RECEIVED
Mar 06 2026
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2026-000066

Curtis D. Bale, ...Petitioner,

v.

John A. Dougherty, Wachovia Securities Financial Holdings, LLC, Wells Fargo Clearing Services, LLC, f/k/a Wells Fargo Advisors, LLC, Wells Fargo & Company, Wells Fargo Bank, N.A., and LPL Financial, LLC,.....Defendants,

of which John A. Dougherty, Wells Fargo Clearing Services, LLC, f/k/a Wells Fargo Advisors, LLC, Wells Fargo Bank, N.A., and LPL Financial, LLC are .....Respondents.

REPLY IN SUPPORT OF PETITION FOR WRIT OF SUPERSEDEAS

Respondents' returns are defined not by the arguments they make, but by the arguments they pointedly avoid. It is through the vacuum which they create that Respondents argue that this Court should not enter a writ of supersedeas. But the arguments which Respondents ignore are the ones which justify the writ.

First, what Wells Fargo and Dougherty ignore. They ignore the FINRA Director's ruling that no stay will issue without a court order, which is precisely the relief Bale now seeks. They avoid any mention of FINRA's submission agreement, seemingly because it undermines their mootness argument because that agreement may independently bind him to arbitration *regardless* of any

outcome of this dispute over the enforceability of underlying account agreements. They artfully evade the fact that their malicious prosecution claim before FINRA cannot proceed while this appeal is pending. And they refuse to accept that this Court's rejection of a policy favoring arbitration changed the landscape of appeals on arbitrability. When the playing field is level, Respondents' arguments against the necessity of a stay crumble.

Next, what LPL ignores. It ignores that filing a FINRA arbitration against LPL while this matter remains pending raises the same mootness concerns as with Wells Fargo. And it studiously avoids agreeing that any statute of limitations will be tolled while Bale's case proceeds in court. So the result is the same even without LPL filing a punitive arbitration like Wells Fargo and Dougherty did: not granting supersedeas may moot Bale's appeal or potentially render Bale's claims untimely.

These omissions expose a return that sidesteps, rather than confronts, the legal and practical harms that compel the issuance of a writ of supersedeas. To be sure, Bale will oppose any argument that his appeal becomes moot or his claims become untimely. But these arguments cannot be left to chance—if courts disagree with Bale, there is no going back. Only a writ of a supersedeas can safeguard Bale's rights given Respondents' refusal to agree to a stay.

Argument

I. No law or agreement restricts Bale's right to seek a writ of supersedeas, particularly because Bale simply followed the FINRA Director's request for a court order staying Wells Fargo and Dougherty's arbitration.

Wells Fargo and Dougherty argue that Bale is barred from seeking supersedeas because he is "bound by his agreement" to select arbitrators 30 days after the Director ruled on his motion to dismiss or stay the arbitration. Wells Fargo Return at 3. Not mincing words, they characterize Bale's request as "his now familiar practice of entering an agreement and then fighting to avoid the very

obligations he agreed to perform." *Id.* at 1. Their argument is wrong, and their hostility cannot compensate for their errors.

First, the parties' agreement to extend the arbitrator selection deadline was *not* a settlement, stipulation, waiver of appellate rights, or any agreement altering Bale's entitlement to judicial intervention. *See Dozier v. Am. Red Cross*, 411 S.C. 274, 292, 768 S.E.2d 222, 231 (Ct. App. 2014) ("Waiver is a voluntary and *intentional* relinquishment or abandonment of a known right.") (emphasis added). Rather, it was a routine procedural accommodation to preserve the status quo in FINRA while the Director ruled on Bale's motion. *See* Wells Fargo Return, Ex. 1. Bale now seeks that same relief while this Court considers Bale's petition, and preserving the status quo is the very purpose of a writ of supersedeas. Wells Fargo and Dougherty cite no authority that would transform an administrative extension into a binding waiver of appellate remedies or even from further extensions of time. By their logic, an agreement to extend a deadline would prevent a party from later asking the Court for a subsequent extension. For good reasons, no law supports that contention.

Second, Wells Fargo and Dougherty ignore the FINRA Director's express ruling denying any stay *absent a court order*. Pet. Ex. C. This qualifying language is the fulcrum of Bale's petition—a request for a court order staying arbitration. Wells Fargo and Dougherty offer no reason Bale should be precluded from seeking the relief identified by the Director.

Lastly, but perhaps most importantly, Bale's recognition of the parties' agreement, and his intent to adhere thereto, is what necessitated his petition. As stated in the petition, "[g]iven the pending deadlines for Bale to submit to FINRA, there is insufficient time for Bale to also request that the circuit court stay its order. Bale therefore petitions this Court for a writ of supersedeas to

stay the circuit court's order." Pet. at 2. The "pending deadlines" are those that the parties agreed to. Absent relief from this Court, the parties must proceed under those deadlines.

