

RECEIVED

Mar 19 2026

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2025-002466
Case No. 2024-CP-10-03700

Joseph W. Rohe,

Respondent,

v.

SHM Charleston City Marina, LLC d/b/a
Safe Harbor Charleston City, and SHM
Charleston Boatyard, LLC d/b/a Safe
Harbor City Boatyard,

Appellants.

RECORD ON APPEAL

Rhett D. Ricard (SC Bar No. 102353)
MAYNARD NEXSEN, PC
205 King Street, Suite 400
Charleston, SC 29401
rricard@maynardnexsen.com
(o): (843) 577-9440; (f): (843) 720-1777

Attorney for Appellants

INDEX

VOLUME I (Pages 1-118)

ORDERS

Page Number

Order Denying Appellants’ Motion to Dismiss or, In the Alternative, to Stay and Compel Arbitration (entered July 16, 2025).....	1
Order on Appellants’ Motion to Alter or Amend (entered November 12, 2025)	9

PLEADINGS

Respondent’s Amended Summons and Complaint (filed August 20, 2024)	14
--	----

MOTIONS, BRIEFS AND PROPOSED ORDERS

Appellants’ Motion to Dismiss, or In the Alternative, to Stay and Compel Arbitration (filed September 19, 2024)	22
Exhibit A: Service Agreement	24
Appellants’ Memorandum in Support of Appellants’ Motion to Dismiss, or In the Alternative, to Stay and Compel Arbitration (filed January 8, 2025)	29
Exhibit A: Service Agreement (<i>refer to pages 24-28 of Record</i>)	36
Appellants’ Supplemental Memorandum in Support of Appellants’ Motion to Dismiss, or In the Alternative, to Stay and Compel Arbitration (filed January 15, 2025)	37
Appellants’ Proposed Order (filed January 15, 2025)	46
Appellants’ Motion to Alter or Amend (filed July 25, 2025)	58
Exhibit A: Appellants’ Supplemental Memorandum in Support of Appellants’ Motion to Dismiss or, In The Alternative, to Stay and Compel Arbitration (<i>refer to pages 37-45 of Record</i>)	71

Respondent’s Memorandum in Opposition to Appellants’ Motion to Alter or Amend (filed August 18, 2025)	72
--	----

TRANSCRIPTS

Hearing Transcript of January 10, 2025	81
--	----

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
JOSEPH W. ROHE	)	CASE NO.: 2024-CP-10-03700
	)	
PLAINTIFF,	)	
	)	
vs.	)	ORDER DENYING DEFENDANTS'
	)	MOTION TO DISMISS OR, IN THE
SHM CHARLESTON CITY MARINA,	)	ALTERNATIVE, TO STAY AND COMPEL
LLC d/b/a Safe Harbor Charleston City;	)	ARBITRATION
and SHM CHARLESTON BOATYARD,	)	
LLC d/b/a Safe Harbor City Boatyard,	)	
	)	
DEFENDANTS.	)	
	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Joseph W. Rohe, Esq.
Defendant's Attorney:	Rhett D. Ricard, Esq.
Date of Hearing:	January 10, 2025
Court Reporter:	WebEx

THIS MATTER comes before the Court on January 10, 2025, upon motion of Defendants SHM CHARLESTON CITY MARINA, LLC d/b/a Safe Harbor Charleston City and SHM CHARLESTON BOATYARD, LLC d/b/a Safe Harbor City Boatyard (collectively "Defendants") to Dismiss Plaintiff's Complaint or, in the Alternative, to Stay this Matter and Compel Arbitration, filed September 19, 2024. A Memorandum in Support was filed January 8, 2025. No response in opposition was filed by the Plaintiff. Present before the Court was Plaintiff, Joseph W. Rohe, Esq. appearing pro se. Representing the Defendants was Rhett D. Ricard, Esq.

FINDINGS OF FACT

Plaintiff filed his Summons and Complaint on July 22, 2024, alleging that Plaintiff engaged Defendants to perform certain services on Plaintiff's boat (Property) located at Safe

Harbor Charleston City, 7 Lockwood Drive, Charleston, South Carolina 29401. Between March 18, 2024, and May 6, 2024, Defendants, their agents and/or employees performed certain services upon the Property and issued three (3) separate invoices for work allegedly performed. Plaintiff alleges that in addition to causing damage to the Property, Defendants invoiced and charged Plaintiff for work that was not performed, double charged for work, and otherwise overcharged Plaintiff in various particulars.

An Amended Summons and Complaint was filed on August 20, 2024. In lieu of an Answer, Defendants filed a Motion to Dismiss or, in the Alternative, to Stay and Compel Arbitration on September 19, 2024.

CONCLUSIONS OF LAW

The Court, after reviewing the record, and submissions and arguments of the parties, hereby makes the following findings of fact and conclusions of law:

I. **THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, NOT THE FEDERAL ARBITRATION ACT, APPLIES TO THIS DISPUTE.**

Although Defendants cite both the South Carolina Uniform Arbitration Act (“SCUAA”) and the Federal Arbitration Act (“FAA”) in their motion, the FAA has no application to this dispute as the transaction between the parties and which is the subject of this litigation did not involve interstate or foreign commerce. See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360 (2001)(“Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that *in fact* involves interstate commerce...” [emphasis added]); Soil Remediation Co. v. Nu-Way Envt’l, 323 S.C. 454, 460, 476 S.E.2d 149 (1996)(“For the [FAA] to apply, the commerce involved in the contract must be interstate or foreign.”); Mathews v. Flour Corp., 312 S.C. 404, 407, 440 S.E.2d 880 (1994)(“Interstate commerce is a necessary basis for application of the [FAA], and a contract or

agreement not so predicated must be governed by state law.”).¹ Additionally, the burden falls upon Defendants to prove a nexus between the contract and interstate commerce. See Hicks Unlimited, Inc. v. Unifirst Corp., 439 S.C. 623, 632, 889 S.E.2d 564 (2023)(“a party seeking to compel arbitration under the FAA must demonstrate that the contract implicates interstate commerce.”). “The Court must examine the agreement, the complaint, and the facts to ascertain whether the transaction is one involving commerce within the meaning of the [FAA].” Soil Remediation, 323 S.C. at 460.

“Commerce” is defined as “commerce among the several States or with foreign nations...” 9 U.S.C. § 1; see also Mathews, 312 S.C. at 407 (“Commerce, as defined in the [FAA], evidences transactions involving interstate or foreign commerce.”). The Commerce Clause, and in turn the FAA, covers three categories: (1) “the use of the channels of interstate commerce,” (2) the protection of “instrumentalities of interstate commerce,” and (3) “activities having a *substantial relation* to interstate commerce.” United States v. Lopez, 514 U.S. 549, 558-59, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1985) [emphasis added].

(1) Channels of Interstate Commerce

The Defendants argue that the transaction that is the subject of this dispute involved or utilized “channels of interstate commerce.” In support of their position, Defendants argue that channels of interstate commerce were utilized because parts and/or materials used in servicing Plaintiff’s vessel were purchased and shipped from outside the State of South Carolina. Defendants, however, fail to present any evidence in support of such claim. In Mathews, the Court

¹ Mathews was overruled in part “to the extent it considered whether the parties *contemplated* interstate commerce as a factor in determining if the FAA applied.” See Munoz, 343 S.C. at 543 [emphasis added].

found the transaction was outside the scope of the FAA because it was “unable to discern from the evidence presented whether the contract *required* respondent to administer anything related to interstate commerce.” Matthews, 312 S.C. at 407, 440 S.E.2d at 882. Here, the contract – a “service” agreement – fails to make any reference to parts, equipment and/or materials to be furnished from outside South Carolina.

Moreover, Plaintiff’s allegations are confined to the following: that Defendants’ performance of “services” was defective, that Defendants charged for work that was not in fact performed, and that Defendants overcharged and/or “double-charged” for work or services performed. See Pl.’s Compl. ¶ 9. Plaintiff’s Complaint does not allege any facts regarding or relating to the supply of parts, equipment or materials by Defendants. Additionally, the service agreement that is the subject of this dispute provides no indication of procurements that might implicate or utilize channels of interstate commerce. Accordingly, Defendants’ argument that parts and/or materials “may have been sourced” from outside of South Carolina is hypothetical, not supported by the agreement, the allegations of the Complaint, or the record evidence, and is ultimately insufficient to sustain Defendants’ burden to prove a nexus between the contract and interstate commerce.

(2) Instrumentalities of Interstate Commerce

Defendants argue that Plaintiff’s vessel is an “instrumentality of interstate commerce” because it is “capable” of traveling to other states or foreign nations. However, the dispute between the parties does not implicate Plaintiff’s vessel in any way other than being the site of the services performed and which are now the subject of this dispute. Accordingly, the dispute between the parties does not implicate any instrumentality of interstate commerce and Defendants have failed to meet their burden to prove a nexus between the contract for services and interstate commerce.

(3) Substantial Relation to Interstate Commerce

The transaction that is the subject of this dispute is confined in all respects to the State of South Carolina and, thus, has no substantial connection or relation with interstate commerce. Plaintiff is a citizen and resident of South Carolina, and Defendants, although are Delaware limited liability companies,² are registered to transact business in South Carolina and maintain their principal places of business in South Carolina. (Pl.'s Am. Compl. ¶¶ 1, 4 & 5). Moreover, there is no nexus between the contract or the services performed and interstate commerce. See Mathews, 312 S.C. at 440 (holding that a contractual dispute involving the sale of real estate situated in South Carolina did not involve interstate commerce where, despite the fact that contracting parties were domiciled outside of South Carolina, there was no nexus between the contract and interstate commerce.); see also Hicks Unlimited, 439 S.C. at 623 (where the Supreme Court held that although a contract to rent uniforms involved a Massachusetts company and a South Carolina company, there was no other sign that it was to be performed using instrumentalities or channels of interstate commerce or that it involved anything beyond South Carolina's borders, so the FAA did not apply). Here, the contract in question was for the provision of maintenance services in South Carolina. (Pl.'s Am. Compl. at ¶ 9). Any services that were actually performed were in fact performed in South Carolina by Defendants' agents or employees located in South Carolina. In addition, the work performed was managed from South Carolina and overseen in South Carolina. (Pl.'s Am. Compl. ¶ 6).

The arbitration provision Defendants seek to apply makes no reference to the FAA or interstate commerce, and in fact appears to intimate that the SCUAA, and not the FAA, was

² Although the parties are not diverse, it is noted that diversity of citizenship alone is insufficient to invoke the FAA, See Maxum Foundations, Inc. v. Salus Corp., 779 F.2d 974, 978 n.4 (4th Cir. 1985).

intended under the contract. For example, arbitration is to be conducted in Charleston, South Carolina with an arbitrator/attorney from the “Charleston metropolitan area,” and even incorporates the discovery provisions of the South Carolina Rules of Civil Procedure. Of note, the South Carolina Supreme Court has made clear the Courts cannot apply the FAA, even where the parties have expressly agreed to such, without first determining that interstate commerce is in fact involved. See Hicks Unlimited, 439 S.C. at 632 (“Just as the parties may not prove the requisite connection to interstate commerce by agreeing their transaction or relationship ‘contemplates’ interstate commerce, they may not make the connection by declaring or contemplating the FAA will govern.”).

As there is no nexus between the dispute and interstate commerce, and the arbitration provision Defendants rely upon appears to implicate the SCUAA, analysis of the arbitration provision must be governed by state law. See Mathews, 312 S.C. at 407 (“Interstate commerce is a necessary basis for application of the [FAA], and a contract or agreement not so predicated *must be governed by state law*.” [emphasis added]).

Based on the foregoing, the Court concludes that Defendants have failed to meet their burden and offer sufficient evidence that the services agreement involved interstate commerce as necessary to subject the dispute to the FAA.

II. APPLYING THE SCUAA, ARBITRATION OF THIS DISPUTE IS PRECLUDED UNDER S.C. CODE ANN. 15-48-10(a).

Under well-established South Carolina law, in order for a non-FAA arbitration provision contained within a contract to be valid and enforceable, it must satisfy the statutory notice requirements of S.C. CODE ANN. § 15-48-10(a), which provides:

“Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page

of the contract and *unless such notice is displayed thereon the contract shall not be subject to arbitration.*” [emphasis added].

Thus, a contract or agreement containing an arbitration clause subject to the SCUAA and which fails to comply with the statutory notice requirements shall not be subject to arbitration. Ex parte Messer, 333 S.C. 391, 394 (Ct. App. 1998)(“In Soil Remediation Co. v. Nu-Way Env., Inc., 323 S.C. 454, 476 S.E.2d 149 (1996), the South Carolina Supreme Court held that section 15-48-10 must be strictly construed by the courts. ‘The terms of the statute are clear; therefore, the court must apply those terms according to their literal meaning.’ Id. at 457, 476 S.E.2d at 151.”).

Neither the subject dispute nor the parties’ relationship implicates interstate commerce and, as such, the purported arbitration provision must be viewed in light of the provisions of the SCUAA. Because the arbitration provision fails to satisfy the statutory notice requirements of S.C. Code Ann. § 15-48-10(a), the contract is not subject to arbitration.³

THEREFORE, IT IS ADJUDGED that Defendants’ Motion to Dismiss or, in the Alternative, to Stay and Compel Arbitration is hereby DENIED.

AND IT IS SO ORDERED!

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

July 16, 2025
Charleston, South Carolina

³ The Defendants concede that the parties’ 2024 service agreement(s) do not comply with the SCUAA and that the sole basis of their argument in support of arbitration is the applicability of the FAA.



Charleston Common Pleas

Case Caption: Joseph W Rohe VS Safe Harbor Marinas Llc , defendant, et al

Case Number: 2024CP1003700

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2025-07-16 14:03:17 page 8 of 8

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Joseph W. Rohe

Plaintiff,

vs.

