Exhibit 1

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2025-001868

Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., ...Respondent,

v.

William Barnes and Barnes Law Firm, LLC, ... Appellants,

v.

Parker Law Group,..... Third-Party Defendant.

RESPONDENT'S MOTION TO STRIKE AND RETURN TO MOTION TO CERTIFY APPEAL PURSUANT TO RULE 204(b), SCRCP

PIERCE. SLOAN, KENNEDY & EARLY, LLC
Carl E. Pierce, II
R. Richard Gergel
321 East Bay Street
Post Office Box 22437
Charleston, SC 29401
(843) 722-7733

ATTORNEYS FOR RESPONDENT

INTRODUCTION

Appellants argue it is of the utmost importance that they be permitted to leapfrog the Court of Appeals and demand this Court's immediate review of grievances they have with a circuit court order compelling arbitration of an employment dispute. Appellants assert this is an exigent matter affecting the well-being of the entire public with novel implications for South Carolina arbitration law, and that this appeal is thus worthy of the Court's immediate attention. In fact, this dispute is nothing of the sort. Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A. ("PMPED") has been involuntarily dragged before the Court concerning a fairly routine dispute over the terms of an employment agreement and its arbitration provision. This appeal only concerns the narrow interests of PMPED and Appellants. Contrary to Appellants' assertions, the dispute only implicates well-established principles of contract law and the doctrine of waiver, and is therefore not suitable for certification pursuant to Rule 204, SCACR.

There are other compelling reasons for denying the Appellants' motion. ***First***, as briefly set forth below and in a motion to dismiss contemporaneously filed with the Court of Appeals, the Court does not have appellate jurisdiction because the complained of order is interlocutory and not immediately appealable under S.C. Code Ann. § 14-3-330. ***Second***, and perhaps more importantly, Appellants' arguments as to why the circuit court's order is erroneous are unpreserved, legally flawed, and unsupported by evidence in the record. For this last reason, PMPED also respectfully requests that the Court strike portions of Appellants' motion concerning the merits of the circuit court's order that are not supported by affidavits or any other evidence that could be properly included in the record on appeal. The only evidence preserved for the Court's review demonstrates that PMPED did essentially nothing to reasonably indicate to Appellants or the circuit court that PMPED waived its right to arbitrate this dispute.

COUNTERSTATEMENT OF THE CASE

Appellant Barnes is a former employee of PMPED. After resigning from PMPED, Barnes joined Barnes Law Firm, LLC as a founding member. Prior to his resignation, Barnes signed an employment agreement with PMPED that requires the arbitration of all disputes relating to Barnes' employment, termination, and the interpretation, performance or breach of the employment agreement. (Ex. 1 ¶ 27). The agreement also provides that disputes will be arbitrated pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 *et seq.*, and that disputes regarding the division of fees associated with transferred cases for which there is no written agreement shall be settled by binding arbitration. (Ex. 1 ¶ 18).

As set forth in paragraph 27(a):

> Except to the extent referenced in paragraph (b), the Employer and the Employee agree that, to the extent permitted by law, any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, or the Employee's employment by the Employer or any termination thereof, shall be settled by arbitration. Arbitration will be held at a location in Hampton County, South Carolina. If the parties proceed to arbitration, it will be conducted in accordance with the South Carolina Uniform Arbitration Act. The parties agree to employ a licensed attorney as their arbitrator and will agree upon one arbitrator. In the event that the parties cannot agree, they will proceed pursuant to S.C. Code Ann. § 15-48-30, again relying on licensed attorneys for the position of arbitrator. The decision of the arbitrator(s) will be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. Each party shall bear the costs equally of arbitration.

Like all disputes relating to the employment agreement, those relating to the apportionment of attorney fees to former employees must be arbitrated. To that end, the employment agreement provides special arbitration procedures for the apportionment of attorney fees to former employees. As set forth in Paragraph 27(b):

> (b) The parties agree to resolve certain payment calculations (as provided in Paragraphs 14, 15 and 16) and fee decisions for transferred cases (as provided in Paragraph 18) by a separate arbitration procedure as set out in those Paragraphs.

Following Barnes' resignation from PMPED, certain disputes arose between PMPED and Barnes regarding: (1) attorney fees owed to PMPED from cases that originated at PMPED but were transferred to Barnes Law Firm, (2) attorney fees owed to Barnes from cases that remained and resolved at PMPED after Barnes left PMPED, and (3) reimbursement of legal fees related to matters that arose during Barnes' employment that were paid by PMPED on behalf of Barnes after his resignation. Barnes refused to arbitrate the disputes as required by the employment agreement. Barnes delayed the initiation of the required arbitration process for almost three years by refusing to provide information regarding the settlements he collected on cases that originated at PMPED and were later transferred to Barnes Law Firm. Barnes also refused to cooperate in the selection of an arbitrator.