The Court should therefore reject Wells Fargo and Dougherty's argument that an agreement to extend one administrative deadline prevents Bale from seeking further relief here under Rule 241, SCACR.

II. Respondents fail to refute the mootness risk because, absent a stay, Bale must sign FINRA's submission agreement stating his claims are arbitrable.

Respondents fail to engage with the key argument in Bale's petition: absent a stay, Bale must sign a mandatory FINRA submission agreement that may independently bind his claims to arbitration, potentially mooting his appeal, or he risks losing all defenses to Wells Fargo and Dougherty's claims. *See*, *e.g.*, *JPMorgan Chase Bank, N.A. & J.P. Morgan Sec. v. Kraus*, No. 25-CV-745 (JMF), 2025 WL 2390853, at *3 (S.D.N.Y. Aug. 18, 2025) (finding the FINRA submission agreement "constitutes a valid, binding agreement to submit all issues, including the threshold issue of arbitrability, to the arbitration panel") (quotation omitted); *Abraham v. DeLeeuw*, No. SACV1000038JVSANX, 2010 WL 11595855, at *1 (C.D. Cal. Mar. 22, 2010) ("The submission agreement signed by Abraham constitutes clear evidence of his agreement to arbitrate the DeLeeuws' claim and all related claims before FINRA."). This is not a theoretical risk; it is an unavoidable procedural step FINRA will require before the case proceeds. Once Bale signs the submission agreement, his appeal may end. *See First Montauk Sec. Corp. v. Menter*, 26 F. Supp. 2d 688, 689 (S.D.N.Y. 1998) ("The Uniform Submission Agreement filed by First Montauk constitutes a valid, binding agreement to submit all issues, including the threshold issue of arbitrability, to the arbitration panel.").

Courts have even found that submission agreements entered before moving to dismiss an arbitration will preclude any access to courts because it is "a flat, unqualified, formal agreement to submit the present matter in controversy to arbitration" which constitutes "clear and unmistakable evidence that all disputed issues including arbitrability are being submitted to arbitration." *First Montauk*, 26 F. Supp. 2d at 689 (cleaned up); *see also Fisher v. Wheat First Sec., Inc.*, 62 F. App'x 472, 476 (4th Cir. 2003) (holding that a submission agreement will modify previous agreements which are not subject to arbitration if the submission agreement arises from the same subject matter); *Smith v. Bartolini*, No. 01 C 4311, 2003 WL 21148940, at *8 (N.D. Ill. May 14, 2003) ("Even if we somehow concluded that this dispute were not arbitrable under the NASD Code, we would still find it arbitrable under a *separate* agreement to arbitrate [i.e., the submission agreement].") (emphasis in original).

> The language of the submission agreement is broad and provides that the party is submitting the present matter in controversy, as set forth in the attached statement of claim, answers, cross claims and all related counterclaims to arbitration in accordance with the Constitution, By–Laws, Rules, Regulation and/or rules of the sponsoring organization. The language in this agreement, which encompasses essentially any and all claims that the parties could bring, is substantially similar to an agreement that requires "any and all" disputes to be submitted to the arbitrator, which has been held to evidence clear and unmistakable intent to submit the arbitrability question to arbitration.

Bayme v. GroupArgent Sec., LLC, No. 10 CIV. 6213 GBD, 2011 WL 2946718, at *4 (S.D.N.Y. July 19, 2011) (cleaned up). Thus, the submission agreement could preclude review of Bale's arbitrability challenge, one which is generally for the courts to determine. *See Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 386, 892 S.E.2d 112, 116 (2023) (recognizing that "[t]he validity of the arbitration clause is a matter for the courts," but "parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence").

And Respondents know this. *See* Wells Fargo Return at 5 ("A case or controversy exists on appeal so long as a favorable decision on the merits can give an appellant effective relief.") (quotation omitted). Moreover, this Court can avert the "catch-22" Bale faces: potentially forfeit any right to contest arbitration by signing the agreement or face the consequences of not signing it. *Osaic Wealth, Inc. v. Ambrose*, No. 1:24-CV-12657, 2025 WL 1725209, at *5 (N.D. Ill. June 20, 2025) (finding the submission agreement "is a valid agreement to arbitrate" and rejecting Osaic's arguments that it had to sign the agreement to avoid "a catch-22" because "there is a third option, and it is one Osaic failed to exercise," which was seeking "emergency relief from this Court before (and perhaps long before) it would have been subject to FINRA sanctions"). Bale of course will argue that signing a submission agreement under court order does not moot an appeal. But once Bale signs that agreement, there is no going back if a later court disagrees and finds that he waived any challenge. This potential for irreparable harm is why supersedeas is needed.

