at a picture of her boyfriend's pecker."

Eubanks: "She would not be happy."

(Kathryn Dennis arrives.)

64. Plaintiff Abruzzo provided the Corporate Defendants no photographs, videos, or depictions of his name, likeness, or voice at any time, nor did he authorize them to utilize any such thing other than the private dinner described previously.

65. Moreover, the images depicted of Plaintiff Abruzzo by the Corporate Defendants during the television broadcast require no blurring. His penis cannot be seen, nor could it be described. Kathryn Dennis could not have possibly walked in with anybody "looking at a picture of her boyfriend's pecker." These statements are false, and Defendants LeCroy, Meissner, and the Corporate Defendants knew they were false at the time they were made and when they were aired on national television. These statements were made knowingly and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise portray him in a false light to create false drama and in furtherance of the storylines involved in Southern Charm.

66. The statements and conduct by the Defendants otherwise are false, and Defendants LeCroy, Meissner, and the Corporate Defendants knew they were false at the time they were made and at the time they were published on national television. These false statements were made

knowingly, with actual malice, and with the intent of disparaging Plaintiff Abruzzo and/or to otherwise portray him in a false light in furtherance of the storylines involved in Southern Charm.

67. The entire conversation amongst Altschul, Olindo, Baird, Defendant LeCroy and Defendant Meissner was prompted and/or encouraged by producers, employees, and/or agents of the Corporate Defendants, and Defendants Meissner and LeCroy individually and as co-conspirators with the Corporate Defendants agreed to falsely state, depict, or imply they were viewing a photo in which they could see Plaintiff Abruzzo's penis or "pecker." Such photos do not exist, nor are they in the public domain or viewable simply by a Google search.

68. The intentional and malicious blurring of the bottom of the photos by the Corporate Defendants falsely suggests that Plaintiff Abruzzo's genitals were viewable in the original photos and therefore had to be blurred to be suitable for television. Moreover, the promotional materials, previews leading up to the episode, and even the title "Dick Moves and Dick Pics" episode was created by the Corporate Defendants and/or designed to explicitly and falsely state or strongly imply that photos of Plaintiff Abruzzo's genitals exist, were viewed by the individual Defendants and/or Corporate Defendants.

69. Such photos do not exist and, therefore, cannot be viewed at all, much less by the individual Defendants during the concocted scene published by the Corporate Defendants. The statements otherwise are false, known to be false, and were published by the Defendants knowingly, willfully, and with actual malice and intent to defame, disparage, or otherwise harm the Plaintiff.

70. After going on only a handful of dates, Plaintiff Abruzzo ended his relationship with Dennis in early 2019 prior to season 6 of Southern Charm airing on television.

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71. The Corporate Defendants would later falsely claim that Dennis ended the relationship with Plaintiff Abruzzo as a result of the concern expressed by other cast members about Plaintiff Abruzzo as depicted on the Southern Charm show.[6] This claim is also false and illustrative of the Corporate Defendants pattern and practice of depicting false narratives as "reality."

72. This false claim was designed and intended to give credence to the false claims of "concern" from other cast members, including the individual Defendants Conover, Meissner, and LeCroy, which falsely portrayed Plaintiff Abruzzo as an unsafe, corrupt, abusive and/or otherwise unsavory individual in order to protect Dennis's storyline and reputation at Plaintiff's expense.

73. Only a small portion of Southern Charm season 6 show actually featured Plaintiff Abruzzo's dinner with Dennis. None of the depictions or discussions of Plaintiff Abruzzo portrayed him as the Corporate Defendants represented to Plaintiff. Instead, almost the entirety of reference to Abruzzo in the show was negative, false, designed to impugn Abruzzo's character, and/or portrayed Abruzzo in a false light.

74. Plaintiff Abruzzo did not and would not consent or otherwise knowingly, willfully, or voluntarily agree to the Defendants' false, misleading, deceptive, and fraudulent portrayal of him in what was a concerted and coordinated effort by the Defendants simply to create dramatic material for consumption by the viewers of the "reality" show Southern Charm in the United States and worldwide. Furthermore, Plaintiff Abruzzo was not involved with any other filming and was

[6] See https://www.bravotv.com/the-daily-dish/why-kathryn-dennis-joseph-abruzzo-politician-boyfriend-broke-up); https://realityblurb.com/2019/06/12/southern-charm-kathryn-dennis-reveals-why-she-broke-up-senator-joseph-abruzzo-plus-how-she-ended-their-relationship/

unaware of any of the statements referenced herein nor was he involved in any way with the editing or creation of the footage described herein.

75. Plaintiff Abruzzo is informed and believes that the Corporate Defendants have unaired footage which reveals the encouragement and/or prompting by the Corporate Defendants to the cast members named herein, along with the agreement and coordination among all Defendants, to discuss, defame and otherwise disparage Plaintiff Abruzzo for the purpose of providing false, scandalous, and/or licentious material for consumption by the public.

76. As a direct and proximate result of the Defendants' conduct described herein, Plaintiff Abruzzo's reputation has been destroyed, his actual and potential earnings severely diminished, lucrative contracts have been ended, future earnings have been diminished, and has otherwise suffered legally compensable damages.

FOR A FIRST CAUSE OF ACTION
OUTRAGE/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Individual Defendants and Corporate Defendants)

77. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

78. The Defendants, through their words, acts, and/or willful omissions intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of the Defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable person could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, anxiety, damage to reputation, and other manifestations.