SHM Charleston City Marina, LLC d/b/a Safe Harbor Charleston City, and SHM Charleston Boatyard, LLC d/b/a Safe Harbor City Boatyard,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-10-03700

**ORDER ON DEFENDANTS'
MOTION TO ALTER OR AMEND**

Presiding Judge:
Plaintiff's Attorney:
Defendants' Attorneys:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Pro Se (Joseph W. Rohe, Esq.)
Rhett Ricard, Esq.
N/A
N/A

This matter comes before the Court upon Defendants' Motion to Alter or Amend the Court's July 16, 2025, Order Denying Defendants' Motion to Dismiss Plaintiff's Complaint or, in the Alternative, to Stay this Matter and Compel Arbitration filed July 25, 2025. The Court received Defendants' Motion to Alter or Amend on July 28, 2025. Defendants' Motion is in the nature of a Memorandum. Plaintiff filed a Memorandum in Opposition to Defendants' Motion to Alter or Amend on August 18, 2025. The Plaintiff is pro se.¹ The Defendants are represented by Rhett Ricard, Esq. Defendants' motion came before the Court on January 10, 2025, for a hearing on Defendants' Motion to Dismiss or, In the Alternative, to Stay and Compel Arbitration filed September 19, 2024. The Court issued an Order Denying Defendants' Motion on July 16, 2025. Having considered Defendants' Motion, Plaintiff's Memorandum in Opposition, as well as the

¹ Plaintiff Joseph W. Rohe is an attorney licensed to practice in S.C.

various interests balanced by the Court at the time of the ruling, the Defendants' Motion to Alter or Amend is Denied.²

CONCLUSIONS OF LAW

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

"A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. "[T]he ten-day deadline in Rule 59(e) is an absolute deadline. A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion." Overland, Inc. v. Nance, 423 S.C. 253, 256-57, 815 S.E.2d 431, 433 (2018) (citation omitted) (citing Leviner v. Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000)). "A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days

² This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

after the filing of the motion.” Rule 59(g), SCRCPP; See also Smith v. Fedor, 422 S.C. 118, 126, 809 S.E.2d 612, 161 (Ct. App. 2017) (“Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further, our language in Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule.”).

Defendants’ Motion is timely under Rule 59(e), SCRCPP, because it was filed nine (9) days after receiving notice of the entry of the Order, which is within the requisite ten (10) day period. Defendants’ Motion is timely under Rule 59(g) as the Court was provided with a copy of the motion three (3) days after Defendants filed the motion, which is within the applicable ten (10) day period.

The Defendant asks this Court to Alter or Amend its July 16, 2025, Order denying Defendants’ Motion to Dismiss or, In the Alternative, to Stay and Compel Arbitration. The Court determined that neither the Federal Arbitration Act (FAA) nor the South Carolina Uniform Arbitration Act (SCUAA) applied, and therefore declined to stay the proceedings, compel arbitration, or dismiss the case. In their motion, Defendants incorrectly characterize South Carolina’s public policy regarding arbitration agreements. Defendants claim that South Carolina law favors the resolution of disputes through arbitration. Defs. Mot. 6. However, on March 5, 2025, four months before Defendants filed their Motion to Alter or Amend, the South Carolina Supreme Court reiterated that there is no state policy favoring arbitration in Lampo v. Amedisys Holding, LLC, 445 S.C. 305, 914 S.E.2d 139 (2025). Lampo, 445 S.C. at 317, 914 S.E.2d at 146 (reminding litigants and lower courts that the Court dispensed the incorrect notion that there was state public policy favoring arbitration years before in Palmetto Constr. Grp. v. Restoration Specialists, LLC, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021)).

After fully considering Defendants' Motion to Alter or Amend, the Court finds that Defendants seek only to reargue the issues on the same basis previously presented to the Court and presents no novel facts, arguments, or theories in support of its position. Defendants have not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, the Motion to Alter or Amend, is heard and respectfully Denied.

IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

November 10, 2025
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Joseph W Rohe VS Shm Charleston City Marina Llc , defendant, et al

Case Number: 2024CP1003700

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2025-11-10 16:06:52 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
JOSEPH W. ROHE	)	CASE NO.: 2024-CP-10-03700
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
SAFE HARBOR MARINAS, LLC d/b/a	)	
Safe Harbor Charleston City and Safe	)	
Harbor City Boatyard; SUN	)	<u>AMENDED SUMMONS</u>
COMMUNITIES OPERATING	)	
LIMITED PARTNERSHIP; SHM	)	
CHARLESTON CITY MARINA, LLC	)	
d/b/a Safe Harbor Charleston City; and	)	
SHM CHARLESTON BOATYARD, LLC	)	
d/b/a Safe Harbor City Boatyard,	)	
	)	
DEFENDANTS.	)	
	)	

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to file with the Clerk of said court and to serve a copy on the undersigned at their office, 100 East Washington Street, Suite 64, Greenville, South Carolina, 29601 an answer to the Complaint in this action, a copy of which is herewith served upon you, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be taken against you for the relief demanded in the Complaint, plus cost of this action.

Submitted this 20th day of August 2024,

s/ Joseph W. Rohe
 Joseph W. Rohe (SC Bar No. 79313)
 100 East Washington Street, Suite 64
 Greenville, South Carolina 29601
 Tel: (843) 530-1318
 Email: jrohe@6125trade.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
JOSEPH W. ROHE	)	CASE NO.: 2024-CP-10-03700
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
SAFE HARBOR MARINAS, LLC d/b/a	)	
Safe Harbor Charleston City and Safe	)	
Harbor City Boatyard; SUN	)	<u>AMENDED COMPLAINT</u>
COMMUNITIES OPERATING	)	
LIMITED PARTNERSHIP; SHM	)	
CHARLESTON CITY MARINA, LLC	)	
d/b/a Safe Harbor Charleston City; and	)	
SHM CHARLESTON BOATYARD, LLC	)	
d/b/a Safe Harbor City Boatyard,	)	
	)	
DEFENDANTS.	)	
	)	

COMES NOW the Plaintiff JOSEPH W. ROHE (“Plaintiff”), and complaining of Defendants SAFE HARBOR MARINAS, LLC d/b/a Safe Harbor Charleston City and Safe Harbor City Boatyard (“Safe Harbor”), SUN COMMUNITIES OPERATING LIMITED PARTNERSHIP (“Sun”), SHM CHARLESTON CITY MARINA, LLC d/b/a Safe Harbor Charleston City (“Safe Harbor Marina”), and SHM CHARLESTON BOATYARD, LLC d/b/a Safe Harbor City Boatyard (“Safe Harbor Boatyard”)(collectively “Defendants”), would allege and show under this honorable Court as follows:

PARTIES, JURISDICTION AND VENUE

- 1.) Plaintiff is a citizen and resident of Greenville County, South Carolina.

2.) Upon information and belief, Defendant Safe Harbor is a limited liability company organized and existing under the laws of the State of Delaware, with offices and its principal place of business located in Charleston County, South Carolina.

3.) Upon information and belief, Defendant Sun is a limited partnership organized and existing under the laws of the State of Michigan, with offices located in Charleston County, South Carolina, and is the owner of Defendant Safe Harbor.

4.) Upon information and belief, Defendant Safe Harbor Marina is a limited liability company organized and existing under the laws of the State of Delaware, with offices and its principal place of business located in Charleston County, South Carolina.

5.) Upon information and belief, Defendant Safe Harbor Boatyard is a limited liability company organized and existing under the laws of the State of Delaware, with offices and its principal place of business located in Charleston County, South Carolina.

6.) As set forth in further detail hereinbelow, this action relates to Defendants' acts and omissions occurring in Charleston County, South Carolina.

7.) This Circuit Court has jurisdiction over the parties hereto and the subject matter hereof.

8.) Venue is proper in this Circuit Court.

FACTUAL ALLEGATIONS

9.) Plaintiff engaged Defendants to perform certain services upon Plaintiff's boat (the "Property") located at Safe Harbor Charleston City, 7 Lockwood Drive, Charleston, South Carolina 29401.

10.) Between March 18, 2024 and May 6, 2024, Defendants, their agents and/or employees performed certain services upon the Property and issued three (3) separate invoices for work allegedly performed.

11.) In addition to causing damage to the Property, Defendants invoiced and charged Plaintiff for work that was not performed, double charged for work, and otherwise overcharged Plaintiff in various particulars as will be shown more fully via discovery and at trial.

FOR A FIRST CAUSE OF ACTION
(Negligence)

12.) Plaintiff repeats and realleges the foregoing paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

13.) Defendants held themselves out as being knowledgeable, experienced and trustworthy in the relevant fields, and owed Plaintiff a duty of care in performing services on the Property.

14.) Defendants breached their duty of care in various particulars as will be shown more fully via discovery and at trial.

15.) As a direct and proximate result of Defendants' negligence, Plaintiff has been damaged in an amount to be determined by the trier of fact and is entitled to recover damages, along with such other costs and expenses as this Court deems appropriate.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

16.) Plaintiff repeats and realleges the foregoing paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

17.) Defendants owed Plaintiff a duty of care to ensure that truthful information was communicated to Plaintiff.

18.) Defendants, having a pecuniary interest in making the representations and failing to exercise due care, made false representations to Plaintiff upon which Plaintiff justifiably relied and, as a proximate result of such reliance, Plaintiff suffered injury and pecuniary loss.

19.) As a direct and proximate result of Defendants' negligent misrepresentation, Plaintiff has been damaged in an amount to be determined by the trier of fact and is entitled to recover actual, consequential and punitive damages, along with such other costs and expenses as this Court deems appropriate.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

20.) Plaintiff repeats and realleges the foregoing paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

21.) The Agreement constitutes a valid and enforceable contract or agreement between the parties, to which Plaintiff has complied with its obligations thereunder.

22.) Defendants breached the Agreement in various particulars, including but not limited to breaching the implied covenant of good faith and fair dealing, as will be shown more fully via discovery and at trial.

23.) As a direct and proximate result of Defendants' breach, Plaintiff has been damaged in an amount to be determined by the trier of fact and is entitled to recover actual and consequential damages, along with such other costs and expenses as this Court deems appropriate.

FOR A FOURTH CAUSE OF ACTION
(Fraud)

24.) Plaintiff repeats and realleges the foregoing paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

25.) Defendants knowingly, or with reckless disregard of the truth, made material and false representations and statements to Plaintiff with the intention that such false representations and statements would be acted upon by Plaintiff.

26.) Plaintiff, being ignorant of the falsity of Defendants' representations and statements, and having a right to rely thereon, did so rely upon the truth of such false representations and statements to the Plaintiff's consequent and proximate injury.

27.) As a direct and proximate result of Defendants' fraud, Plaintiff has been damaged in an amount to be determined by the trier of fact and is entitled to recover actual, consequential and punitive damages, along with such other costs and expenses as this Court deems appropriate.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act)

28.) Plaintiff repeats and realleges the foregoing paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

29.) Defendants, with fraudulent intent, breached the Agreement with Plaintiff and Defendants' breach of the Agreement was accompanied by a fraudulent act.

30.) As a direct and proximate result of Defendants' fraudulent breach, Plaintiff has been damaged in an amount to be determined by the trier of fact and is entitled to recover actual, consequential and punitive damages, along with such other costs and expenses as this Court deems appropriate.

FOR A SIXTH CAUSE OF ACTION
(Unjust Enrichment)

31.) Plaintiff repeats and realleges the foregoing paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

32.) Plaintiff conferred a non-gratuitous benefit upon Defendants in the form of payments for work that was not performed or for which Plaintiff was otherwise overcharged, and Defendants realized and retained value from this benefit.

33.) Under the circumstances, it would be inequitable to permit Defendants to retain such benefit without paying Plaintiff for its value.

34.) As a direct and proximate result of Defendants' unjust enrichment, Plaintiff has been damaged in an amount to be determined by the trier of fact and is entitled to recover the value of the unjust enrichment, along with such other costs and expenses as this Court deems appropriate.

FOR A SEVENTH CAUSE OF ACTION
(Unfair Trade Practices)

35.) Plaintiff repeats and realleges the foregoing paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

36.) Defendants violated the South Carolina Unfair Trade Practices Act by engaging in unfair and deceptive acts in the conduct of trade or commerce that affect the public interest of the State of South Carolina.

37.) Defendants' acts were immoral, unethical and offensive to public policy, have occurred in the past and have the potential for further repetition.

38.) As a direct and proximate result of Defendants' unfair trade practices, Plaintiff has been damaged in an amount to be determined by the trier of fact and is entitled to recover treble

damages, along with attorneys' fees, costs and such other expenses as this Court deems appropriate.

WHEREFORE, the Plaintiff, having fully complained against Defendants, prays unto and would respectfully request that this honorable Court award Plaintiff actual, consequential, treble and punitive damages as appropriate against the Defendants, in amounts to be determined by the trier of fact, award Plaintiff attorneys' fees, costs and expenses, and grant such other and further relief as this honorable Court may deem just and proper. Plaintiff requests trial by jury on all matters so triable.

Respectfully submitted this 20th day of August 2024.

s/ Joseph W. Rohe
Joseph W. Rohe (S.C. Bar No. 79313)
100 East Washington Street, Suite 64
Greenville, South Carolina 29601
Tel: (843) 530-1318
Email: jrohe@6125trade.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOSEPH W. ROHE,

Plaintiff,

vs.