LPL's arguments that supersedeas is improper because it has not yet initiated any proceedings against Bale should not change this analysis. The harms Bale faces are the same. If Bale initiates an arbitration, as LPL believes he must, then he risks mooting the appeal through the submission agreement.[1] LPL also will likely argue that the statute of limitations started running again once the circuit court's order compelling arbitration became final. If Bale waits for final resolution of the appeal, LPL may argue that the statute ran in the meantime, depending on how

[1] Because Bale's claims against LPL flow through Dougherty, LPL may argue that submitting Dougherty's claim to arbitration extends to LPL. *See* Pet. Ex. B (agreeing to submit the "present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted" to arbitration). Again, Bale would oppose that argument. But Bale cannot turn back the clock if he is wrong. So once more, Bale faces irreparable harm absent supersedeas.

long the appeal lasts. As with mootness, Bale will argue that the statute of limitations has been tolled. But if Bale is wrong, then he will lose his claims purely on procedural grounds and not on the merits. That risk of irreparable harm warrants supersedeas. *Cf. Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 616, 879 S.E.2d 746, 757 (2022) (rejecting an arbitration agreement which creates a risk of "preclude[ing] Petitioners from recovery on a purely procedural (rather than a merit) basis"). Under any of these scenarios, Bale faces the same Hobson's choice that he faces for Wells Fargo and Dougherty.

It also is of no moment that Bale has not sought relief from the circuit court with respect to LPL. His arguments are the same for all Respondents. It defies judicial economy to require Bale to seek relief in this Court against Wells Fargo and Dougherty, while forcing him to first pursue relief against LPL in circuit court. There is no sound justification to withhold relief that can be granted with one fell swoop.

Even putting aside the mootness of Bale's appeal, Respondents' arguments ignore the practical realities of proceeding prematurely in arbitration. For instance, Wells Fargo and Dougherty's claim in arbitration for monetary damages, which they also ignore,[2] concerns the core question on appeal: whether this Court's repudiation of a policy favoring arbitration entitles him to appeal the trial court's order compelling arbitration. If this Court holds in favor of Bale, the foundation of their claim collapses. Even simply granting certiorari should defeat their claim that Bale's appeal is frivolous. Proceeding with arbitration now simply risks entangling the merits of a

[2] Wells Fargo and Dougherty claim that their FINRA action seeks "a declaration that it has no liability to Petitioner for damages for breach of contract." Wells Fargo Return at 3. Their FINRA claim does much more than that. It seeks a declaration that they have no liability to Bale under any theory *and* monetary damages for malicious prosecution for filing an allegedly frivolous appeal. *See generally* Pet. Ex. A.

claim that cannot even be evaluated until this Court determines whether Bale's appeal was proper, or at least colorable, in the first place. Otherwise, a FINRA panel instead of this Court becomes the authority on South Carolina law.

Finally, Respondents' fallback position that later relief can unwind arbitration proceedings is a novel issue in this State and should be rejected. *See* Wells Fargo Return at 5; *see also Chi. Sch. Reform Bd. of Trs. v. Diversified Pharm. Servs.*, 40 F. Supp. 2d 987, 995 (N.D. Ill. 1999) (finding that the ability to obtain judicial review after arbitration has concluded "is, for all practical purposes, based on an empty promise[,]" because of the "extremely narrow standard of review applied to arbitrator's decisions"); *U.S. for Use & Benefit of Cap. Elec. Const. Co. v. Pool & Canfield, Inc.*, 778 F. Supp. 1088, 1092 (W.D. Mo. 1991) ("It would be irrational to hold that there is no irreparable harm in forcing a party to be subjected to the cost and hardship of a meaningless proceeding simply because it could be later reviewed by a proper forum."). As Respondents acknowledge, what matters is the right to *effective* appellate relief. Just as you cannot unscramble an egg, this Court's ruling on arbitrability years-after-the-fact cannot cure the irreparable harm Bale will suffer if forced to proceed with arbitration while this challenge remains pending.

Because Bale cannot receive effective relief without a stay, the Court should grant his petition for a writ of supersedeas.

III. A stay is necessary to prevent the indisputable and irreparable harm Bale will suffer if he must proceed.

Respondents' remaining arguments are equally unavailing because they rely on outdated case law and ignore the actual, irreparable harms to Bale absent a stay.