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79. As a direct and proximate result of the outrageous conduct of the Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
FRAUD
(Corporate Defendants)

80. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

81. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as after filming while wrapping up, were false and material.

82. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of their truth or falsity.

83. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

84. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

85. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

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FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE FRAUD
(Corporate Defendants)

86. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

87. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as after filming while wrapping up, were false and material.

88. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of its truth or falsity.

89. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

90. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

91. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION
(Corporate Defendants)

92. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

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93. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as after filming while wrapping up, were false and material.

94. The Corporate Defendants had a pecuniary interest in making the false statements.

95. The Corporate Defendants owed a duty of care to see that they communicated truthful information to the Plaintiff.

96. The Corporate Defendants breached their duties of care by failing to exercise due care.

97. Plaintiff Abruzzo justifiably relied on the Defendants representations.

98. As a direct and proximate result of his reliance on the Corporate Defendants' misrepresentations, Plaintiff has been injured and suffered pecuniary damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION
FRAUDULENT INDUCEMENT
(Corporate Defendants)

99. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

100. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as when the partial piece of paper was presented for signing and after filming while wrapping up, were false and material.

101. The Corporate Defendants knew of the falsity of the statements or acted with reckless disregard of its truth or falsity.

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102. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these representations.

103. Plaintiff Abruzzo was ignorant of the falsity of the representations, relied on the truth of the representations, and had the right to so rely.

104. As a direct and proximate result of the fraudulent conduct of the Corporate Defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION
CIVIL CONSPIRACY
(Individual Defendants and Corporate Defendants)

105. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

106. The Corporate Defendants and individual cast members named herein constitute a combination of two or more people.

107. The very nature of the acts done, the relationship of the parties, the interests of these Defendants, and other circumstances can reasonably be inferred to be the joint assent of the minds of the Defendants for the primary purpose of injuring Plaintiff Abruzzo.

108. The statements described herein, along with the public dissemination and broadcast of the Southern Charm episodes which discuss, describe, ad/or depict Plaintiff Abruzzo constitute overt acts done pursuant to, and in furtherance of, the conspiracy.

109. As a direct and proximate result of the Defendants' conspiracy and conduct in forming and perpetrating the conspiracy, Plaintiff Abruzzo has been injured and suffered damages.

Plaintiff is entitled to judgment against the individual and Corporate Defendants, jointly and severally, for actual, general, compensatory, incidental, and/or consequential damages, punitive damages, and special damages in the form of attorney's fees, litigation costs, and other special damages; all of which to be determined by a jury.

FOR A SEVENTH CAUSE OF ACTION
DEFAMATION
(Individual Defendants and Corporate Defendants)

110. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

111. The statements made by the Corporate Defendants and individual cast members herein were published, non-privileged, false and defamatory per se as the statements allege criminal activity, moral turpitude, and/or unfitness for one's profession of the Plaintiff.

112. The individual and Corporate Defendants are at fault for the statements described herein. These false statements tended to impeach the honesty, integrity, virtue or reputation of the Plaintiff and were publications of natural or alleged defects of the Plaintiff which thereby exposed him to public hatred, contempt, ridicule, caused her to be shunned or avoided, and/or otherwise injured him in her office, business, or occupation.

113. The statements described herein were known to be false and were nevertheless published with actual malice.

114. The individual and Corporate Defendants' representations and statements falsely impute to Plaintiff Abruzzo a matter, practice or course of conduct incompatible with his business, trade or profession as a legitimate and successful lobbyist and former politician. He is not a participant in deviant activities such as assault nor has he participated, offered or agreed to be portrayed in a bad light or employed or contracted by the Defendants to appear or otherwise serve

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as a paid participant in the activities portrayed in Southern Charm for which his image, likeness and/or identity was used.

115. These false statements by implication constitute defamation *per se*.

116. Such false and *per se* defamatory representations and statements by implication were published to innumerable people or viewers.

117. The individual and Corporate Defendants knew their conduct described herein was wrongful.

118. The individual and Corporate Defendants intended to deprive Plaintiff Abruzzo of a property interest or, at a minimum, evinced a conscious disregard for the fact that Plaintiff Abruzzo did not consent to Defendants' use, alteration or publication of his name, likeness, reputation, or identity to promote, advertise, market or endorse Defendants' show or companies.

119. The individual and Corporate Defendants acted with actual or constructive knowledge of the high probability that injury or damage would result to Plaintiff Abruzzo or, at a minimum, were so reckless or wanton in care that their conduct constituted a conscious disregard of, or indifference to, Plaintiff Abruzzo's rights.

120. As a direct and proximate result of the individual and Corporate Defendants defamatory statements, Plaintiff has damaged. Plaintiff has suffered damage to his reputation, lost income and/or earnings, been embarrassed, humiliated, and endured mental suffering as a result of the Defendants' conduct. Moreover, Plaintiff has suffered physical bodily injuries in the form of nausea, headaches, other physical injuries, special damages in the form of attorney's fees and litigation expenses incurred in having to assert his rights and defend his reputation, and substantial economic damage as a direct and proximate result of the defamatory statements. Plaintiff is

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entitled to judgment against the individual and Defendants, jointly and severally, for all general and special damages as well as punitive damages in an amount sufficient to deter similar conduct.

FOR AN EIGHTH CAUSE OF ACTION
VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT
(Corporate Defendants)

121. The allegations of the foregoing paragraphs are incorporated into this cause of action as if fully stated herein.

122. The South Carolina Unfair Trade Practices Act declares unfair or deceptive acts or practices in the conduct of trade or commerce to be unlawful.