SHM CHARLESTON CITY MARINA, LLC
d/b/a Safe Harbor Charleston City; and SHM
CHARLESTON BOATYARD, LLC d/b/a
Safe Harbor City Boatyard,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-10-03700

**DEFENDANTS' MOTION TO DISMISS
OR, *IN THE ALTERNATIVE*, TO STAY
AND COMPEL ARBITRATION**

PLEASE TAKE NOTICE THAT Defendants, SHM Charleston City Marina, LLC d/b/a Safe Harbor Charleston City and SHM Charleston Boatyard, LLC d/b/a Safe Harbor City Boatyard ("Safe Harbor Defendants"), by and through their undersigned counsel, hereby intends to move and does so move before this Court for an Order dismissing this action, pursuant to Rules 12(1) and 12(b)(3) of the South Carolina Rules of Civil Procedure, or staying this action until Plaintiff Joseph W. Rohe ("Plaintiff") submits this matter to mandatory, binding arbitration, pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, *et seq.*, and/or pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*, and said arbitration is completed, as required by Plaintiff's contract with the Safe Harbor Defendants, which is attached hereto as Exhibit A. This Motion is based on (1) the rules and statutes of the State of South Carolina as well as the FAA, (2) Plaintiff's Complaint and the exhibits attached thereto, and (3) a supporting memorandum that may be filed with the Court.

Both federal law and South Carolina law favor the resolution of disputes through arbitration. *See Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739, S.E.2d 209, 213

(2013) (“It is the policy of this state and federal law to favor arbitration and ‘any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.’” (citation omitted)). Therefore, any dispute that falls within the scope of an arbitration clause must be submitted to arbitration. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”). Moreover, “any doubt as to whether [a] claim is subject to arbitration must be resolved in favor of arbitration.” *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 275, 776 S.E.2d 91, 96 (2015). Due to the arbitration provision that governs this dispute and for the reasons set forth herein and that may be more fully set forth in a supporting memoranda, this Motion should be granted.

AND IT IS SO MOVED.

Respectfully submitted,

/s/ Rhett D. Ricard

Rhett D. Ricard, SC Bar No. 102353
 MAYNARD NEXSEN PC
 205 King Street, Suite 400 (29401)
 Charleston, SC 29401
 T: 843-720-1762
rricard@maynardnexsen.com

Attorney for Defendants

September 19, 2024
 Charleston, South Carolina

EXHIBIT A

ELECTRONICALLY FILED - 2024 Sep 19 11:58 AM - CHARLESTON - COMMON PLEAS - CASE# 20240P1003700

Your Dates	
Your Arrival Date	
Desired* Completion/Departure Date	
Today's Date	03/18/2024
*Actual completion/departure date may vary	



Haul and Service Authorization

SAFE HARBOR
CITY BOATYARD

130 Wando Creek Ln | Charleston SC 29492
843.884.3000

Customer Information ("The Owner")				Office Use Only	
Any reference to "owner" within this contract is referring to the responsible party of this contract, be it vessel owner, captain or potential buyer.					
Customer Name JOSEPH ROHE		You Are ☒ Owner ☐ Captain ☐ Potential Buyer		Customer ID 11186	
Street Address 100 E. WASHINGTON		City GREENVILLE		Work Order #	
State SC		Zip Code 29601			
Email @gmail.com		Phone (843) 530-1313		Boat ID 12595	
Boat Information					
Boat Name CATALYST		Make SWIRSCAT		Model 52C 45	
Hull ID #		Key/Combo		Year 2013	
		Length (LOA) 48		Beam 24	
				Draft	

Attention: all food/bait must be removed from vessel prior to arriving at the boatyard, we are not responsible for loss of power for any reason and are not responsible for any damages caused by spoilage, etc.

Work Desired	
☒ Shore Power: ☐ 30A ☒ 50A ☐ Nightly ☐ Monthly	☐ Check/Replace Hoses, Belts, Clamps, Impellers
☐ Haul/Block/Launch	☐ Take Coolant Samples and Send Out
☐ Pressure Wash	☐ Recondition Prop
☐ Bottom Paint: ☐ (1) Coat ☐ (2) Coats	☐ Check/Load Test Batteries
Paint Type: _____	☐ Rig/Derig Mast
☐ Prep, Prime and Paint Running Gear*	☐ Step/Unstep Mast
*Running gear: trim tabs, engines, shafts, struts, props, thrusters.	☐ Dehumidifier
☐ Full Detail of Exterior of Boat	☒ Engine Service, fluids/filters, etc. # of Engines: 2
☐ Buff and Wax Hull Sides	Engine Make/Model: YANMAR
☐ Clean and Wax Smooth Areas on Deck	Current Engine Hours: ? Engine Year: 2013
☐ Check, Lube and Adjust Seacocks	Additional work needed: GENSET LOW OUTPUT (182V)
☐ Check/Repack Shaft Stuffing Boxes	WATERMAKER NO HIGH PRESSURE
☐ Renew Underwater Zinc(s)	

Work Order Authorization	
This is a maritime contract and is subject to terms and conditions on the reverse side of which accompany this Document. Signatures must be on work order and terms and conditions to place Boat into work schedule. All invoices are subject to a 7.5% Environmental Surcharge on parts and labor. I hereby authorize the repair work herein to be completed by SHM Charleston Boatyard, LLC (the "Boatyard"), together with the furnishing by the Boatyard of the necessary parts, subcontractors, and other materials for such repair.	
JOSEPH ROHE	03/18/24
Customer Name	Date

Payment Card Authorization	
(WE) HEREBY AUTHORIZE the BOATYARD or its affiliates, to charge my Payment Card in accordance with the terms outlined in this Agreement, including but not limited to, charging me for the Other Fees on the Other Fees Payment Date and for the Dockage Fee as outlined in this Agreement for the applicable scenario. I certify that I am an authorized user of this Payment Card and that I will not dispute the payment with my Payment Card company or financial institution, so long as the transaction corresponds to the terms indicated in this Agreement. This authorization is to remain in full force and effect until Boatyard has received written notification from me (or either of us) of termination of this authorization in such time and in such a manner as to afford the Boatyard a reasonable opportunity to act on it.	
NOTE: ALL WRITTEN AUTHORIZATIONS MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.	
Card Holder Signature	Date
03/18/2024	9787
	Last 4 Digits of Payment Card

TERMS AND CONDITIONS

The Boatyard agrees to perform work on the above named Boat for the Owner listed on Page 1 under the following terms and conditions:

WORK: The work required by this Contract is described on Page 1. Owner agrees to pay for all work performed by Boatyard, including additional work authorized by Owner or its agents, whether such authorization is verbal or written. Owner grants Boatyard and/or Boatyard's employees, agents, and subcontractor's permission to operate or navigate the Boat for the purpose of testing, inspection, or sea trials of the Boat.

COST OF WORK: All work will be performed and billed to the Owner based on the Boatyard's standard rates, unless a fixed price is agreed upon. If the work is performed on a fixed price basis, Owner agrees to pay that fixed price for the work. Owner understands that the actual amount of time and material may vary from any proposal and may be either greater or less than the proposed amount. If it is determined that the costs to complete the repairs will exceed the original proposal by more than 50%, Boatyard will contact the Owner and obtain permission for the additional amount.

PAYMENT: Owner agrees to pay Boatyard _____ of the estimated costs of the work upon acceptance of this Contract. Boatyard will invoice Owner as work progresses and Owner agrees to pay the full invoiced amount at the completion of the service. A service charge of 1.5 % per month or \$25.00 per month, whichever is greater will be added to all invoices that are not paid at the completion of the service. In the event that Owner does not pay Boatyard under this contract, then Boatyard has the right to maintain the Boat in its possession and not return the Boat to the Owner until the Boatyard is paid in full.

LAY DAYS: There will be no charge for storage while the Boatyard is performing the work required by this Contract. Owner will be notified of the completion of the work by Boatyard at the address, e-mail address, and/or phone numbers listed on Page 1, and Owner is required to inspect the work and take delivery of the Boat within seven (7) days of such notification. Owner will be charged storage of the Boat after the seven (7) day period at Boatyard's normal Lay Day rate for short term or transient storage.

LIMITATION OF LIABILITY: In no event shall Boatyard's liability for any claim arising under this contract exceed 20% of the total cost of the work performed by the Boatyard under this contract. Boatyard is not liable for any loss, damage or delay resulting from strikes or labor difficulties, whatsoever and wheresoever occurring or for stoppage of work due to causes beyond our control. Boatyard shall not be liable for any personal injury, including death, or for damage to property of Owner, Owner's agents, and/or third parties even if same is the result of the negligence of Boatyard or Boatyard's employees. Boatyard's liability, if any, is strictly limited to the cost of repair, correction or replacement thereof and in no event shall Boatyard be liable for any consequential damage whatsoever, including but without limitation, delay, loss of profits, detention, demurrage, towage, and pilotage. In no event shall Boatyard be liable for the cost of defense, including attorneys' fees, of any action whether commenced by our employees, subcontractors' employees, or others against the Boat, its Owner, agents, charterers or underwriters.

WARRANTY: Unless otherwise agreed, Boatyard is not liable for defective workmanship or material or for damage to any Boat or for any loss sustained by Owner, the Boat's charterers or underwriters, or parties in interest, directly or indirectly, in contract, tort or otherwise, even if same is caused by the negligence of Boatyard or Boatyard's employees, which negligence shall not be presumed but must be affirmatively established. The foregoing is in lieu of all warranties and liabilities expressed or implied and any document which unilaterally purports to alter or increase our liability beyond that stated herein is not acceptable to Boatyard and does not form a part of this contract. Different or more extensive liabilities will be accepted if an agreement in writing stating the nature and extent thereof is entered into before the Boat enters Boatyard's yard or work is commenced, whichever first occurs, and an adjustment is made in the price. Any material supplied by Boatyard or its subcontractors are subject to and limited to the manufacturer's warranty, and Owner's sole remedy relating to any such warranty is against the manufacturer.

LIMITATIONS ON WARRANTIES: Boatyard is not responsible for any warranty claim, or liability for defective workmanship or material, or for loss or damage that is not made in writing within ninety (90) days of the date the Owner is notified the work is completed. Boatyard is not responsible for any damage or failure resulting from Owner's negligence, misuse, or lack of maintenance of the Boat or equipment, or damage or failure resulting from other defects or inadequacies of the Boat or its equipment. All warranty claims must be made in writing within ninety (90) days of the date the Owner is notified the work is completed, or the warranty claim is waived by Owner. Under no circumstances is Boatyard responsible for down time of the Boat, or other incidental or consequential damages resulting from any defects in workmanship. Owner's sole remedy is for Boatyard to repair and/or correct any defects in workmanship at Boatyard. Except for the warranties listed above, Boatyard hereby expressly disclaims all warranties, either express or implied, including any implied warranties of merchantability and fitness for a particular purpose. Boatyard neither assumes nor authorizes any other person or employee to assume for it any liability in connection with this Contract.

CARE OF BOAT: Owner shall insure that any equipment that must be maintained during the time the Boat is at Boatyard, and that is not specifically being worked on by Boatyard, is maintained. Boatyard is not responsible for the care or maintenance of any equipment on the Boat that it is not specifically being worked. OWNER IS REQUIRED TO INSURE ALL PLUGS ARE REMOVED SO THAT THE BOAT WILL NOT COLLECT WATER WHILE AT BOATYARD. OWNER IS RESPONSIBLE FOR INSURING PLUGS ARE INSTALLED PRIOR TO RE-LAUNCHING THE BOAT. OWNER IS RESPONSIBLE FOR INSURING BOAT IS PROTECTED FROM FREEZE DAMAGE WHILE AT BOATYARD. OWNER IS RESPONSIBLE FOR WINTERIZING THE BOAT. BOATYARD IS NOT RESPONSIBLE FOR THE LOSS OR DAMAGE TO ANY ARTICLES, EQUIPMENT, FISHING RODS, RADIOS, ELECTRONICS, BOAT APPURTANCES OR PERSONAL ITEMS LEFT ON ONBOARD OR IN THE BOAT IN CASE OF FIRE, THEFT OR ANY OTHER CAUSE, INCLUDING BOATYARD AND ITS OWN EMPLOYEE'S NEGLIGENCE.

NO WORK BY OWNER: Owner shall not have any work performed on the Boat by any subcontractor, employee(s) of the Owner, or otherwise while the Boat is at the Boatyard without the express written permission of Boatyard. Owner may perform routine maintenance on the Boat not related to the work being performed by Boatyard, provided the work does not involve painting, and all such work must be done with the permission of the Boatyard on a not to interfere basis.

Please note, any reference to "owner" within this contract is referring to the responsible party of this contract, be it vessel owner, captain or potential buyer.

ACCESS TO THE BOAT: Owner shall be provided access to the Boat during Boatyard's normal business hours. Owner agrees to check in with the Boatyard prior to going on the Boat. Owner agrees to not interfere with work being performed and will address all comments/questions directly to the office.

INDEMNIFICATION: Owner agrees to protect, defend, indemnify, hold, and save Boatyard and its employees, contractors and subcontractors, and all their employees harmless from and against all claims, losses, costs, demands, damages, suits, and causes of action of whatsoever nature or character, and whether arising out of contract, tort, strict liability, unseaworthiness of any Boat, misrepresentation, violation of applicable law and/or any cause whatsoever, including, but not limited to, reasonable attorney's fees and other costs and expenses, without limit and without regard to the cause or causes thereof, which in any way arise out of or are related to this Contract (including, without limitation, the performance or subject matter of this Contract) and which are asserted by or arise in favor of Owner or any of its agents, representatives, or employees, or Owner's subcontractors or any of their employees (and/or their spouses or relatives) due to bodily injury, death, or loss of or damage to property, or any cause whatsoever whether or not caused by the sole, joint, and/or concurrent negligence, fault, negligence, strict liability, breach of contract, or legal duty of Boatyard or any other party indemnified hereunder, the unseaworthiness of any Boat, or any cause whatsoever.

SUBCONTRACTORS: Owner agrees that its subcontractors will maintain general liability coverage with a minimum of \$1,000,000.00, and worker's compensation coverage, including South Carolina Worker's Compensation Coverage and Longshore and Harbor Worker's Compensation coverage, covering all persons or individuals working at the Boatyard, and that its subcontractors will execute a Boatyard waiver prior to commencing work on any Boat at the Boatyard.