A. There is no policy against staying arbitration.

Contrary to Wells Fargo's and Dougherty's assertion, stays of arbitration are not "distinctly disfavored." Wells Fargo Return at 4 (quoting *Indep. Lift Truck Builders Union v. Hyster Co.*, 803 F. Supp. 1374, 1375 (C.D. Ill. 1992)).

The United States Supreme Court in *Morgan v. Sundance, Inc.*, made clear that "the FAA's 'policy favoring arbitration' does not authorize federal courts to invent special, arbitration-preferring procedural rules." 596 U.S. 411, 418 (2022); *see also id.* (noting that the FAA's policy "is based upon the enforcement of a contract, rather than a preference for arbitration as an alternative dispute resolution mechanism" (quoting *Nat'l Found. for Cancer Rsch. v. A. G. Edwards & Sons, Inc.*, 821 F.2d 772, 774 (D.C. Cir. 1987)). There is simply "no public policy—federal or state—'favoring' arbitration." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021). For that reason, courts "may not devise novel rules to favor arbitration over litigation." *Morgan*, 596 U.S. at 418.

Before this recent policy shift, courts routinely relied on the policy favoring arbitration to give arbitration law "special status." *Palmetto Constr. Grp.*, 432 S.C. at 639, 856 S.E.2d at 153; *see also Towles v. United HealthCare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999) ("Both federal and state policy favor arbitrating disputes. This preference for arbitration has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying an application to compel arbitration."); Richard Frankel, *The Arbitration Clause as Super Contract*, 91 Wash. U. L. Rev. 531, 533 (2014) ("Much of this arbitration favoritism is attributable to lower-court misinterpretation of thirty-year-old dicta"). Respondents' case law is no different. *See*, *e.g.*, *Hyster*, 803 F. Supp. at 1375 (noting the "strong federal policy in favor of settling labor disputes by arbitration"); *Wenchun Zheng v. Gen. Elec. Co.*, No. 115CV1232TJMCFH, 2016 WL 11605145, at

*5 (N.D.N.Y. Nov. 16, 2016) ("Moreover, there is a strong public policy in favor of arbitration, which weighs against Plaintiff's application for a stay."). Because that policy no longer exists, the Court should disregard Wells Fargo and Dougherty's argument that stays are disfavored.

Wells Fargo and Dougherty's reliance on *PaineWebber Inc. v. Farnam*, 843 F.2d 1050 (7th Cir. 1988), throughout their return fares no better. *PaineWebber* relied on the Seventh Circuit's earlier holding in *Graphic Communications Union, Chicago Paper Handlers' & Electrotypers' Local No. 2 v. Chicago Tribune. Co.*, which required a heightened standard for stays of arbitration pending appeal because holding otherwise "would fly in the face of the strong federal policy favoring arbitration of disputes." *Graphic Commc'ns*, 779 F.2d 13, 15 (7th Cir. 1985). As explained above, this Court has expressly rejected that policy.

PaineWebber is further distinguishable because it concerned whether an arbitration demand under an undisputed agreement was timely, *not* whether there was a valid and enforceable arbitration agreement in the first place. 843 F.2d. at 1052; *see also id.* ("Doubtless PaineWebber enforces its arbitration clauses when its customers initiate litigation. Here, however, the customers invoked the arbitration clauses, and PaineWebber is resisting."). What's more, the irreparable harm asserted in *PaineWebber* was the loss of judicial review because the arbitration would be decided before the appeal. *Id.* at 1051. The Seventh Circuit believed this "would be significant only if the cost and travail of holding a hearing were an irreparable injury," which the court found it was not. *Id.* In contrast, allowing this arbitration to proceed will either immediately moot the appeal or cost Bale any defense to Respondents' arguments. *See supra* pp. 4–8; *see also* Pet. at 3–4, 6. So it is not just about cost or having to proceed in arbitration. It is about Bale having to choose between forever losing his appeal arguments or any substantive arguments against Respondents' allegations.

As one district court also said, *PaineWebber's* rationale that movant can rarely show irreparable harm is "just plain wrong." *Arthur J. Gallagher & Co. v. Great Am. E&S Ins.*, 784 F. Supp. 3d 1072, 1078 (N.D. Ill. 2025); *see id.* at 1078–79 (acknowledging that under Seventh Circuit precedent a "party is stuck litigating its defenses in an arbitration to which it never agreed, in a forum that by definition offers more limited procedural protections than a court, and it may never get an actual shot at a judicial tribunal"); *see also Hayes v. Allstate Ins.*, 722 F.2d 1332, 1340 (7th Cir.1983) (Posner, J., dissenting) ("Since arbitration may be protracted … a plaintiff forced into arbitration against his will may be irreparably harmed, for if it later turns out that the matter should not have been submitted to arbitration he will not be able to recover his lost time and expense."). As discussed below, the irreparable harm to Bale warrants supersedeas.