123. The Corporate Defendants are engaged in trade or commerce within the meaning of the Act.

124. The conduct described herein by the Corporate Defendants is offensive to public policy and/or is immoral, unethical, or oppressive. The Corporate Defendants' representations to those appearing on Southern Charm who are not regular cast members, including the Plaintiff herein, along with the portrayal by the Corporate Defendants of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm as "reality" or as somehow based in actual fact are intended to deceive and in fact have the tendency to deceive.

125. The deceptive, false, and fraudulent acts and/or practices of the Corporate Defendants have occurred with the Plaintiff and with other individuals who have appeared on Southern Charm, thus making it likely the Corporate Defendants' actions will continue absent some deterrence. As a result, the false and misleading representations to those appearing on Southern Charm, including the Plaintiff, as well as the false and misleading representations to others about those appearing on Southern Charm and the portrayal by the Corporate Defendants of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm,

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including the Plaintiff, as "reality" or somehow based upon some actual fact about those individuals and/or Charleston and its residents, negatively affect the public interest.

126. Further, the Corporate Defendants' policies and procedures to lie to, and about, anybody who appears on Southern Charm in its efforts to televise a "reality" show, create a potential for repetition of the unfair and deceptive acts.

127. As a direct and proximate result of the Corporate Defendants unfair trade practices, Plaintiff has suffered actual loss, injury, and/or damages. Plaintiff is entitled to judgment against the Corporate Defendants for actual, compensatory, general, incidental, and/or consequential damages, punitive damages, attorney's fees, and three times the actual damages sustained and such other relief as the court deems necessary and proper pursuant to SC Code 39-5-140.

FOR A NINTH CAUSE OF ACTION
NEGLIGENCE
(Individual and Corporate Defendants)

128. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth in paragraphs above as if fully alleged herein.

129. Under the circumstances stated herein, the individual and Corporate Defendants owed a duty of care towards Plaintiff Abruzzo.

130. Among other things, that duty included the obligation to deal with Plaintiff Abruzzo and his image in a commercially reasonable and prudent manner, to not use or alter Plaintiff Abruzzo's image, appearance, portrait in derogation of his rights, to refrain from making false and defamatory assertions of fact about Plaintiff Abruzzo, and to otherwise refrain from causing harm to Plaintiff Abruzzo.

131. The individual and Corporate Defendants breached those duties by using and/or altering Plaintiff Abruzzo's name, likeness, image, appearance, and/or portrait without Plaintiff

Abruzzo's authorization, permission or consent and/or by making false and defamatory statements about Plaintiff.

132. The individual and Corporate Defendants' conduct and breach as described above directly and proximately caused injury to Plaintiff Abruzzo's person, reputation, brand, goodwill and livelihood for which he has suffered damages.

133. As a direct and proximate result of the individual and Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. Plaintiff is entitled to a judgment granting actual, compensatory, incidental and/or consequential damages against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury, lost profits, disgorgement of profits earned directly or indirectly by individual and/or Defendants' unlawful use, punitive damages against the individual and Corporate Defendants, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining all Defendants from engaging in further unauthorized use of Plaintiff's name, likeness, image, portrait and/or appearance and such further relief that is just and proper.

FOR A TENTH CAUSE OF ACTION
QUANTUM MERUIT/UNJUST ENRICHMENT
(Individual and Corporate Defendants)

134. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth in above as if fully alleged herein.

135. Plaintiff Abruzzo has conferred a benefit upon the individual and Corporate Defendants and by virtue of their usage and self-serving alteration of his name, likeness, image, portrait and/or appearance and the false and defamatory statements about, and portrayal of, Plaintiff.

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136. Corporate Defendants and individual Defendants were aware that Plaintiff Abruzzo's name, likeness, image, portrait and/or appearance was valuable.

137. Corporate Defendants and individual Defendants were aware of the resulting benefit from usage of Plaintiff Abruzzo's name, likeness, image, portrait and/or appearance.

138. Corporate Defendants and individual Defendants have retained money, profits and other benefits conferred upon them by using Plaintiff Abruzzo's name, likeness, image, portrait and/or appearance as well as the false and defamatory statements about, and portrayal of, Plaintiff to promote and advertise Corporate Defendants' and individual Defendants show, companies, brands, or themselves personally.

139. It would be inequitable for any of the individual or Corporate Defendants to retain the benefits conferred upon them by using Plaintiff Abruzzo's name, likeness, image, portrait and/or appearance as well as the false and defamatory statements about, and portrayal of, Plaintiff without paying fair value to Plaintiff Abruzzo.

140. As a direct and proximate result of the individual Defendants and Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. Plaintiff is entitled to a judgment granting actual, general, compensatory, incidental, and/or consequential damages including lost profits and income, in an amount to be determined at trial by a jury; disgorgement by the individual and Corporate Defendants of money and/or profits earned directly or indirectly by the unlawful use of Plaintiff's name, likeness, image, portrait and/or appearance; punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining the individual and Corporate Defendants from engaging in further unauthorized use of the name, likeness, image, portrait, and/or appearance by the Plaintiff, and/or such further relief that is just and proper.