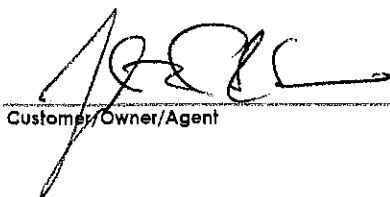
LIEN AGAINST BOAT: Boatyard shall have a lien against the Boat for the costs of work performed, materials, storage and for any unpaid sums due under the terms of this Contract. Nothing herein shall be deemed to constitute a waiver of our maritime lien. An express mechanic's lien is hereby acknowledged on the Boat to secure the amount of repair thereto as well.

ARBITRATION: Any and all disputes of any type whatsoever relating to or arising out of this Contract shall be resolved through binding arbitration, with such arbitration being conducted in Charleston, South Carolina at a convenient location agreeable to the arbitrator(s), Owner and Boatyard. The parties shall select a mutually agreeable attorney from the Charleston metropolitan area to serve as the arbitrator. If the parties cannot select a mutually agreeable arbitrator, then each party must name an attorney from the Charleston metropolitan area to serve as the arbitrator and the two arbitrators will select the third arbitrator. The parties shall be entitled to conduct discovery in preparation for the arbitration in accordance with the South Carolina Rules of Civil Procedure. Except as stated herein, the arbitration shall be conducted in accordance with rules of the Society of Maritime Arbitrators, Inc. All arbitration proceedings against Boatyard must be commenced within one year after work has ceased for whatever reason, or has been completed, or the Boat has been redelivered, whichever first occurs.

COLLECTION: The Boatyard shall be entitled to recover reasonable attorney's fees and costs (including expert fees and all expenses) relating to any litigation and/or arbitration proceedings arising out of this contract. If any amount owed to Boatyard pursuant to this agreement and any other charges or accounts due to Boatyard, including late charges, are placed in the hands of an attorney for collection, Owner agrees to pay. In addition to all such charges or accounts due to Boatyard, reasonable attorney's fees and costs. Nothing in this arbitration provision prevents Boatyard from filing a lien against, arresting, attaching, or seizing the Boat as provided by general maritime law and/or the Supplemental Rules for Certain Admiralty and Maritime Claims, or proceeding in state court, including, but not limited to magistrate's court, to have the Boat attached, seized, arrested, or declared abandoned. In the event that Boatyard must institute an in rem proceeding against the Boat and the Boat is arrested by the U.S. Marshal Service, Owner agrees that Boatyard may serve as and be appointed the Substitute Custodian of the Boat and that the Boat may be sold at a U.S. Marshal sale by court order for thirty-five percent (35%), or more of the Boat's fair market value at the time of the sale.

ENTIRE AGREEMENT AND LIMITATION OF LIABILITY: This Agreement includes the entire agreement between the parties, and in no event shall our liability for any claim arising under this contract exceed in aggregate of the sum of \$50,000.00. Invalidity of any one or more provisions of this contract shall not affect or impair the remaining provisions. This contract may not be changed orally. The terms of this contract shall be separable, and if any provision hereof, or any part of any provision be held to be invalid or unenforceable, such holdings shall not affect the validity or enforceability of any other provision or part thereof in this contract. Should there be a waiver of any term or condition of this contract by Boatyard, such waiver shall not be deemed a continuing waiver, and all other terms and conditions of this contract shall remain in full force and effect.

MISCELLANEOUS CLAUSES: The person signing this contract does hereby certify that the description of the Boat as set forth above is correct and that he/she is the lawful owner of the Boat, or is authorized to subject the Boat to the provisions of this agreement. In the event of the issuance of a hurricane or tropical storm warning by the National Hurricane Center, it shall be Owner's responsibility to be aware of such warning, and to make arrangement for the removal of the Boat from Boatyard, or insure the Boat is properly and safely moored. This contract shall be governed by the general maritime law of the United States and the laws of the State of South Carolina.



Customer/Owner/Agent

03/18/2024
Date

Please note, any reference to "owner" within this contract is referring to the responsible party of this contract, be it vessel owner, captain or potential buyer.



SAFE HARBOR

CITY BOATYARD

CREDIT CARD AUTHORIZATION

130 WANDO CREEK LN | CHARLESTON SC, 29492 | 843.884.3000

Customer Information		*FOR OFFICE USE*	
Name:	JOSEPH ROHE	Today's Date:	3/18/24
Address:	100 E. WASHINGTON ST. #104	Customer ID:	11186
City, State:	GREENVILLE SC	Boat ID:	12595
Email:		Last 4 Digits of Credit Card:	
Phone:	(843) 530-1318	Notes/Special instructions/Ticket #	
Boat Information			
Vessel Name:	CATALYST	TSYS KJ ✓	
Make/Model:	SWISSCAT 52C45		
Hull ID:	LOA: 48		

Owner Signature

JOSEPH ROHE
Printed Name

03/18/2024
Date

Information below dotted line to be detached and destroyed by Service Office

Credit Card Type



Card Number:

Exp:

CCV Code:

I hereby authorize Safe Harbor City Boatyard (SHCBY) to store my above credit card for any future, current/existing charges for the agreed upon services, storage fees and/or parts prior to my vessel and/or my (personal) leaving SHCBY premises. Being the authorized cardholder or the Corporate officer, by signing I understand and agree to the terms set forth in this agreement, agree to pay, and specifically authorize SHCBY to charge my card for the services provided. I further agree that in the event my card becomes invalid, I will provide a new valid credit card upon request, to be charged for the payment of any outstanding balances owed.

ELECTRONICALLY FILED - 2024 SEP 19 11:58 AM - CHARLESTON - COMMON PLEAS - CASE#2024CP1003700

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JOSEPH W. ROHE,

Plaintiff,

vs.

SHM CHARLESTON CITY MARINA, LLC,
d/b/a Safe Harbor Charleston City; and SHM
CHARLESTON BOATYARD, LLC, d/b/a
Safe Harbor City Boatyard,

Defendants.

IN THE CIRCUIT COURT
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-10-03700

**DEFENDANTS' MEMORANDUM
IN SUPPORT OF
DEFENDANTS' MOTION
TO DISMISS OR, *IN THE*
ALTERNATIVE, TO STAY AND
COMPEL ARBITRATION**

Defendants SHM Charleston City Marina, LLC, d/b/a Safe Harbor Charleston City (“**Safe Harbor Charleston City**”) and SHM Charleston Boatyard, LLC, d/b/a Safe Harbor City Boatyard (“**Safe Harbor City Boatyard**”) (collectively, “**Safe Harbor Defendants**”), by and through their undersigned attorney, pursuant to Rules 12(1) and 12(b)(3) of the South Carolina Rules of Civil Procedure, submit this Memorandum in Support of their Motion to Dismiss or, In the Alternative, to Stay and Compel Arbitration, filed on September 19, 2024 (“**Motion**”). For the reasons set forth herein, the Safe Harbor Defendants’ Motion should be granted.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Safe Harbor Charleston City operates a marina along the Ashley River in downtown Charleston, South Carolina. Likewise, Safe Harbor City Boatyard operates a marina along the Wando River in Charleston County, South Carolina. Both of the Safe Harbor Defendants offer boat slips, boat storage, and most importantly for this case, marine services, including diagnostics, repair, and maintenance. Safe Harbor City Boatyard offers more marine servicing capabilities than does Safe Harbor Charleston City, but both Safe Harbor Defendants utilize a mobile service that is capable of providing marine services in a mutually supporting manner. Plaintiff Joseph W. Rohe

(“**Plaintiff**”) is an attorney, practicing in Greenville, South Carolina, and the owner of a forty-eight-foot (48’) 2013 SwissCat 45 catamaran. (Exhibit A, Service Agreement.)

B. The Service Agreement and Plaintiff’s Allegations

On March 18, 2024, Plaintiff and Safe Harbor City Boatyard executed a service agreement for Safe Harbor City Boatyard to perform certain repair work regarding the catamaran’s shore power and engines, amongst other services. (Am. Compl. ¶ 9; Exhibit A, Service Agreement.) Plaintiff alleges between March 18, 2024 and May 6, 2024, that the Safe Harbor Defendants performed certain services on the catamaran that caused damage to the catamaran. (Compl. ¶¶ 10–11.) Additionally, Plaintiff alleges the Safe Harbor Defendants “invoiced and charged Plaintiff for work that was not performed, double charged for work, and otherwise overcharged Plaintiff in various particulars as will be shown more fully via discovery and at trial.” (Compl. ¶ 11.)

On July 22, 2024, Plaintiff filed his Complaint against Safe Harbor Marinas, LLC d/b/a Safe Harbor Charleston City and Safe Harbor City Boatyard and Sun Communities Operating Limited Partnership. On August 20, 2024, Plaintiff filed his Amended Complaint, joining the Safe Harbor Defendants and simultaneously filed his voluntary dismissal of Safe Harbor Marinas, LLC d/b/a Safe Harbor Charleston City and Safe Harbor City Boatyard and Sun Communities Operating Limited Partnership. That same day, the Safe Harbor Defendants accepted service of the Amended Complaint.

In the Amended Complaint, Plaintiff alleges seven causes of action: (1) negligence; (2) negligent misrepresentation; (3) breach of contract; (4) fraud; (5) breach of contract accompanied by a fraudulent act; (6) unjust enrichment; and (7) unfair trade practices. Plaintiff’s Amended Complaint expressly references, and his causes of action rely upon, the service

agreement. (Compl. ¶¶ 9, 21, 22, 29, 30.) Therefore, Plaintiff's Amended Complaint expressly relates to and arises out of the service agreement.

C. Arbitration Provision

Plaintiff expressly agreed to arbitration via execution of the service agreement on March 18, 2024, as depicted below.

ARBITRATION: Any and all disputes of any type whatsoever relating to or arising out of this Contract shall be resolved through binding arbitration, with such arbitration being conducted in Charleston, South Carolina at a convenient location agreeable to the arbitrator(s), Owner and Boatyard. The parties shall select a mutually agreeable attorney from the Charleston metropolitan area to serve as the arbitrator. If the parties cannot select a mutually agreeable arbitrator, then each party must name an attorney from the Charleston metropolitan area to serve as the arbitrator and the two arbitrators will select the third arbitrator. The parties shall be entitled to conduct discovery in preparation for the arbitration in accordance with the South Carolina Rules of Civil Procedure. Except as stated herein, the arbitration shall be conducted in accordance with rules of the Society of Maritime Arbitrators, Inc. All arbitration proceedings against Boatyard must be commenced within one year after work has ceased for whatever reason, or has been completed, or the Boat has been redelivered, whichever first occurs.

(Exhibit A, Service Agreement, p. 3.) Plaintiff signed the service agreement in multiple locations, including on the same page as the arbitration provision is located. (Exhibit A, Service Agreement.) Based upon this arbitration provision, Plaintiff agreed all of the claims he subsequently pleaded against the Safe Harbor Defendants were subject to mandatory, binding arbitration. (Exhibit A, Service Agreement.) On September 19, 2024, based upon the mandatory, binding arbitration provision, the Safe Harbor Defendants timely filed their response to Plaintiff's Amended Complaint by seeking enforcement of the said arbitration provision via the filing of the pending Motion to Dismiss or, In the Alternative, to Stay and Compel Arbitration.

ARGUMENT AND INCORPORATED LEGAL STANDARD

A. The Court Should Consider the Service Agreement in Deciding this Motion.

This Court has the authority to consider the service agreement without converting this Motion into one for summary judgment. Case law holds when a plaintiff's causes of action explicitly rely upon one or more documents, a court should consider those documents and not allow a plaintiff to survive a motion to dismiss by intentionally omitting the attachment of those documents to the complaint. *See Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009)

("[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based."); *see also Phillips v. LCI Int'l, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999) (holding, on a motion to dismiss, a court may consider a document outside of the pleading if it is "integral to and explicitly relied on in the complaint"). Plaintiff's service agreement executed with Safe Harbor City Boatyard is integral to Plaintiff's Amended Complaint; indeed, all of his causes of action expressly relate to and arise out of the service agreement. Therefore, this Court must consider the service agreement generally and the arbitration provision contained therein specifically.

B. This Court Should Dismiss This Lawsuit or, in the Alternative, Stay This Proceeding and Compel Arbitration.

Because Plaintiff expressly agreed to the arbitration provision, this Court should dismiss this lawsuit. (Exhibit A, Service Agreement, p. 3.) Both federal law and South Carolina law favor the resolution of disputes through arbitration and any doubt as to whether a claim is subject to arbitration must be resolved in favor of arbitration. *See, e.g., Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739, S.E.2d 209, 213 (2013) ("It is the policy of this state and federal law to favor arbitration and 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.'" (citation omitted)); *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 275, 776 S.E.2d 91, 96 (2015) ("[A]ny doubt as to whether [a] claim is subject to arbitration must be resolved in favor of arbitration."); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

"The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." *Landers v.*

Fed. Deposit Ins. Corp., 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (quoting *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 92 (4th Cir. 1996)). “Such a presumption is strengthened when an arbitration clause is broadly written.” *Id.* (citing *AT & T Tech., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650 (1986)). Further, both contract-based and tort-based causes of action can be held subject to an arbitration agreement. *See, e.g., id.* at 103, 739 S.E.2d at 210 (holding both a breach of contract claim and “four causes of action comprised of several tort and corporate claims” were all within the scope of the broad arbitration provision that required arbitration for “any controversy or claim arising out of or relating to this contract”).

The arbitration provision in this case is broad. It covers “[a]ny and all disputes of any type whatsoever relating to or arising out of” the service agreement. (Exhibit A, Service Agreement, p. 3.) All of Plaintiff’s causes of action arise out of his engagement of services from the Safe Harbor Defendants, i.e. the services to be performed on Plaintiff’s catamaran. Based on the foregoing, this Court should find all of Plaintiff’s causes of action are subject to the arbitration provision.