At a mediation conducted on November 25, 2024, PMPED informed Appellants that PMPED and PLG would demand arbitration if the dispute was not resolved at mediation. The mediation was not successful. With only weeks left before the statute of limitations deadline and pressured by Barnes' continued refusal to participate in an arbitration process he agreed to as an attorney, PMPED had no choice but to file the action giving rise to this appeal on December 16, 2024. To compel Barnes to participate in arbitration and preserve any claims that could potentially be found nonarbitrable, PMPED asked the circuit court to (1) determine whether the claims must be arbitrated, (2) order arbitration for all arbitrable claims, and (3) proceed with a jury trial as to any remaining nonarbitrable issues. The complaint references the arbitration provision eight times:

> 12. . . . Pursuant to the PMPED Employment Agreement, the division of attorney fees collected from the transferred cases that are not subject to the fifty percent fee sharing agreement *must be determined by an arbitrator*.
>
> 23. Pursuant to the PMPED Employment Agreement, attorney fees collected from transferred cases that are not subject to the fifty percent fee sharing agreement

described in Paragraph 10 *must be divided between Plaintiff PMPED and Defendant Barnes by an arbitrator*.

32. Further, a binding agreement existed between Plaintiff PMPED and Defendant Barnes under which *Plaintiff PMPED and Defendant Barnes would divide attorney fees collected in the remaining transferred cases (those not subject to the fifty percent fee sharing agreement) according to the determination of an arbitrator* to be agreed to by the parties. Upon information and belief, Defendants Barnes and Barnes Law Firm have collected attorney fees from transferred cases where *the division of attorney fees must be determined by an arbitrator*.

49. As described herein, including but not limited to Paragraph 12, a valid contract exists concerning fees collected in all other transferred cases *that requires the division of attorney fees collected in those cases to be determined by an arbitrator*.

54. WHEREFORE, Plaintiff PMPED, incorporating all allegations and averments set forth above, demands and prays for as follows:

g. *That the Court order Defendant Barnes to arbitrate, before a licensed attorney selected by Plaintiff or mutual agreement of the parties, any issue determined to be subject to arbitration and that the Court issue an Order as to any rules the Court deems necessary for the arbitration proceedings . . . .*

i. That a trial be had by jury on all *triable issues* . . . .

On January 3, 2025, prior to the Appellants' filing of a responsive pleading, counsel for PMPED wrote to counsel for Appellants memorializing that he had previously emailed Appellants asking about arbitration and asking Appellants to propose an arbitrator. On January 15, 2025, Appellants answered the complaint, and *both* Appellants brought numerous counterclaims against PMPED and third-party claims against Parker Law Group, LLP ("PLG"), including claims for breach of contract, quantum meruit, unjust enrichment, accounting, and a declaratory judgment. The breach of contract, unjust enrichment, and declaratory judgment claims in particular sought to have the circuit court enforce alleged terms of the employment agreement and make declarations interpreting the employment agreement in Appellants' favor.

On January 16, 2025, Appellants served discovery requests on PMPED, including 11 interrogatories and 44 requests for production. PMPED filed an answer to Appellants' counterclaims. On March 3, 2025, PMPED provided responses to seven of the interrogatories, primarily identifying nine witnesses and identifying a one-page document containing minutes from a PMPED shareholder meeting. PMPED only produced two pages of documents in response to Appellants requests for production and either objected or did not respond to 43 of the requests.[1]

On March 26, 2025, Appellants moved to compel responses from PMPED. On April 14, 2025, Appellants moved for a confidentiality order with PMPED's consent. On May 9, 2025, PMPED filed a motion to stay the action and compel arbitration. Appellants noticed the deposition of a PMPED shareholder after PMPED had filed its motion, which was opposed by PMPED on the grounds that it had moved to stay the case and compel arbitration such that discovery issues would be determined by an arbitrator. PMPED moved to quash the deposition subpoena on May 27, 2025. On July 17, 2025, the circuit court stayed the case and compelled arbitration.

ARGUMENT

There is nothing unusual about this case. In substance, PMPED's complaint constitutes a request for the circuit court to compel arbitration. The evidence in the record only demonstrates that after doing so, PMPED answered Appellants' counterclaims, partially answered Appellants'

[1] There are no publicly filed documents purporting to be discovery requests from PMPED to Appellants that could be made part of the record on appeal. Appellants filed what appears to be an attorney-crafted table summarizing Appellants' position on discovery as an exhibit to their reply memorandum in support of their motion to reconsider the circuit court's July 17, 2025 order. This document was not filed prior to the circuit court's order or the hearing on the motion to compel arbitration, is not new evidence that was not discoverable prior to the order or hearing, and as such it is not preserved for review or evidence that can be properly included in the record. *See Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). Further, PMPED and PLG argued to the circuit court that Appellants' waiver and prejudice arguments were raised for the first time in their motion for reconsideration and were not preserved for review. Appellants appear to contest this argument now, before this Court, for the first time.

discovery requests by producing two pages of documents and identifying a small number of witnesses, consented to Appellants' motion for a protective order, then filed a motion to stay the action and compel arbitration. All of this occurred within five months of the filing of the summons and complaint. There is nothing contained within these facts, no matter how they are spun by Appellants, by which any court could find that PMPED, through its *own* actions, conveyed an intent to waive arbitration. Because Appellants' arguments as to waiver and thier attempt to certify this appeal to the Court are baseless, the Court should deny their motion.