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FOR AN ELEVENTH CAUSE OF ACTION
WRONGFUL APPROPRIATION OF PERSONALITY/INFRINGEMENT ON THE RIGHT OF PUBLICITY
(Individual and Corporate Defendants)

141. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

142. The right of publicity is the inherent right of every human being to control the commercial use of his identity.

143. Plaintiff's right of publicity is a recognized property right that entitles him to the right to control the commercial use, to be free from unwarranted and/or unconsented use of his identity, and to be compensated monetarily for such commercial use.

144. The conduct alleged herein involves the intentional, unconsented use of the Plaintiff's name, likeness, and/or identity by the individual and Corporate Defendants for their own benefit which violates the Plaintiff's exclusive right to publicize and profit from his name, likeness, and/or other aspects of his personal identity.

145. As a direct and proximate result of the individual and Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. The individual and Corporate Defendants wrongful appropriation of Plaintiff's personality/infringement on Plaintiff's right of publicity carries with it a presumption of damages. Plaintiff is entitled to a judgment granting actual, compensatory, incidental, and/or consequential damages, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful conduct, punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining further unlawful use or publicization of the name, likeness, image, portrait, and/or appearance by the Plaintiff, and/or such further relief that is just and proper against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury.

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FOR A TWELFTH CAUSE OF ACTION
WRONGFUL PUBLICIZING OF PRIVATE AFFAIRS
(Individual and Corporate Defendants)

146. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

147. The "facts" publicized about the Plaintiff by the individual and Corporate Defendants described herein, to the extent any factual assertion published by the Defendants about the Plaintiff is even remotely true, which Plaintiff denies, constitutes an intentional disclosure of facts in which there is no legitimate public interest.

148. The disclosures and characterizations of the Plaintiff by the individual and Corporate Defendants described herein are such that would be, and are, highly offensive to a person of reasonable sensibilities, including the Plaintiff, which has caused serious injury.

149. The disclosures and characterizations of the Plaintiff by the individual and Corporate Defendants described herein were procured by fraudulent representations, misrepresentations, falsehoods, and other conduct that was willful, intentional, malicious, and designed to harm Plaintiff.

150. As a direct and proximate result of the individual Defendants and Corporate Defendants conduct, Plaintiff Abruzzo has been damaged. Plaintiff is entitled to a judgment granting actual, general, compensatory, incidental, and/or consequential damages including lost profits and income against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury; disgorgement by the individual and Corporate Defendants of money and/or profits earned directly or indirectly by the unlawful use of Plaintiff's name, likeness, image, portrait and/or appearance; punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief

enjoining the individual and Corporate Defendants from engaging in further unauthorized use or publicization of the name, likeness, image, portrait, appearance or any disclosure of any purported fact about the Plaintiff, and/or such further relief that is just and proper.

FOR A THIRTEENTH CAUSE OF ACTION
PUBLIC NUISANCE
(Individual and Corporate Defendants)

151. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

152. Nuisance law is based on the premise that every citizen holds his property subject to the implied obligation that he will use it in such a way as not to prevent others from enjoying the use of their property.

153. A nuisance is anything that works hurt, inconvenience, or damages; anything that essentially interferes with the enjoyment of life or property.

154. A public nuisance exists wherever acts or conditions are subversive of public order, decency, or morals, or constitute an obstruction of public rights.

155. Here, the individual and Corporate Defendants' conduct, course of conduct, portrayals, patterns, policies and practices are, at their very core, the distribution of hurt, inconvenience, damage, falsehoods about individuals appearing on Southern Charm who are not paid cast members, including the Plaintiff. It consists of the systematic deprivation and/or interference with the rights of those individuals to not be defamed and profit from the use of their name, likeness, or image, as well as the rights of the public in the accurate portrayal of the City of Charleston, surrounding locations, and their residents.

156. These deceptive, false, fraudulent, and otherwise damaging acts and/or practices engaged in by the individual and Corporate Defendants' culminate in the false and harmful

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portrayal of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm, including the Plaintiff, as "reality" or somehow based upon some actual fact about those individuals and/or Charleston and its residents.

157. These deceptive, false, fraudulent, and otherwise damaging acts and/or practices engaged in by the individual and Corporate Defendants' are subversive of public order, decency, morals, and/or constitute an obstruction of public rights thereby constituting a public nuisance

158. Plaintiff's right of publicity is a recognized property right that entitles him to the right to control the commercial use, to be free from unwarranted, unconsented, and/or fraudulent use of his identity, and to be compensated monetarily for such commercial use.

159. As a direct and proximate result of the individual and Corporate Defendants' nuisance activities, Plaintiff property right of publicity has been injured, causing Plaintiff to incur special damages different in kind from what the public may sustain as a result of the false portrayal of the individuals and residents of Charleston by the television show Southern Charm. Plaintiff is entitled to a judgment granting actual, general, compensatory, incidental, and/or consequential damages including lost profits and income against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury; disgorgement by the individual and Corporate Defendants of money and/or profits earned directly or indirectly by the unlawful use of Plaintiff's name, likeness, image, portrait and/or appearance; punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining the individual and Corporate Defendants from engaging in further unauthorized or fraudulent use or publicization of the name, likeness, image, portrait, appearance or any disclosure of any purported fact about the Plaintiff, and/or such further relief that is just and proper.

FOR A FOURTEENTH CAUSE OF ACTION
PRIVATE NUISANCE

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(Individual and Corporate Defendants)

160. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

161. A private nuisance is that class of wrongs that arises from the unreasonable, unwarrantable, or unlawful use by a person of his own property, personal or real.