Whether to dismiss the lawsuit outright or stay the action and compel arbitration is left to this Court’s discretion. As a general rule, the FAA requires a court to stay an action pending arbitration rather than dismissing the case. 9 U.S.C. § 3 (stating courts “shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement”). However, there is an exception to this general rule that affords the Court discretion to dismiss a plaintiff’s causes of action rather than stay them if it is clear the entire controversy between the parties will be resolved in the arbitration. *See 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.”); *Cox v. Assisted Living Concepts, Inc.*, No. 6:13-00747, 2014 WL 1094394, at *7 (D.S.C. Mar. 18, 2014) (finding all of plaintiff’s claims in the complaint

were subject to arbitration and, therefore, dismissing plaintiff's claims and compelling arbitration); *Ingram-Allen v. Iveys*, No. 1:03CV00196, 2004 WL 1462024, at *2 (M.D.N.C. Feb. 26, 2004), *aff'd*, 98 F. App'x 944 (4th Cir. 2004) (holding that because all of plaintiff's claims are covered by the arbitration agreement, "and because courts read the FAA as permitting dismissal in these circumstances, this court will grant Defendant's motion to dismiss").

There is no question that Plaintiff's seven causes of action will be fully resolved through arbitration. The Court should therefore dismiss Plaintiff's claims and enforce the parties' agreement to arbitrate this dispute.¹ Nevertheless, this Court retains discretion to stay the action and compel arbitration as an alternative to dismissal. Based upon the arbitration provision that governs this dispute and for the reasons set forth herein, this Motion should be granted.

CONCLUSION

Based on the foregoing, Plaintiff cannot maintain this action in this Court. The arbitration provision provides the exclusive avenue for Plaintiff's causes of action and the relief he seeks. For the reasons set forth herein, the Safe Harbor Defendants respectfully request this Court to grant this Motion and either dismiss this case or, in the alternative, to stay this case and compel arbitration.

¹ Dismissal of this action for **both** Safe Harbor Defendants is warranted and it is insignificant that Safe Harbor Charleston City is not a signatory to the service agreement. South Carolina law recognizes five theories providing a basis for binding a non-signatory to an arbitration agreement: "1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 289, 733 S.E.2d 597, 601 (Ct. App. 2012); *see also Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). Because (1) Plaintiff's claims against the nonsignatory Safe Harbor Charleston City make reference to and presumes the existence of the arbitration provision, (2) Plaintiff's claims can be reasonably interpreted to assert an agency relationship between the Safe Harbor Defendants, and (3) Plaintiff must rely upon the terms of the service agreement and the arbitration provision therein to assert his claims against Safe Harbor Charleston City, Plaintiff is just as bound to arbitration with the nonsignatory Safe Harbor Charleston City as he is with the signatory Safe Harbor City Boatyard.

Respectfully submitted,

/s/Rhett D. Ricard

Rhett D. Ricard, SC Bar No. 102353

MAYNARD NEXSEN PC

205 King Street, Suite 400

Charleston, SC 29401

Telephone: 843.577.9440

rricard@maynardnexsen.com

Attorney for Defendants

January 8, 2025
Charleston, South Carolina

EXHIBIT A

SERVICE AGREEMENT

*Refer back to Record at
pages 24-28*

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JOSEPH W. ROHE,

Plaintiff,

vs.

SHM CHARLESTON CITY MARINA, LLC,
d/b/a Safe Harbor Charleston City; and SHM
CHARLESTON BOATYARD, LLC, d/b/a
Safe Harbor City Boatyard,

Defendants.

IN THE CIRCUIT COURT
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-10-03700

**DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION
TO DISMISS OR, *IN THE*
ALTERNATIVE, TO STAY AND
COMPEL ARBITRATION**

Defendants SHM Charleston City Marina, LLC, d/b/a Safe Harbor Charleston City (“**Safe Harbor Charleston City**”) and SHM Charleston Boatyard, LLC, d/b/a Safe Harbor City Boatyard (“**Safe Harbor City Boatyard**”) (collectively, “**Safe Harbor Defendants**”), by and through their undersigned attorney, pursuant to Rules 12(1) and 12(b)(3) of the South Carolina Rules of Civil Procedure, submit this Supplemental Memorandum in Support of their Motion to Dismiss or, In the Alternative, to Stay and Compel Arbitration, filed on September 19, 2024 (“**Motion**”). An initial Memorandum in Support was filed on January 8, 2025. However, this Supplemental Memorandum is being submitted in order to further address points raised by the Court in the hearing on this Motion on January 10, 2025. For the reasons set forth herein, the Safe Harbor Defendants’ Motion should be granted.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

1. Plaintiff alleges Safe Harbor Charleston City is a limited liability company organized and existing under the laws of the State of Delaware.
2. Likewise, Plaintiff alleges Safe Harbor City Boatyard is a limited liability company organized and existing under the laws of the State of Delaware.

3. The Safe Harbor Defendants operate on the Ashley and Wando Rivers in and around Charleston, South Carolina, both rivers being navigable waterways.¹ *See, e.g., Brownlee v. S.C. Dep't of Health & Env't Control*, 382 S.C. 129, 138, 676 S.E.2d 116, 120–21 (2009) (“Navigable water is a public highway which the public is entitled to use for the purposes of travel either for business or pleasure.”) (quoting *State ex rel. Lyon v. Columbia Water Power Co.*, 82 S.C. 181, 189, 63 S.E. 884, 888 (1909)); *Lockwood v. Charleston Bridge Co.*, 60 S.C. 492, 38 S.E. 112, 114 (1901) (“[T]he court will take judicial notice that Ashley river, near Charleston, is a navigable stream[.]”); *Gehlken v. McAllister Towing & Transp. Co.*, No. 2:03-3935-DCN, 2007 WL 2332487, at *7 (D.S.C. Jan. 29, 2007) (holding admiralty jurisdiction in a case recognizing the Wando River as “a navigable river”); *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 124, 747 S.E.2d 461, 465 (2013) (holding the Wando River is “a channel of interstate commerce”); *see also* S. Scott Bluestein, *Pleasure Boats and Jet Skis: Does Admiralty Law Apply?*, S.C. Law., Oct. 1999, at 33, 34 (“Navigable waters in South Carolina include the Atlantic Ocean; the Intracoastal Waterway; the Savannah, New, Beaufort, Edisto, Stono, Ashley, Cooper, Wando . . . Rivers; [and] Charleston Harbor . . .”).

4. Plaintiff is an attorney, residing and practicing in Greenville, South Carolina, and the owner of a forty-eight-foot (48') 2013 SwissCat 45 catamaran (“**Vessel**”).

B. The Service Agreement and Plaintiff's Allegations

5. On March 18, 2024, Plaintiff and Safe Harbor City Boatyard executed a service agreement for Safe Harbor City Boatyard to perform certain repair and maintenance work regarding the

¹ Specifically, Plaintiff alleges Safe Harbor Charleston City's address is 7 Lockwood Drive in Charleston, South Carolina and the Service Agreement has Safe Harbor City Boatyard's address as 130 Wando Creek Lane in Charleston, South Carolina. It is undisputed these addresses are on and have access to the Ashley and Wando Rivers, respectively; regardless, the Court can take judicial notice of the same.

Vessel's shore power and engines, amongst other services, as depicted below and as seen in Exhibit A of the Safe Harbor Defendants' Motion ("Service Agreement").

Boat Information					
Boat Name CATALYST	Make SWIRSCAT	Model S2C 45	Year 2013		
Hull ID#	Key/Combo	Length [LOA] 48	Beam 24	Draft	
Attention: all food/bait must be removed from vessel prior to arriving at the boatyard, we are not responsible for loss of power for any reason and are not responsible for any damages caused by spoilage, etc.					
Work Desired					
☒ Shore Power:	☐ 30A	☒ 50A			
	☐ Nightly	☐ Monthly			
☐ Haul/Block/Launch	☐ Survey / Short Haul				
☐ Pressure Wash	☐ Load/Offload				
☐ Bottom Paint:	☐ (1) Coat	☐ (2) Coats			
Paint Type:					
☐ Prep, Prime and Paint Running Gear*					
*Running gear: trim tabs, engines, shafts, struts, props, thrusters.					
☐ Full Detail of Exterior of Boat					
☐ Buff and Wax Hull Sides					
☐ Clean and Wax Smooth Areas on Deck					
☐ Check, Lube and Adjust Seacocks					
☐ Check/Repack Shaft Stuffing Boxes					
☐ Renew Underwater Zinc(s)					
☐ Check/Replace Hoses, Belts, Clamps, Impellers					
☐ Take Coolant Samples and Send Out					
☐ Recondition Prop					
☐ Check/Load Test Batteries					
☐ Rig/Derig Mast					
☐ Step/Unstep Mast					
☐ Dehumidifier					
☒ Engine Service, fluids/filters, etc.	# of Engines:		2		
Engine Make/Model:		YANMAR			
Current Engine Hours:		?		Engine Year: 2013	
Additional work needed: GENERATOR LOW OUTPUT (182V)					
• WATERMAKER NO HIGH PRESSURE					

6. Plaintiff alleges between March 18, 2024 and May 6, 2024, that the Safe Harbor Defendants performed certain services on the Vessel that caused damage to the Vessel.

7. Additionally, Plaintiff alleges the Safe Harbor Defendants invoiced and charged Plaintiff for work that was not performed, double charged for work, and otherwise overcharged Plaintiff in various particulars as will be shown more fully via discovery and at trial.

8. In the Amended Complaint, Plaintiff alleges seven causes of action: (1) negligence; (2) negligent misrepresentation; (3) breach of contract; (4) fraud; (5) breach of contract accompanied by a fraudulent act; (6) unjust enrichment; and (7) unfair trade practices.

9. Plaintiff's Amended Complaint expressly references, and his causes of action rely upon, the Service Agreement.

C. Arbitration Provision

10. Plaintiff expressly agreed to arbitration via execution of the Service Agreement on March

18, 2024.

11. As depicted below and as seen in Exhibit A of the Safe Harbor Defendants' Motion, Plaintiff agreed that "[a]ny and all disputes of any type whatsoever relating to or arising out of this Contract shall be resolved through binding arbitration."

ARBITRATION: Any and all disputes of any type whatsoever relating to or arising out of this Contract shall be resolved through binding arbitration, with such arbitration being conducted in Charleston, South Carolina at a convenient location agreeable to the arbitrator(s), Owner and Boatyard. The parties shall select a mutually agreeable attorney from the Charleston metropolitan area to serve as the arbitrator. If the parties cannot select a mutually agreeable arbitrator, then each party must name an attorney from the Charleston metropolitan area to serve as the arbitrator and the two arbitrators will select the third arbitrator. The parties shall be entitled to conduct discovery in preparation for the arbitration in accordance with the South Carolina Rules of Civil Procedure. Except as stated herein, the arbitration shall be conducted in accordance with rules of the Society of Maritime Arbitrators, Inc. All arbitration proceedings against Boatyard must be commenced within one year after work has ceased for whatever reason, or has been completed, or the Boat has been redelivered, whichever first occurs.

12. The arbitration provision also sets forth that "the arbitration shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc."

13. Plaintiff signed the Service Agreement in multiple locations, including on the same page as the arbitration provision is located.

ARGUMENT AND INCORPORATED LEGAL STANDARD²

A. The FAA's Applicability to a Maritime Transaction Generally and the Service Agreement Specifically

14. "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, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable" 9 U.S.C. § 2 (emphasis added).

15. "Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce,

² The Safe Harbor Defendants incorporate herein by reference the authority and arguments set forth in their initial Memorandum in Support, filed on January 8, 2025.

regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001).

16. Here, the parties have not contracted to the contrary, such that the FAA’s applicability is not prohibited by the arbitration provision specifically or the Service Agreement generally.

17. “‘Maritime transactions’, as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or **repairs to vessels**, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction” 9 U.S.C. § 1 (emphasis added).

18. “[T]he courts have held consistently that contracts **to repair vessels are directly maritime in nature** and invoke admiralty jurisdiction.” *AXA Re Prop. & Cas. Ins. Co. v. Tailwalker Marine, Inc.*, No. C.A. 2:04-1684-23, 2004 WL 3680276, at *2 (D.S.C. Dec. 17, 2004) (emphasis added) (citing *New Bedford Dry Dock Co. v. Purdy*, 258 U.S. 96, 99 (1922) (stating that a contract for repairs of a vessel is maritime); *Diesel Repower, Inc. v. Islander Invs., Ltd.*, 271 F.3d 1318, 1322–23 (11th Cir. 2001) (“A contract to repair a vessel invokes admiralty jurisdiction.”); *see also S.C. State Ports Auth. v. Silver Anchor, S.A., (Panama)*, 23 F.3d 842, 846 n.3 (4th Cir. 1994) (“[A] contract **to repair** or to insure a ship **is maritime**”) (emphasis added); *One Beacon Insurance Co. v. Crowley Marine Services Inc.*, 648 F.3d 258, 262 (5th Cir. 2011) (“[A] contract for the repair of a vessel is a maritime contract, governed by general maritime law.”).

19. Indeed, “[i]t is axiomatic that the routine repair of vessels is a crucial maritime activity.” *Com. Union Ins. Co. v. Detyens Shipyard, Inc.*, 147 F. Supp. 2d 413, 419 (D.S.C. 2001) (quoting *Sea Vessel, Inc. v. Reyes*, 23 F.3d 345, 351 (11th Cir. 1994)).