B. The prejudice to Respondents is *de minimis* compared to the irreparable harm Bale will incur absent supersedeas.

Wells Fargo and Dougherty (but not LPL) urge this Court to deny supersedeas because Bale will not be irreparably harmed absent a stay, but they "would be substantially injured." Wells Fargo Return at 6–7. This argument defies reality.

First, Respondents' claims that they will incur substantial injury in the event of a stay ring hollow because they are grounded in the now repudiated policy favoring arbitration. *See* Wells Fargo Return at 7 (quoting *PaineWebber,* 843 F.2d at 1052–53). Without this policy, the potential prejudice of mere delay weighs in favor of granting a stay. *See Diduck v. Kaszycki & Sons Contractors, Inc.*, 147 F.R.D. 60, 62 (S.D.N.Y. 1993). And courts have acknowledged that "[e]ven the goal underlying arbitration—prompt resolution of the parties' dispute—could be frustrated" if arbitration proceeds before an appellate court can speak with finality on whether an arbitration agreement exists. *Grane v. Grane*, 130 Ill. App. 3d 332, 338, 473 N.E.2d 1366, 1370 (1985). Because the

existence of an agreement here is disputed, Wells Fargo and Dougherty's desire for "seeing valid agreements … enforced" is premature. *See* Wells Fargo Return at 7. If this Court reverses the trial court, "both parties would have expended time and financial resources to conduct an unnecessary and unauthorized arbitration." *Id.*; *Monavie, LLC v. Quixtar Inc.*, 741 F. Supp. 2d 1227, 1242 (D. Utah 2009) (finding that the balance of equities favors enjoining arbitration because if the plaintiff prevails on the issue of arbitrability, the defendant "will have lost no 'bargained-for contractual rights to arbitration' because it had none"). This Court can therefore outright reject Wells Fargo and Dougherty's arguments that "a stay would substantially injure" them.

And second, numerous courts have rejected Wells Fargo and Dougherty's arguments that participating in arbitration can never constitute irreparable harm. *E.g.*, *Merrill Lynch Inv. Managers v. Optibase, Ltd.*, 337 F.3d 125, 129 (2d Cir. 2003) ("[T]he movant would be irreparably harmed by being forced to expend time and resources arbitrating an issue that is not arbitrable, and for which any award would not be enforceable.") (internal quotation omitted); *Starling v. OnProcess Tech., Inc.*, No. 1:23-CV-10949-JEK, 2024 WL 1258501, at *9 (D. Mass. Mar. 25, 2024) (recognizing that the First Circuit has declined to adopt the "broad proposition that being improperly subjected to arbitration can never constitute irreparable harm"), *appeal dismissed sub nom. Starling v. AT&T Servs.,* No. 24-1341, 2024 WL 4542999 (1st Cir. Sep. 19, 2024). The cases which accept this proposition do so "because arbitration is a preferred method of solving disputes." *Durant, Nichols, Houston, Hodgson & Cortese-Costa, PC v. Dupont*, 397 F. Supp. 2d 386, 388 (D. Conn. 2005). But that underlying premise is no longer true.

As noted repeatedly in this reply, Bale's claim of irreparable harm is not just having to participate in arbitration, but that he is forced to either contract away his appellate arguments or

risk losing his right to oppose Respondents' arguments. *See supra* pp. 4–8; *see also* Pet. at 3–4, 6. Respondents' refusal to acknowledge this reality does not make it go away. Instead, their refusal to grapple with the practical harms at issue here makes supersedeas not just appropriate, but unavoidable.

Conclusion

Allowing arbitration to proceed before this Court can rule on Bale's petition for writ of certiorari will inflict irreparable harm, destroy the right Bale seeks to preserve on appeal, and undermine this Court's ability to provide meaningful review. Bale therefore respectfully asks that this Court issue a writ of supersedeas.

Respectfully submitted,

s/ *R. Walker Humphrey, II*
R. Walker Humphrey, II
Willoughby Humphrey & D'Antoni, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Mitchell Willoughby
Elizabeth Zeck
Margaret M. O'Shields
Willoughby Humphrey & D'Antoni, P.A.
Post Office Box 8416
Columbia, South Carolina 29202
(803) 252-3300

Overture E. Walker
Stoney & Walker, LLC
930 Richland Street
Columbia, South Carolina 29201
(803) 868-5800

Attorneys for Petitioner Curtis D. Bale

March 6, 2026
Charleston, South Carolina