162. Here, the individual and Corporate Defendants' conduct, course of conduct, portrayals, patterns, policies and practices demonstrate their use of their own personal, intellectual, and/or publicity rights is designed and in fact distributes hurt, inconvenience, falsehoods and damage to individuals appearing on Southern Charm who are not paid cast members, including the Plaintiff.

163. These deceptive, false, fraudulent, and otherwise damaging acts and/or practices engaged in by the individual and Corporate Defendants' culminate in the false and harmful portrayal of all persons, scenarios, conflicts, and storylines of persons appearing on Southern Charm, including the Plaintiff, as "reality" or somehow based upon some actual fact about those individuals and/or Charleston and its residents. It consists of the systematic deprivation and/or interference with the rights of those individual, including the Plaintiff, to their reputations and to profit from the use of their name, likeness, or image.

164. Plaintiff's right of publicity is a recognized property right that entitles him to the right to control the commercial use, and to be free from unwarranted, unconsented, and/or fraudulent use of his name, likeness, and/or identity, and to be compensated monetarily for such commercial use.

165. The individual and Corporate Defendants' continuing dissemination and false portrayal of the Plaintiff and his name, likeness, and/or identity through re-runs, internet streams,

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and sales of episodes containing or referencing Plaintiff constitutes an ongoing and unreasonable, unwarrantable, and/or unlawful use by the individual and Corporate Defendants' own property at the expense of Plaintiff's property rights thereby constituting a private nuisance.

166. As a direct and proximate result of the individual and Corporate Defendants' nuisance activities, Plaintiff property right of publicity has been injured, causing Plaintiff to incur damages and special damages. Plaintiff is entitled to a judgment granting actual, general, compensatory, incidental, and/or consequential damages including lost profits and income against the individual and Corporate Defendants, jointly and severally, in an amount to be determined at trial by a jury; disgorgement by the individual and Corporate Defendants of money and/or profits earned directly or indirectly by the unlawful use of Plaintiff's name, likeness, image, portrait and/or appearance; punitive damages, attorneys' fees and costs, prejudgment and post-judgment interest, and preliminary and permanent injunctive relief enjoining the individual and Corporate Defendants from engaging in further unauthorized or fraudulent use or publicization of the name, likeness, image, portrait, appearance or any disclosure of any purported fact about the Plaintiff, and/or such further relief that is just and proper.

FOR A FIFTEENTH CAUSE OF ACTION
FRAUDULENT INDUCEMENT OF ARBITRATION AGREEMENT/UNCONSCIONABILITY OF ARBITRATION AGREEMENT
(Individual and Corporate Defendants)

167. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

168. Upon the filing of Plaintiff's initial complaint, the Defendants collectively filed a motion to dismiss and for order compelling arbitration, which seeks to enforce a purported "Release and Arbitration Agreement."

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169. The "Arbitration Agreement" is not signed by the individual Defendants, not signed by the Corporate Defendants, does not cover the torts alleged herein by the Plaintiff against either the individual or Corporate Defendants, nor is it enforceable as a matter of law by the Corporate Defendants against the Plaintiff or with respect to the individual Defendants.

170. As described herein, the contents of this "Arbitration Agreement" was never provided to Plaintiff; only bottom half of a single piece of paper containing a signature block was provided.

171. Plaintiff was induced to sign by the fraudulent representations made by the same Corporate Defendants who now seek to enforce this purported "Arbitration Agreement."

172. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as at the time the partial piece of paper was presented for signature and after filming while wrapping up, were false and material.

173. Moreover, given the substance and actual language of the "Arbitration Agreement" relied upon by the Defendants, the omission of representations at the time the signature block was presented and/or after filming regarding any purported waiver of the fundamental right to a jury trial or the release of rights or claims arising out of conduct, including intentional and illegal conduct, that no reasonable person would contemplate under the circumstances, Plaintiff Abruzzo included, constitutes fraud by omission.

174. The Corporate Defendants knew of the falsity of the statements/omissions or acted with reckless disregard of its truth or falsity.

175. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these false representations/omissions.

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176. Plaintiff Abruzzo was ignorant of the falsity of the representations/omissions, relied on the truth of the representations, and had the right to so rely.

177. The purported "Arbitration Agreement" is an adhesion contract that was only partially presented on a take it or leave it basis with terms that were not known or negotiable. Plaintiff, who does not watch reality television, had no reason to suspect the Defendants would purport to grant themselves the illegal and outrageous rights contained therein and, based upon the representations/omissions by the Corporate Defendants, understood the document to authorize the Defendants only to film the dinner with his then girlfriend, did not have counsel, nor could he have reasonably contemplated the need for counsel to allow the Corporate Defendants to simply film the dinner, and had no business concern with the filming of the dinner because he was not paid.

178. The terms of the "Arbitration Agreement" are intertwined with the remainder of the document and are unconscionable, illegal, unenforceable and void *ab initio* as against public policy and cannot be enforced by the court. It purports to grant the Corporate Defendants (not the individual Defendants) the right to defame, disparage, portray Plaintiff in a false light, make misrepresentations to Plaintiff and about Plaintiff to others, and to conceal or hide cameras and audio devices in areas which a person would have a reasonable expectation of privacy, among other things no person would reasonably expect to be found in any agreement, much less one that authorizes filming of a single dinner.