20. “Moreover, courts have gone on to hold that maritime contracts to be performed on land can be within the admiralty jurisdiction of the court.” *AXA Re Prop. & Cas. Ins. Co. v. Tailwalker*

Marine, Inc., No. C.A. 2:04-1684-23, 2004 WL 3680276, at *2 (citing *American Eastern Development Corp. v. Everglades Marine, Inc.*, 608 F.2d 123 (5th Cir. 1979) (finding admiralty jurisdiction over a vessel destroyed while on land pursuant to a maritime-related contract); *id.* at *3 (“The key to jurisdiction is not the location of the vessel, but whether the contract sought to be enforced impacts maritime commerce.”)).

21. Even “the storage and maintenance of a vessel at a marina on navigable waters” are considered to constitute “traditional maritime activities,” the contracts for which would be subject to admiralty jurisdiction. *See, e.g., Sisson v. Ruby*, 497 U.S. 358, 367 (1990).

22. The case of *Koechli v. BIP International, Inc.*, 870 So. 2d 940 (Fla. Dist. Ct. App. 2004), is instructive. In *Koechli*, a repair company was retained to repair a vessel and brought an action against the agents of vessel’s owner and others alleging several claims; the *Koechli* court determined that the contract containing an agreement to arbitrate was covered by the FAA.

23. Here, it is undisputed the Service Agreement in this case was for the repair and/or maintenance of Plaintiff’s Vessel; therefore, the Service Agreement constitutes a maritime transaction covered by the FAA.

24. Based on the foregoing, Plaintiff is bound to mandatory, binding arbitration.

B. The Service Agreement’s Implication and Involvement of Interstate Commerce

25. There is not only a basis for the enforceability of the arbitration provision here due to the Service Agreement constituting a maritime transaction covered by the FAA, but it is also one that involves interstate commerce.

26. “The United States Supreme Court has held that the phrase ‘involving commerce’ is the same as ‘affecting commerce,’ which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent.” *Blanton v. Stathos*, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002).

27. In other words, the FAA’s reaches expansively “as coinciding with that of the Commerce Clause.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 122, 747 S.E.2d 461, 464 (2013) (“The United States Supreme Court ‘has previously described the [FAA]’s reach expansively as coinciding with that of the Commerce Clause.”).

28. Under the reach of the Commerce Clause, “Congress has authority to regulate (1) ‘the use of the channels of interstate commerce,’ (2) ‘the instrumentalities of interstate commerce, or persons or things in interstate commerce . . .’ and (3) ‘those activities having a substantial relation to interstate commerce.’” *Id.* (*United States v. Gould*, 568 F.3d 459, 470 (4th Cir. 2009)).

29. “Channels of commerce are ‘the interstate transportation routes through which persons and goods move,’” which includes “navigable waterways.” *See id.* (quoting *United States v. Ballinger*, 395 F.3d 1218, 1225 (11th Cir. 2005)).

30. “Instrumentalities of interstate commerce, by contrast, are the people and things themselves moving in commerce . . . ,” which includes “boats.” *Id.*

31. “Although diversity of citizenship—or lack thereof—is not by itself enough to determine the nature of a transaction,” *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697 (4th Cir. 2012), the Court need not exclusively rely upon diversity here.

32. First, the Vessel is an instrumentality of interstate commerce. *See Cape Romain*, 405 S.C. at 122, 747 S.E.2d at 464.

33. Second, realistically, the Service Agreement could not be completed without the use of materials in interstate commerce, which is sufficient to trigger FAA coverage. *See Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 123–24, 747 S.E.2d 461, 465 (2013); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 594–95, 553 S.E.2d 110, 117–18 (2001); *Blanton v. Stathos*, 351 S.C. 534, 540–41, 570 S.E.2d 565, 568–69 (Ct. App. 2002); *Episcopal Hous. Corp. v. Federal*

Ins. Co., 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977); *Thornton v. Trident Med. Ctr., L.L.C.*, 357 S.C. 91, 97, 592 S.E.2d 50, 53 (Ct. App. 2003).

34. Likewise, realistically, the transport of the Vessel to be repaired, maintained, and stored by the Safe Harbor Defendants could not be completed without the use of navigable waters subject to federal law and, importantly, a channel of interstate commerce. *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 124, 747 S.E.2d 461, 465 (2013) (“[T]he location of the construction site, the transportation of out-of-state materials through the channels of interstate commerce, and the use of barges and other instrumentalities of interstate commerce all support application of the FAA in this instance.”); *United States v. Rands*, 389 U.S. 121, 122–23 (1967) (“The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States.”); *United States v. Ballinger*, 395 F.3d 1218, 1226 (11th Cir. 2005) (noting that shipments of goods and boats themselves are instrumentalities of interstate commerce); *United States v. Deaton*, 332 F.3d 698, 706 (4th Cir. 2003) (“The power over navigable waters is an aspect of the authority to regulate the channels of interstate commerce.”).

35. Third, “in deciding to apply the FAA, [this Court] need not identify any specific effect upon interstate commerce, so long as ‘in the aggregate the economic activity in question would represent “a general practice . . . subject to federal control.”’” *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697–98 (4th Cir. 2012) (quoting *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56–57 (2003) (citation omitted)).

36. Here, the broad impact of maritime repair, maintenance, and storage on the national economy is self-evident. *See id.* (finding the broad impact of consumer automobile lending on the national economy was evident).

37. Based on the foregoing, the Service Agreement involves interstate commerce, such that

Plaintiff is bound to mandatory, binding arbitration on this ground as well.

CONCLUSION

Based on the foregoing, Plaintiff cannot maintain this action in this Court. The arbitration provision provides the exclusive avenue for Plaintiff's causes of action and the relief he seeks. For the reasons set forth herein and set forth in their initial Memorandum in Support filed on January 8, 2025, the Safe Harbor Defendants respectfully request this Court to grant this Motion and either dismiss this case or, in the alternative, to stay this case and compel arbitration.

Respectfully submitted,

/s/Rhett D. Ricard

Rhett D. Ricard, SC Bar No. 102353

MAYNARD NEXSEN PC

205 King Street, Suite 400

Charleston, SC 29401

Telephone: 843.577.9440

rricard@maynardnexsen.com

January 15, 2025

Charleston, South Carolina

Attorney for Defendants

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JOSEPH W. ROHE,

Plaintiff,

vs.

SHM CHARLESTON CITY MARINA, LLC,
d/b/a Safe Harbor Charleston City; and SHM
CHARLESTON BOATYARD, LLC, d/b/a
Safe Harbor City Boatyard,

Defendants.

IN THE CIRCUIT COURT
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-10-03700

ORDER

This matter comes before the Court on the Motion to Dismiss or, in the Alternative, to Stay and Compel Arbitration filed on September 19, 2024 (“Motion”), by Defendants SHM Charleston City Marina, LLC, d/b/a Safe Harbor Charleston City (“**Safe Harbor Charleston City**”) and SHM Charleston Boatyard, LLC, d/b/a Safe Harbor City Boatyard (“**Safe Harbor City Boatyard**”) (collectively, “**Safe Harbor Defendants**”), pursuant to Rules 12(1) and 12(b)(3) of the South Carolina Rules of Civil Procedure and the Federal Arbitration Act (“**FAA**”), 9 U.S.C. § 1, *et seq.*¹ The Safe Harbor Defendants filed a memorandum in support on January 8, 2024; Plaintiff Joseph W. Rohe (“**Plaintiff**”) did not file any response in opposition. A hearing on this matter occurred on January 10, 2024.

After hearing from counsel and reviewing the record, the Court makes the following findings of fact and conclusions of law:

¹ On July 22, 2024, Plaintiff filed his Complaint against Safe Harbor Marinas, LLC d/b/a Safe Harbor Charleston City and Safe Harbor City Boatyard and Sun Communities Operating Limited Partnership. On August 20, 2024, Plaintiff filed his Amended Complaint, joining the Safe Harbor Defendants and simultaneously filed a voluntary dismissal of Safe Harbor Marinas, LLC d/b/a Safe Harbor Charleston City and Safe Harbor City Boatyard and Sun Communities Operating Limited Partnership. Therefore, this case now only involves the Safe Harbor Defendants.

FINDINGS OF FACT

A. The Parties

1. Plaintiff alleges Safe Harbor Charleston City is a limited liability company organized and existing under the laws of the State of Delaware.

2. Likewise, Plaintiff alleges Safe Harbor City Boatyard is a limited liability company organized and existing under the laws of the State of Delaware.

3. The Safe Harbor Defendants operate on the Ashley and Wando Rivers in and around Charleston, South Carolina, both rivers being navigable waterways.² *See, e.g., Brownlee v. S.C. Dep't of Health & Env't Control*, 382 S.C. 129, 138, 676 S.E.2d 116, 120–21 (2009) (“Navigable water is a public highway which the public is entitled to use for the purposes of travel either for business or pleasure.”) (quoting *State ex rel. Lyon v. Columbia Water Power Co.*, 82 S.C. 181, 189, 63 S.E. 884, 888 (1909)); *Lockwood v. Charleston Bridge Co.*, 60 S.C. 492, 38 S.E. 112, 114 (1901) (“[T]he court will take judicial notice that Ashley river, near Charleston, is a navigable stream[.]”); *Gehlken v. McAllister Towing & Transp. Co.*, No. 2:03-3935-DCN, 2007 WL 2332487, at *7 (D.S.C. Jan. 29, 2007) (holding admiralty jurisdiction in a case recognizing the Wando River as “a navigable river”); *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 124, 747 S.E.2d 461, 465 (2013) (holding the Wando River is “a channel of interstate commerce”); *see also* S. Scott Bluestein, *Pleasure Boats and Jet Skis: Does Admiralty Law Apply?*, S.C. Law., Oct. 1999, at 33, 34 (“Navigable waters in South Carolina include the Atlantic Ocean;

² Specifically, Plaintiff alleges Safe Harbor Charleston City’s address is 7 Lockwood Drive in Charleston, South Carolina and the Service Agreement has Safe Harbor City Boatyard’s address as 130 Wando Creek Lane in Charleston, South Carolina. It is undisputed these addresses are on and have access to the Ashley and Wando Rivers, respectively; regardless, the Court takes judicial notice of the same.

the Intracoastal Waterway; the Savannah, New, Beaufort, Edisto, Stono, Ashley, Cooper, Wando Rivers; [and] Charleston Harbor . . .”).

4. Plaintiff is an attorney, residing and practicing in Greenville, South Carolina, and the owner of a forty-eight-foot (48’) 2013 SwissCat 45 catamaran (“Vessel”).

B. The Service Agreement and Plaintiff’s Allegations

5. On March 18, 2024, Plaintiff and Safe Harbor City Boatyard executed a service agreement for Safe Harbor City Boatyard to perform certain repair and maintenance work regarding the Vessel’s shore power and engines, amongst other services, as depicted below (“Service Agreement”).

Boat Information					
Boat Name CATALYST	Make SWISSCAT	Model SC 45	Year 2013		
Hull ID#	Key/Combo	Length (LOA) 48	Beam 24	Draft	
Attention: all food/bait must be removed from vessel prior to arriving at the boatyard, we are not responsible for loss of power for any reason and are not responsible for any damages caused by spoilage, etc.					
Work Desired					
☒ Shore Power:	☐ 30A	☒ 50A			
	☐ Nightly	☐ Monthly			
☐ Haul/Block/Launch	☐ Survey / Short Haul				
☐ Pressure Wash	☐ Load/Offload				
☐ Bottom Paint:	☐ (1) Coat ☐ (2) Coats				
Paint Type: _____					
☐ Prep, Prime and Paint Running Gear*					
*Running gear: trim tabs, engines, shafts, struts, props, thrusters.					
☐ Full Detail of Exterior of Boat					
☐ Buff and Wax Hull Sides					
☐ Clean and Wax Smooth Areas on Deck					
☐ Check, Lube and Adjust Seacocks					
☐ Check/Repack Shaft Stuffing Boxes					
☐ Renew Underwater Zinc(s)					
			☐ Check/Replace Hoses, Belts, Clamps, Impellers		
			☐ Take Coolant Samples and Send Out		
			☐ Recondition Prop		
			☐ Check/Load Test Batteries		
			☐ Rig/DeRig Mast		
			☐ Step/Unstep Mast		
			☐ Dehumidifier		
			☒ Engine Service, fluids/filters, etc.	# of Engines:	2
			Engine Make/Model:	YANMAR	
			Current Engine Hours:	?	Engine Year: 2013
Additional work needed			GENSET LOW OUTPUT (182V)		
			• WATERMAKER NO HIGH PRESSURE		

6. Plaintiff alleges between March 18, 2024 and May 6, 2024, that the Safe Harbor Defendants performed certain services on the Vessel that caused damage to the Vessel.

7. Additionally, Plaintiff alleges the Safe Harbor Defendants invoiced and charged Plaintiff for work that was not performed, double charged for work, and otherwise overcharged Plaintiff in various particulars as will be shown more fully via discovery and at trial.

8. In the Amended Complaint, Plaintiff alleges seven causes of action: (1) negligence; (2) negligent misrepresentation; (3) breach of contract; (4) fraud; (5) breach of contract accompanied by a fraudulent act; (6) unjust enrichment; and (7) unfair trade practices.

9. Plaintiff's Amended Complaint expressly references, and his causes of action rely upon, the Service Agreement.

C. Arbitration Provision

10. Plaintiff expressly agreed to arbitration via execution of the Service Agreement on March 18, 2024.

11. As depicted below, Plaintiff agreed that “[a]ny and all disputes of any type whatsoever relating to or arising out of this Contract shall be resolved through binding arbitration.”