I. The Court does not have appellate jurisdiction to entertain Appellants' motion.

Because the circuit court's order staying the case and compelling arbitration is not a final order involving the merits or discontinuing the action, it is not immediately appealable. Vitally, PMPED did not move the circuit court to dismiss the action, and the case has only been stayed. Accordingly, the circuit court's order is interlocutory.

PMPED's motion did not invoke Rule 12, SCRCP. To the contrary, PMPED specifically asked the circuit court to stay rather than dismiss the proceedings. The circuit court's July 11, 2025 order specified that it does not end the case. Similarly, the formal order that followed did not dismiss the case or end the action either and only stayed it.

As set forth by this Court:

> [S]tatutes at both the federal and state level have been enacted which restrict the right to appeal orders which favor arbitration over litigation. 9 U.S.C.A. § 16 (West Supp. 1995); S.C. Code Ann. § 15-48-200 (Supp. 1994).
>
> Section 15-48-200(a) provides as follows:
>
> > An appeal may be taken from: (1) An order denying an application to compel arbitration made under § 15-48-20; (2) An order granting an application to stay arbitration made under § 15-48-20(b); (3) An order confirming or denying confirmation of an award; (4) An order modifying or correcting an award; (5) An order vacating an award

> without directing a rehearing; or (6) A judgment or decree entered pursuant to the provisions of this chapter.
>
> By application of the rule of statutory construction "expression unius est exclusion alterius" (the mention of one is the exclusion of another), *all other orders related to arbitration are not immediately appealable*. *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984). Therefore, the order in this case, which stays this action and compels arbitration, is not immediately appealable under § 15-48-200.

Heffner v. Destiny, Inc., 321 S.C. 536, 537-38, 471 S.E.2d 135, 135-36 (1995) (emphasis added). Therefore, the only avenue for the Court, and the Court of Appeals, to have appellate jurisdiction to review this case (and more importantly this motion), despite the language of *Heffner*, would be for the order to somehow be immediately appealable under S.C. Code Ann. § 14-3-330.

a. The order is not immediately appealable under S.C. Code Ann. § 14-3-330(1) because it does not involve the merits of the underlying case.

Under section 14-3-330(1), the order could be immediately appealable if it involved the merits of the underlying case. Motions to compel arbitration by definition do not involve the merits as they do not finally determine a substantial matter forming the whole or part of a cause of action or defense. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011). The circuit court's order compelling arbitration does not finally determine any element of PMPED's causes of action, is interlocutory, and therefore is subject to revision by the circuit court at any time prior to the entry of final judgment. *See Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (stating that an order is interlocutory if it leaves any further act that must be done by the court prior to a determination of the rights of the parties.).

The circuit court's July 11, 2025 order clearly indicates that it does not end the case. There is no finality in the grant of the motion, and there could be newly discovered evidence that would support Appellants' arguments and persuade the circuit court to revise its order. Future circumstances (for example, if the arbitration breaks down or fails to resolve the dispute) could

dictate that the parties return to the circuit court. In sum, because the order does not determine the merits of any of PMPED's causes of action or Appellants' counterclaims, third-party claims, and affirmative defenses, the order is not immediately appealable under section 14-3-330(1).

b. The order is not immediately appealable under S.C. Code Ann. § 14-3-330(2) because the order does not determine the action or prevent a judgment.

The order is not immediately appealable under section 14-3-330(2) either, even though it affects the parties' rights to a jury trial. Section 14-3-330(2) states that:

> An order affecting a substantial right made in an action [is immediately appealable] when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action

S.C. Code Ann. § 14-3-330(2). Because the order at issue does not dismiss or otherwise finally discontinue the action, it does not determine the action or prevent a judgment. Appellants have not lost any defenses "and in fact, their defense will remain viable until there is a final order in the case." *Mid-State Distribs.*, 310 S.C. at 335 n.4, 426 S.E.2d at 780 n.4. An order compelling arbitration that does not dismiss the action does not finally determine any of the rights of the parties. *Contra Widener v. Fort Mill Ford*, 381 S.C. 522, 524, 674 S.E.2d 172, 173-74 (Ct. App. 2009) (stating that an order *dismissing* an action and compelling arbitration finally determines the rights of the parties and is immediately appealable pursuant to section 14-3-330). The order is therefore not immediately appealable, the Court does not have appellate jurisdiction over this matter, and it should be dismissed.[2]

[2] Similarly, under the FAA an order staying a case and compelling arbitration is not immediately appealable. *See Smith v. Spizzirri*, 601 U.S. 472, 477, 144 S. Ct. 1173, 1177, 218 L. Ed. 2d 494 (2024) ("When a court compels arbitration, by contrast, Congress made clear that, absent certification of a controlling question of law by the district court under 28 U.S.C. § 1292(b), the order compelling arbitration is not immediately appealable.").