179. The purported "release" clause is so intertwined with the purported "arbitration" clause that they cannot be separated. The "release" language purports to release the Corporate Defendants from the aforementioned intentional torts as well as other intentional torts such as defamation, intentional infliction of emotional distress, and the rights of privacy and publicity

"regardless of whether caused by the negligence *or willful misconduct*" of the Corporate Defendants.

180. Yet, the agreement purports to require Plaintiff to maintain confidentiality regarding any information learned about the Corporate Defendants, including the agreement itself, in perpetuity and throughout the universe, and to refrain from making negative statements about the Corporate Defendant or otherwise infringing upon or violating the rights of any other person.

181. It further attempts to hold Plaintiff liable for the Corporate Defendants attorney fees and costs incurred in connection with a claim or lawsuit brought against them, even for intentional or willful misconduct, and purports to grant the Corporate Defendants the right to obtain injunctive relief from a court of competent jurisdiction (without posting bond) against Plaintiff if he were to disclose information about the Defendants, the agreement, or their tortious conduct or if he were to seek redress for any harm caused whatsoever by the Defendants, along with a liquidated damages payment of $500,000 per alleged breach, plus disgorgement of any income received by Plaintiff connection with such alleged breach. Despite specifically granting the Corporate Defendants the right to injunctive relief, the "Arbitration Agreement" specifically purports to prohibit Plaintiff from seeking or obtaining injunctive relief, again while authorizing the Corporate Defendants to simultaneously engage in never ending and ongoing intentional torts, and at the same time attempting to bar Plaintiff from any legal redress for those torts.

182. The "arbitration" clause purports to require arbitration to be held in New York City when Plaintiff resides in Florida and Southern Charm is based in Charleston. The agreement further falsely represents that Plaintiff has had ample opportunity to read it (he did not, nor was he even presented the entire agreement much less the "arbitration agreement"), that he had the opportunity to review the agreement with an attorney (he did not, nor could he reasonably have

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contemplated the need to do so based upon the representations to him and the circumstances then and there existing), and that he has in fact read the agreement (he did not as he was not even presented the entire agreement, much less the "arbitration agreement").

183. Taken as a whole and individually, the "Release" clause and "Arbitration Agreement" are so intertwined that they cannot be separated. in essence purports to allow the Corporate Defendants to engage in any type of conduct whatsoever, including lying to and about the Plaintiff and committing illegal acts or intentional torts against the Plaintiff, while purporting to prohibit Plaintiff from taking any action whatsoever to prevent or repair the harm caused and even from discussing the "agreement" with anybody, at any place, at any time, in perpetuity, and "throughout the universe." The terms are so one-sided and oppressive that no reasonable person would make them, Plaintiff included, and no fair and honest person would accept them.

184. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, Plaintiff has been injured and suffered damages. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, as well as the oppressive, unconscionable, illegal, unenforceable, and void as against public policy terms of the "Arbitration Agreement," Plaintiff is entitled to an order declaring the "Arbitration Agreement" void *ab initio* and/or unenforceable, for judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A SIXTEENTH CAUSE OF ACTION
FRAUDULENT INDUCEMENT OF RELEASE/UNCONSCIONABILITY OF RELEASE
(Individual and Corporate Defendants)

185. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

186. Upon the filing of Plaintiff's initial complaint, the Defendants collectively filed a motion to dismiss and for order compelling arbitration, which seeks to enforce a purported "Release and Arbitration Agreement."

187. The "Arbitration Agreement" is not signed by the individual Defendants, not signed by the Corporate Defendants, does not cover the torts alleged herein by the Plaintiff against either the individual or Corporate Defendants, nor is it enforceable as a matter of law by the Corporate Defendants against the Plaintiff or with respect to the individual Defendants.

188. As described herein, the contents of this "release" was never provided to Plaintiff; only bottom half of a single piece of paper containing a signature block was provided.

189. Plaintiff was induced to sign by the fraudulent representations made by the same Corporate Defendants who now seek to enforce this purported "release."

190. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as at the time the partial piece of paper was presented for signature and after filming while wrapping up, were false and material.

191. Moreover, given the substance and actual language of the "release" relied upon by the Defendants, the omission of representations at the time the signature block was presented and/or after filming regarding any purported waiver of the fundamental right to a jury trial or the release of rights or claims arising out of conduct, including intentional and illegal conduct, that no reasonable person would contemplate under the circumstances, Plaintiff Abruzzo included, constitutes fraud by omission.

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192. The Corporate Defendants knew of the falsity of the statements/omissions or acted with reckless disregard of its truth or falsity.

193. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these false representations/omissions.

194. Plaintiff Abruzzo was ignorant of the falsity of the representations/omissions, relied on the truth of the representations, and had the right to so rely.

195. The purported "release" is an adhesion contract that was only partially presented on a take it or leave it basis with terms that were not known or negotiable. Plaintiff, who does not watch reality television, had no reason to suspect the Defendants would purport to grant themselves the illegal and outrageous rights contained therein and, based upon the representations/omissions by the Corporate Defendants, understood the document to authorize the Defendants only to film the dinner with his then girlfriend, did not have counsel, nor could he have reasonably contemplated the need for counsel to allow the Corporate Defendants to simply film the dinner, and had no business concern with the filming of the dinner because he was not paid.

196. The terms of the "release" are intertwined with the remainder of the document and are unconscionable, illegal, unenforceable and void *ab initio* as against public policy and therefore cannot be enforced by the court. It purports to grant the Corporate Defendants (not the individual Defendants) the right to defame, disparage, portray Plaintiff in a false light, make misrepresentations to Plaintiff and about Plaintiff to others, and to conceal or hide cameras and audio devices in areas which a person would have a reasonable expectation of privacy, among other things no person would reasonably expect to be found in any agreement, much less one that authorizes filming of a single dinner.