ARBITRATION: Any and all disputes of any type whatsoever relating to or arising out of this Contract shall be resolved through binding arbitration, with such arbitration being conducted in Charleston, South Carolina at a convenient location agreeable to the arbitrator(s), Owner and Boatyard. The parties shall select a mutually agreeable attorney from the Charleston metropolitan area to serve as the arbitrator. If the parties cannot select a mutually agreeable arbitrator, then each party must name an attorney from the Charleston metropolitan area to serve as the arbitrator and the two arbitrators will select the third arbitrator. The parties shall be entitled to conduct discovery in preparation for the arbitration in accordance with the South Carolina Rules of Civil Procedure. Except as stated herein, the arbitration shall be conducted in accordance with rules of the Society of Maritime Arbitrators, Inc. All arbitration proceedings against Boatyard must be commenced within one year after work has ceased for whatever reason, or has been completed, or the Boat has been redelivered, whichever first occurs.

12. The arbitration provision also sets forth that “the arbitration shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.”

13. Plaintiff signed the Service Agreement in multiple locations, including on the same page as the arbitration provision is located.

CONCLUSIONS OF LAW

A. Authority to Consider the Service Agreement

14. This Court has the authority to consider the Service Agreement without converting this Motion into one for summary judgment.

15. Case law holds when a plaintiff's causes of action explicitly rely upon one or more documents, a court should consider those documents and not allow a plaintiff to survive a motion

to dismiss by intentionally omitting the attachment of those documents to the complaint. *See Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (“[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.”); *see also Phillips v. LCI Int’l, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999) (holding, on a motion to dismiss, a court may consider a document outside of the pleading if it is “integral to and explicitly relied on in the complaint”).

16. Further, “[t]o ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 594, 553 S.E.2d 110, 117 (2001).

17. Plaintiff’s Service Agreement executed with Safe Harbor City Boatyard is integral to Plaintiff’s Amended Complaint; indeed, all of his causes of action expressly relate to and arise out of the Service Agreement.

18. Therefore, this Court must consider the Service Agreement generally and the arbitration provision contained therein specifically.

B. Public Policy Regarding Arbitration Agreements

19. Both federal law and South Carolina law favor the resolution of disputes through arbitration and any doubt as to whether a claim is subject to arbitration must be resolved in favor of arbitration. *See, e.g., Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739, S.E.2d 209, 213 (2013) (“It is the policy of this state and federal law to favor arbitration and ‘any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.’” (citation omitted)); *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 275, 776 S.E.2d 91, 96 (2015) (“[A]ny doubt as to whether [a] claim is subject to arbitration must be resolved in favor of arbitration.”); *Zabinski v. Bright Acres*

Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”).

20. “The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration.” *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (quoting *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 92 (4th Cir. 1996)).

21. “Such a presumption is strengthened when an arbitration clause is broadly written.” *Id.* (citing *AT & T Tech., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650 (1986)).

22. Further, both contract-based and tort-based causes of action can be held subject to an arbitration agreement. *See, e.g., id.* at 103, 739 S.E.2d at 210 (holding both a breach of contract claim and “four causes of action comprised of several tort and corporate claims” were all within the scope of the broad arbitration provision that required arbitration for “any controversy or claim arising out of or relating to this contract”).

23. The arbitration provision in this case is broad: it covers “[a]ny and all disputes of any type whatsoever relating to or arising out of” the Service Agreement.

24. All of Plaintiff’s causes of action arise out of his engagement of services from the Safe Harbor Defendants, i.e. the services to be performed on the Vessel.

C. The FAA’s Applicability to a Maritime Transaction Generally and the Service Agreement Specifically

25. “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, or the refusal to perform the whole or any part thereof, or an agreement in writing to

submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable” 9 U.S.C. § 2 (emphasis added).

26. “Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001).

27. Here, the parties have not contracted to the contrary, such that the FAA’s applicability is not prohibited by the arbitration provision specifically or the Service Agreement generally.

28. “‘Maritime transactions’, as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or *repairs to vessels*, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction” 9 U.S.C. § 1 (emphasis added).

29. “[T]he courts have held consistently that contracts *to repair vessels are directly maritime in nature* and invoke admiralty jurisdiction.” *AXA Re Prop. & Cas. Ins. Co. v. Tailwalker Marine, Inc.*, No. C.A. 2:04-1684-23, 2004 WL 3680276, at *2 (D.S.C. Dec. 17, 2004) (emphasis added) (citing *New Bedford Dry Dock Co. v. Purdy*, 258 U.S. 96, 99 (1922) (stating that a contract for repairs of a vessel is maritime); *Diesel Repower, Inc. v. Islander Invs., Ltd.*, 271 F.3d 1318, 1322–23 (11th Cir. 2001) (“A contract to repair a vessel invokes admiralty jurisdiction.”); *see also S.C. State Ports Auth. v. Silver Anchor, S.A., (Panama)*, 23 F.3d 842, 846 n.3 (4th Cir. 1994) (“[A] contract *to repair* or to insure a ship *is maritime*”) (emphasis added); *One Beacon Insurance Co. v. Crowley Marine Services Inc.*, 648 F.3d 258, 262 (5th Cir. 2011) (“[A] contract for the repair of a vessel is a maritime contract, governed by general maritime law.”).

30. Indeed, “[i]t is axiomatic that the routine repair of vessels is a crucial maritime activity.” *Com. Union Ins. Co. v. Detyens Shipyard, Inc.*, 147 F. Supp. 2d 413, 419 (D.S.C. 2001) (quoting *Sea Vessel, Inc. v. Reyes*, 23 F.3d 345, 351 (11th Cir. 1994)).

31. “Moreover, courts have gone on to hold that maritime contracts to be performed on land can be within the admiralty jurisdiction of the court.” *AXA Re Prop. & Cas. Ins. Co. v. Tailwalker Marine, Inc.*, No. C.A. 2:04-1684-23, 2004 WL 3680276, at *2 (citing *American Eastern Development Corp. v. Everglades Marine, Inc.*, 608 F.2d 123 (5th Cir. 1979) (finding admiralty jurisdiction over a vessel destroyed while on land pursuant to a maritime-related contract); *id.* at *3 (“The key to jurisdiction is not the location of the vessel, but whether the contract sought to be enforced impacts maritime commerce.”)).

32. Even “the storage and maintenance of a vessel at a marina on navigable waters” are considered to constitute “traditional maritime activities,” the contracts for which would be subject to admiralty jurisdiction. *See, e.g., Sisson v. Ruby*, 497 U.S. 358, 367 (1990).

33. The Court finds the case of *Koechli v. BIP International, Inc.*, 870 So. 2d 940 (Fla. Dist. Ct. App. 2004), instructive. In *Koechli*, a repair company was retained to repair a vessel and brought an action against the agents of vessel’s owner and others alleging several claims; the *Koechli* court determined that the contract containing an agreement to arbitrate was covered by the FAA.

34. Here, it is undisputed the Service Agreement in this case was for the repair and/or maintenance of Plaintiff’s Vessel; therefore, the Service Agreement constitutes a maritime transaction covered by the FAA.

35. Based on the foregoing, Plaintiff is bound to mandatory, binding arbitration.

D. The Service Agreement’s Implication and Involvement of Interstate Commerce

36. The Court not only finds a basis for the enforceability of the arbitration provision here due to the Service Agreement constituting a maritime transaction covered by the FAA, but it is also one that involves interstate commerce.

37. “The United States Supreme Court has held that the phrase ‘involving commerce’ is the same as ‘affecting commerce,’ which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent.” *Blanton v. Stathos*, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002).

38. In other words, the FAA’s reaches expansively “as coinciding with that of the Commerce Clause.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 122, 747 S.E.2d 461, 464 (2013) (“The United States Supreme Court ‘has previously described the [FAA]’s reach expansively as coinciding with that of the Commerce Clause.”).

39. Under the reach of the Commerce Clause, “Congress has authority to regulate (1) ‘the use of the channels of interstate commerce,’ (2) ‘the instrumentalities of interstate commerce, or persons or things in interstate commerce’ and (3) ‘those activities having a substantial relation to interstate commerce.’” *Id.* (*United States v. Gould*, 568 F.3d 459, 470 (4th Cir. 2009)).

40. “Channels of commerce are ‘the interstate transportation routes through which persons and goods move,’” which includes “navigable waterways.” *See id.* (quoting *United States v. Ballinger*, 395 F.3d 1218, 1225 (11th Cir. 2005)).

41. “Instrumentalities of interstate commerce, by contrast, are the people and things themselves moving in commerce,” which includes “boats.” *Id.*

42. “Although diversity of citizenship—or lack thereof—is not by itself enough to determine the nature of a transaction,” *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697 (4th Cir. 2012), the Court need not exclusively rely upon diversity here.

43. First, the Vessel is an instrumentality of interstate commerce. *See Cape Romain*, 405 S.C. at 122, 747 S.E.2d at 464.

44. Second, realistically, the Service Agreement could not be completed without the use of materials in interstate commerce, which is sufficient to trigger FAA coverage. *See Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 123–24, 747 S.E.2d 461, 465 (2013); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 594–95, 553 S.E.2d 110, 117–18 (2001); *Blanton v. Stathos*, 351 S.C. 534, 540–41, 570 S.E.2d 565, 568–69 (Ct. App. 2002); *Episcopal Hous. Corp. v. Federal Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977); *Thornton v. Trident Med. Ctr., L.L.C.*, 357 S.C. 91, 97, 592 S.E.2d 50, 53 (Ct. App. 2003).

45. Likewise, realistically, the transport of the Vessel to be repaired, maintained, and stored by the Safe Harbor Defendants could not be completed without the use of navigable waters subject to federal law and, importantly, a channel of interstate commerce. *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 124, 747 S.E.2d 461, 465 (2013) (“[T]he location of the construction site, the transportation of out-of-state materials through the channels of interstate commerce, and the use of barges and other instrumentalities of interstate commerce all support application of the FAA in this instance.”); *United States v. Rands*, 389 U.S. 121, 122–23 (1967) (“The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States.”); *United States v. Ballinger*, 395 F.3d 1218, 1226 (11th Cir. 2005) (noting that shipments of goods and boats themselves are instrumentalities of interstate commerce); *United States v. Deaton*, 332 F.3d 698, 706 (4th Cir. 2003) (“The power over navigable waters is an aspect of the authority to regulate the channels of interstate commerce.”).

46. Third, “in deciding to apply the FAA, [this Court] need not identify any specific effect upon interstate commerce, so long as ‘in the aggregate the economic activity in question would

represent “a general practice . . . subject to federal control.”” *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697–98 (4th Cir. 2012) (quoting *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56–57 (2003) (citation omitted)).

47. Here, the broad impact of maritime repair, maintenance, and storage on the national economy is self-evident. *See id.* (finding the broad impact of consumer automobile lending on the national economy was evident).

48. Based on the foregoing, the Service Agreement involves interstate commerce, such that Plaintiff is bound to mandatory, binding arbitration on this ground as well.

E. Dismissal versus Staying and Compelling Arbitration

49. Whether to dismiss the lawsuit outright or stay the action and compel arbitration is left to this Court’s discretion. As a general rule, the FAA requires a court to stay an action pending arbitration rather than dismissing the case. 9 U.S.C. § 3 (stating courts “shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement”).

50. However, there is an exception to this general rule that affords the Court discretion to dismiss a plaintiff’s causes of action rather than stay them if it is clear the entire controversy between the parties will be resolved in the arbitration. *See 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.”); *Cox v. Assisted Living Concepts, Inc.*, No. 6:13-00747, 2014 WL 1094394, at *7 (D.S.C. Mar. 18, 2014) (finding all of plaintiff’s claims in the complaint were subject to arbitration and, therefore, dismissing plaintiff’s claims and compelling arbitration); *Ingram-Allen v. Iveys*, No. 1:03CV00196, 2004 WL 1462024, at *2 (M.D.N.C. Feb. 26, 2004), *aff’d*, 98 F. App’x 944 (4th Cir. 2004) (holding that because all of plaintiff’s claims are covered by the arbitration agreement, “and because courts read the FAA as permitting dismissal in these circumstances, this court will grant Defendant’s motion to dismiss”).

51. Here, there is no question that Plaintiff's seven causes of action will be fully resolved through arbitration.³

For the reasons set forth herein, the Court **GRANTS** the Safe Harbor Defendants' Motion and **ORDERS** the case dismissed.⁴

IT IS SO ORDERED.

[Electronic Signature Page Follows.]

³ Dismissal of this action for both Safe Harbor Defendants is warranted and it is insignificant that Safe Harbor Charleston City is not a signatory to the service agreement. South Carolina law recognizes five theories providing a basis for binding a non-signatory to an arbitration agreement: "1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 289, 733 S.E.2d 597, 601 (Ct. App. 2012); *see also Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). Because (1) Plaintiff's claims against the nonsignatory Safe Harbor Charleston City make reference to and presumes the existence of the arbitration provision, (2) Plaintiff's claims can be reasonably interpreted to assert an agency relationship between the Safe Harbor Defendants, and (3) Plaintiff must rely upon the terms of the service agreement and the arbitration provision therein to assert his claims against Safe Harbor Charleston City, Plaintiff is just as bound to arbitration with the nonsignatory Safe Harbor Charleston City as he is with the signatory Safe Harbor City Boatyard.

⁴ Should Plaintiff wish to pursue his claims, he must pursue them in arbitration and should consult with counsel for the Safe Harbor Defendants and otherwise comply with the terms and conditions of the arbitration provision set forth in the Service Agreement.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JOSEPH W. ROHE,

Plaintiff,

vs.

SHM CHARLESTON CITY MARINA, LLC,
d/b/a Safe Harbor Charleston City; and SHM
CHARLESTON BOATYARD, LLC, d/b/a
Safe Harbor City Boatyard,

Defendants.