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197. The "release" language purports to release the Corporate Defendants from the aforementioned intentional torts as well as other intentional torts such as defamation, intentional infliction of emotional distress, and the rights of privacy and publicity "regardless of whether caused by the negligence *or willful misconduct*" of the Corporate Defendants.

198. Yet, the agreement purports to require Plaintiff to maintain confidentiality regarding any information learned about the Corporate Defendants, including the agreement itself, in perpetuity and throughout the universe, and to refrain from making negative statements about the Corporate Defendant or otherwise infringing upon or violating the rights of any other person.

199. It further attempts to hold Plaintiff liable for the Corporate Defendants attorney fees and costs incurred in connection with a claim or lawsuit brought against them, even for intentional or willful misconduct, and purports to grant the Corporate Defendants the right to obtain injunctive relief from a court of competent jurisdiction (without posting bond) against Plaintiff if he were to disclose information about the Defendants, the agreement, or their tortious conduct or if he were to seek any redress whatsoever for any harm caused by the Defendants, along with a liquidated damages payment of $500,000 per alleged breach, plus disgorgement of any income received by Plaintiff connection with such alleged breach. Despite specifically granting the Corporate Defendants the right to injunctive relief, the "release" specifically purports to prohibit Plaintiff from seeking or obtaining injunctive relief, again while authorizing the Corporate Defendants to simultaneously engage in never ending and ongoing intentional torts, and at the same time attempting to bar Plaintiff from any legal redress for those torts.

200. The "release" further falsely represents that Plaintiff has had ample opportunity to read it (he did not, nor was he even presented the entire agreement much less the "arbitration agreement"), that he had the opportunity to review the agreement with an attorney (he did not, nor

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could he reasonably have contemplated the need to do so based upon the representations to him and the circumstances then and there existing), and that he has in fact read the agreement (he did not as he was not even presented the entire agreement, much less the "arbitration agreement").

201. Taken as a whole and individually, the "release" in essence purports to allow the Corporate Defendants to engage in any type of conduct whatsoever, including lying to and about the Plaintiff and committing illegal acts or intentional torts against the Plaintiff, while purporting to prohibit Plaintiff from taking any action whatsoever to prevent or repair the harm caused and even from discussing the "release" with anybody, at any place, at any time, in perpetuity, and "throughout the universe." The terms are so one-sided and oppressive that no reasonable person would make them, Plaintiff included, and no fair and honest person would accept them.

202. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, Plaintiff has been injured and suffered damages. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, as well as the oppressive, unconscionable, illegal, unenforceable, and void as against public policy terms of the "release," Plaintiff is entitled to an order declaring the "release" void *ab initio* and/or unenforceable, for judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

FOR A SEVENTEENTH CAUSE OF ACTION
RESCISSION OF "RELEASE AND ARBITRATION AGREEMENT"
(Individual and Corporate Defendants)

203. Plaintiff Abruzzo hereby incorporates by reference each and every allegation set forth above as if fully alleged herein.

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204. Upon the filing of Plaintiff's initial complaint, the Defendants collectively filed a motion to dismiss and for order compelling arbitration, which seeks to enforce a purported "Release and Arbitration Agreement."

205. The "Release and Arbitration Agreement" is not signed by the individual Defendants, not signed by the Corporate Defendants, does not cover the torts alleged herein by the Plaintiff against either the individual or Corporate Defendants, nor is it enforceable as a matter of law by the Corporate Defendants against the Plaintiff or with respect to the individual Defendants.

206. South Carolina law refuses to enforce contracts based on fraudulent conduct because a party should not retain the benefits of an agreement that he knowingly and intentionally entered into though deceptive means. Beyond the patent unfairness inherent in enforcing a contract induced through intentional fraud, giving legal effect to such a contract violates a fundamental principle of contract law: there must be a meeting of the minds. By its very nature, there can be no union of purpose where one party is intentionally deceiving the other through fraud.

207. It is well settled that if the party who signs a written contract in ignorance of its contents without reading it or having it read is induced to sign by conduct of the other party which amounts to actionable fraud, this gives the signer the right to avoid the contract as against him on the ground of fraud.

208. South Carolina law allows for a contract to be rescinded for a unilateral mistake when that mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement. Further, a rescission of a contract is allowed when there is evidence of misrepresentation or concealment.

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209. As described herein, the contents of this "Release and Arbitration Agreement" were never provided to Plaintiff; only bottom half of a single piece of paper containing a signature block was provided.

210. Plaintiff was induced to sign by the fraudulent representations made by the same Corporate Defendants who now seek to enforce this purported "Release and Arbitration Agreement."

211. The representations to Plaintiff Abruzzo made by the Corporate Defendants immediately prior to the filming as well as at the time the partial piece of paper was presented for signature and after filming while wrapping up, were false and material.

212. Moreover, given the substance and actual language of the "Release and Arbitration Agreement" relied upon by the Defendants, the omission of representations at the time the signature block was presented and/or after filming regarding any purported waiver of the fundamental right to a jury trial or the release of rights or claims arising out of conduct, including intentional and illegal conduct, that no reasonable person would contemplate under the circumstances, Plaintiff Abruzzo included, constitutes fraud by omission.

213. The Corporate Defendants knew of the falsity of the statements/omissions or acted with reckless disregard of its truth or falsity.

214. The Corporate Defendants intended for Plaintiff Abruzzo to act upon these false representations/omissions.

215. Plaintiff Abruzzo was ignorant of the falsity of the representations/omissions, relied on the truth of the representations, and had the right to so rely.

216. The purported "Release and Arbitration Agreement" is an adhesion contract that was only partially presented on a take it or leave it basis with terms that were not known or

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negotiable. Plaintiff, who does not watch reality television, had no reason to suspect the Defendants would purport to grant themselves the illegal and outrageous rights contained therein and, based upon the representations/omissions by the Corporate Defendants, understood the document to authorize the Defendants only to film the dinner with his then girlfriend, did not have counsel, nor could he have reasonably contemplated the need for counsel to allow the Corporate Defendants to simply film the dinner, and had no business concern with the filming of the dinner because he was not paid.

217. The terms of the "Release and Arbitration Agreement" are intertwined with one another so as to be inseparable and are unconscionable, illegal, unenforceable and void *ab initio* as against public policy and therefore cannot be enforced by the court. It purports to grant the Corporate Defendants (not the individual Defendants) the right to defame, disparage, portray Plaintiff in a false light, make misrepresentations to Plaintiff and about Plaintiff to others, and to conceal or hide cameras and audio devices in areas which a person would have a reasonable expectation of privacy, among other things no person would reasonably expect to be found in any agreement, much less one that authorizes filming of a single dinner.

218. The "Release and Arbitration Agreement" purports to release the Corporate Defendants from the aforementioned intentional torts as well as other intentional torts such as defamation, intentional infliction of emotional distress, and the rights of privacy and publicity "regardless of whether caused by the negligence *or willful misconduct*" of the Corporate Defendants.

219. Yet, the "Release and Arbitration Agreement" purports to require Plaintiff to maintain confidentiality regarding any information learned about the Corporate Defendants, including the agreement itself, in perpetuity and throughout the universe, and to refrain from

making negative statements about the Corporate Defendant or otherwise infringing upon or violating the rights of any other person.

220. It further attempts to hold Plaintiff liable for the Corporate Defendants attorney fees and costs incurred in connection with a claim or lawsuit brought against them, even for intentional or willful misconduct, and purports to grant the Corporate Defendants the right to obtain injunctive relief from a court of competent jurisdiction (without posting bond) against Plaintiff if he were to disclose information about the Defendants, the agreement, or their tortious conduct or if he were to seek any redress whatsoever for any harm caused by the Defendants, along with a liquidated damages payment of $500,000 per alleged breach, plus disgorgement of any income received by Plaintiff connection with such alleged breach. Despite specifically granting the Corporate Defendants the right to injunctive relief, the "Release and Arbitration Agreement" specifically purports to prohibit Plaintiff from seeking or obtaining injunctive relief, again while authorizing the Corporate Defendants to simultaneously engage in never ending and ongoing intentional torts, and at the same time attempting to bar Plaintiff from any legal redress for those torts.

221. The "Release and Arbitration Agreement" further falsely represents that Plaintiff has had ample opportunity to read it (he did not, nor was he even presented the entire agreement much less the "arbitration agreement"), that he had the opportunity to review the agreement with an attorney (he did not, nor could he reasonably have contemplated the need to do so based upon the representations to him and the circumstances then and there existing), and that he has in fact read the agreement (he did not as he was not even presented the entire agreement, much less the "arbitration agreement").

222. Taken as a whole and individually, the "Release and Arbitration Agreement" in essence purports to allow the Corporate Defendants to engage in any type of conduct whatsoever,

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including lying to and about the Plaintiff and committing illegal acts or intentional torts against the Plaintiff, while purporting to prohibit Plaintiff from taking any action whatsoever to prevent or repair the harm caused and even from discussing the "Release and Arbitration Agreement" with anybody, at any place, at any time, in perpetuity, and "throughout the universe." The terms are so one-sided and oppressive that no reasonable person would make them, Plaintiff included, and no fair and honest person would accept them.

223. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, Plaintiff has been injured and suffered damages. As a direct and proximate result of the fraudulent conduct, representations, and/or omissions of the Corporate Defendants, as well as the oppressive, unconscionable, illegal, unenforceable, and void as against public policy terms of the "Release and Arbitration Agreement," Plaintiff is entitled to a rescission of the "Release and Arbitration Agreement," for judgment against the Defendants for actual, general, compensatory, incidental, and/or consequential damages, and punitive damages in a sufficient amount to deter such similar conduct by these Defendants or others; all of which to be determined by a jury.

WHEREFORE, the Plaintiff Abruzzo hereby requests the following relief:

A. A jury trial;

B. Actual, compensatory, consequential, special, and general damages against the Defendants, jointly and severally, in an amount not less than Ten Million Dollars ($10,000,000.00);

C. Treble damages for willful violations of the SC Unfair Trade Practice Act;

D. Attorney's fees as provided by law;

E. Punitive damages in an amount sufficient to deter the same or similar conduct as determined by a jury;

F. Costs and fees taxed against the Defendants as permitted by law;

G. Such other and further relief as the Court deems just, prudent, and proper.

Respectfully submitted,

s/ Aaron E. Edwards
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ATTORNEYS FOR PLAINTIFF

Mt. Pleasant, South Carolina
Dated: June 19, 2020

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