IN THE CIRCUIT COURT
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-10-03700

**DEFENDANTS' MOTION TO ALTER
OR AMEND**

(Hearing Requested)

Defendants SHM Charleston City Marina, LLC, d/b/a Safe Harbor Charleston City (“**Safe Harbor Charleston City**”) and SHM Charleston Boatyard, LLC, d/b/a Safe Harbor City Boatyard (“**Safe Harbor City Boatyard**”) (collectively, “**Safe Harbor Defendants**”), by and through their undersigned attorney, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, moves this Court to alter or amend its Order of July 16, 2025, because the Safe Harbor Defendants (1) “believe[] the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue,” and (2) must “preserve [their arguments] for appellate review.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). For example, the Court’s Order of July 16, 2025, fails to consider, much less even reference, the Safe Harbor Defendants’ Memorandum in Support of Defendants’ Motion to Dismiss or, *In the Alternative*, to Stay and Compel Arbitration, filed on January 15, 2025, which is attached hereto as **Exhibit A**. In that memorandum, the Safe Harbor Defendants made clear that the Court need not reach the interstate commerce issue, because the FAA governs maritime transactions and it is indisputable this is a maritime transaction. *See* 9 U.S.C. § 2 (emphasis added). (“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”) Because it appears the Court did not consider this argument as to the FAA’s applicability of this indisputable maritime transaction, and failed to fully consider the other arguments set forth more fully herein, the Safe Harbor Defendants respectfully submit this Court should reconsider its Order and grant this Motion.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

1. Plaintiff alleges Safe Harbor Charleston City is a limited liability company organized and existing under the laws of the State of Delaware.

2. Likewise, Plaintiff alleges Safe Harbor City Boatyard is a limited liability company organized and existing under the laws of the State of Delaware.

3. The Safe Harbor Defendants operate on the Ashley and Wando Rivers in and around Charleston, South Carolina, both rivers being navigable waterways.¹ *See, e.g., Brownlee v. S.C. Dep’t of Health & Env’t Control*, 382 S.C. 129, 138, 676 S.E.2d 116, 120–21 (2009) (“Navigable water is a public highway which the public is entitled to use for the purposes of travel either for business or pleasure.”) (quoting *State ex rel. Lyon v. Columbia Water Power Co.*, 82 S.C. 181, 189, 63 S.E. 884, 888 (1909)); *Lockwood v. Charleston Bridge Co.*, 60 S.C. 492, 38 S.E. 112, 114 (1901) (“[T]he court will take judicial notice that Ashley river, near Charleston, is a navigable stream[.]”); *Gehlken v. McAllister Towing & Transp. Co.*, No. 2:03-3935-DCN, 2007 WL 2332487, at *7 (D.S.C. Jan. 29, 2007) (holding admiralty jurisdiction in a case recognizing the Wando River as “a navigable river”); *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C.

¹ Specifically, Plaintiff alleges Safe Harbor Charleston City’s address is 7 Lockwood Drive in Charleston, South Carolina and the Service Agreement has Safe Harbor City Boatyard’s address as 130 Wando Creek Lane in Charleston, South Carolina. It is undisputed these addresses are on and have access to the Ashley and Wando Rivers, respectively; regardless, the Court can take judicial notice of the same.

115, 124, 747 S.E.2d 461, 465 (2013) (holding the Wando River is “a channel of interstate commerce”); *see also* S. Scott Bluestein, *Pleasure Boats and Jet Skis: Does Admiralty Law Apply?*, S.C. Law., Oct. 1999, at 33, 34 (“Navigable waters in South Carolina include the Atlantic Ocean; the Intracoastal Waterway; the Savannah, New, Beaufort, Edisto, Stono, Ashley, Cooper, Wando . . . Rivers; [and] Charleston Harbor . . .”).

4. Plaintiff is an attorney, residing and practicing in Greenville, South Carolina, and the owner of a forty-eight-foot (48’) 2013 SwissCat 45 catamaran (“Vessel”).

B. The Service Agreement and Plaintiff’s Allegations

5. On March 18, 2024, Plaintiff and Safe Harbor City Boatyard executed a maritime service agreement for Safe Harbor City Boatyard to perform certain repair and maintenance work regarding the Vessel’s shore power and engines, amongst other services, as depicted below and as seen in Exhibit A of the Safe Harbor Defendants’ Motion (“Service Agreement”).

Boat Information					
Boat Name CATALYST	Make SWISSCAT	Model 52C 45	Year 2013		
Hull ID#	Key/Combo	Length [LOA] 48	Beam 24	Draft	
Attention: all food/bait must be removed from vessel prior to arriving at the boatyard, we are not responsible for loss of power for any reason and are not responsible for any damages caused by spoilage, etc.					
Work Desired					
☒ Shore Power:	☐ 30A	☒ 50A	☐ Check/Replace Hoses, Belts, Clamps, Impellers		
	☐ Nightly	☐ Monthly	☐ Take Coolant Samples and Send Out		
☐ Haul/Block/Launch	☐ Survey / Short Haul		☐ Recondition Prop		
☐ Pressure Wash	☐ Load/Offload		☐ Check/Load Test Batteries		
☐ Bottom Paint:	☐ (1) Coat	☐ (2) Coats	☐ Rig/Derig Mast		
Paint Type:			☐ Step/Unstep Mast		
☐ Prep, Prime and Paint Running Gear*			☐ Dehumidifier		
*Running gear: trim tabs, engines, shafts, struts, props, thrusters.			☒ Engine Service, fluids/filters, etc. # of Engines: 2		
☐ Full Detail of Exterior of Boat			Engine Make/Model: YANMAR		
☐ Buff and Wax Hull Sides			Current Engine Hours: ? Engine Year: 2013		
☐ Clean and Wax Smooth Areas on Deck	Additional work needed: GENSET LOW OUTPUT (182V)				
☐ Check, Lube and Adjust Seacocks	• WATERMAKER NO HIGH PRESSURE				
☐ Check/Repack Shaft Stuffing Boxes					
☐ Renew Underwater Zinc(s)					

6. Plaintiff alleges between March 18, 2024 and May 6, 2024, that the Safe Harbor Defendants performed certain services on the Vessel that caused damage to the Vessel.

7. Additionally, Plaintiff alleges the Safe Harbor Defendants invoiced and charged Plaintiff for work that was not performed, double charged for work, and otherwise overcharged Plaintiff in various particulars as will be shown more fully via discovery and at trial.

8. In the Amended Complaint, Plaintiff alleges seven causes of action: (1) negligence; (2) negligent misrepresentation; (3) breach of contract; (4) fraud; (5) breach of contract accompanied by a fraudulent act; (6) unjust enrichment; and (7) unfair trade practices.

9. Plaintiff's Amended Complaint expressly references, and his causes of action rely upon, the Service Agreement.

C. Arbitration Provision

10. Plaintiff expressly agreed to arbitration via execution of the Service Agreement on March 18, 2024.

11. As depicted below and as seen in Exhibit A of the Safe Harbor Defendants' Motion, Plaintiff agreed that "[a]ny and all disputes of any type whatsoever relating to or arising out of this Contract shall be resolved through binding arbitration."

ARBITRATION: Any and all disputes of any type whatsoever relating to or arising out of this Contract shall be resolved through binding arbitration, with such arbitration being conducted in Charleston, South Carolina at a convenient location agreeable to the arbitrator(s), Owner and Boatyard. The parties shall select a mutually agreeable attorney from the Charleston metropolitan area to serve as the arbitrator. If the parties cannot select a mutually agreeable arbitrator, then each party must name an attorney from the Charleston metropolitan area to serve as the arbitrator and the two arbitrators will select the third arbitrator. The parties shall be entitled to conduct discovery in preparation for the arbitration in accordance with the South Carolina Rules of Civil Procedure. Except as stated herein, the arbitration shall be conducted in accordance with rules of the Society of Maritime Arbitrators, Inc. All arbitration proceedings against Boatyard must be commenced within one year after work has ceased for whatever reason, or has been completed, or the Boat has been redelivered, whichever first occurs.

12. The arbitration provision also sets forth that "the arbitration shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc."

13. Plaintiff signed the Service Agreement in multiple locations, including on the same page as the arbitration provision is located.

LEGAL STANDARD

14. The South Carolina Supreme Court has recognized "two basic situations in which a party

should consider filing a Rule 59(e)[, SCRCPP,] motion.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Under the rule, “[a] party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* But, “[a] party **must** file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* (emphasis added). The Supreme Court of South Carolina has also recognized that “[t]here is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.” *Id.* at 22, 602 S.E.2d at 779. Rather, “[i]t is *inherently unfair* to disallow such an opportunity.” *Id.* (emphasis added).

ARGUMENT

A. Authority to Consider the Service Agreement

15. This Court has the authority to consider the Service Agreement without converting this Motion into one for summary judgment.

16. Case law holds when a plaintiff’s causes of action explicitly rely upon one or more documents, a court should consider those documents and not allow a plaintiff to survive a motion to dismiss by intentionally omitting the attachment of those documents to the complaint. *See Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (“[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.”); *see also Phillips v. LCI Int’l, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999) (holding, on a motion to dismiss, a court may consider a document outside of the pleading if it is “integral to and explicitly relied on in the

complaint”).

17. Further, “[t]o ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 594, 553 S.E.2d 110, 117 (2001).

18. Plaintiff’s Service Agreement executed with Safe Harbor City Boatyard is integral to Plaintiff’s Amended Complaint; indeed, all of his causes of action expressly relate to and arise out of the Service Agreement.

19. Therefore, this Court must consider the Service Agreement generally and the arbitration provision contained therein specifically.

B. Public Policy Regarding Arbitration Agreements

20. Both federal law and South Carolina law favor the resolution of disputes through arbitration and any doubt as to whether a claim is subject to arbitration must be resolved in favor of arbitration. *See, e.g., Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739, S.E.2d 209, 213 (2013) (“It is the policy of this state and federal law to favor arbitration and ‘any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.’” (citation omitted)); *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 275, 776 S.E.2d 91, 96 (2015) (“[A]ny doubt as to whether [a] claim is subject to arbitration must be resolved in favor of arbitration.”); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”).

21. “‘The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration.’” *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (quoting *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 92 (4th Cir. 1996)).

22. “Such a presumption is strengthened when an arbitration clause is broadly written.” *Id.* (citing *AT & T Tech., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650 (1986)).

23. Further, both contract-based and tort-based causes of action can be held subject to an arbitration agreement. *See, e.g., id.* at 103, 739 S.E.2d at 210 (holding both a breach of contract claim and “four causes of action comprised of several tort and corporate claims” were all within the scope of the broad arbitration provision that required arbitration for “any controversy or claim arising out of or relating to this contract”).

24. The arbitration provision in this case is broad: it covers “[a]ny and all disputes of any type whatsoever relating to or arising out of” the Service Agreement.

25. All of Plaintiff’s causes of action arise out of his engagement of services from the Safe Harbor Defendants, i.e. the services to be performed on the Vessel.

C. The FAA’s Applicability to a Maritime Transaction Generally and the Service Agreement Specifically

26. “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, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable” 9 U.S.C. § 2 (emphasis added).

27. “Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001).

28. Here, the parties have not contracted to the contrary, such that the FAA’s applicability is not prohibited by the arbitration provision specifically or the Service Agreement generally.

29. “‘Maritime transactions’, as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or *repairs to vessels*, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction” 9 U.S.C. § 1 (emphasis added).

30. “[T]he courts have held consistently that contracts *to repair vessels are directly maritime in nature* and invoke admiralty jurisdiction.” *AXA Re Prop. & Cas. Ins. Co. v. Tailwalker Marine, Inc.*, No. C.A. 2:04-1684-23, 2004 WL 3680276, at *2 (D.S.C. Dec. 17, 2004) (emphasis added) (citing *New Bedford Dry Dock Co. v. Purdy*, 258 U.S. 96, 99 (1922) (stating that a contract for repairs of a vessel is maritime); *Diesel Repower, Inc. v. Islander Invs., Ltd.*, 271 F.3d 1318, 1322–23 (11th Cir. 2001) (“A contract to repair a vessel invokes admiralty jurisdiction.”); *see also S.C. State Ports Auth. v. Silver Anchor, S.A., (Panama)*, 23 F.3d 842, 846 n.3 (4th Cir. 1994) (“[A] contract *to repair* or to insure a ship *is maritime*”) (emphasis added); *One Beacon Insurance Co. v. Crowley Marine Services Inc.*, 648 F.3d 258, 262 (5th Cir. 2011) (“[A] contract for the repair of a vessel is a maritime contract, governed by general maritime law.”).

31. Indeed, “[i]t is axiomatic that the routine repair of vessels is a crucial maritime activity.” *Com. Union Ins. Co. v. Detyens Shipyard, Inc.*, 147 F. Supp. 2d 413, 419 (D.S.C. 2001) (quoting *Sea Vessel, Inc. v. Reyes*, 23 F.3d 345, 351 (11th Cir. 1994)).

32. “Moreover, courts have gone on to hold that maritime contracts to be performed on land can be within the admiralty jurisdiction of the court.” *AXA Re Prop. & Cas. Ins. Co. v. Tailwalker Marine, Inc.*, No. C.A. 2:04-1684-23, 2004 WL 3680276, at *2 (citing *American Eastern Development Corp. v. Everglades Marine, Inc.*, 608 F.2d 123 (5th Cir. 1979) (finding admiralty jurisdiction over a vessel destroyed while on land pursuant to a maritime-related contract); *id.* at *3 (“The key to jurisdiction is not the location of the vessel, but whether the contract sought to be

enforced impacts maritime commerce.”).

33. Even “the storage and maintenance of a vessel at a marina on navigable waters” are considered to constitute “traditional maritime activities,” the contracts for which would be subject to admiralty jurisdiction. *See, e.g., Sisson v. Ruby*, 497 U.S. 358, 367 (1990).

34. The case of *Koechli v. BIP International, Inc.*, 870 So. 2d 940 (Fla. Dist. Ct. App. 2004), is instructive. In *Koechli*, a repair company was retained to repair a vessel and brought an action against the agents of vessel’s owner and others alleging several claims; the *Koechli* court determined that the contract containing an agreement to arbitrate was covered by the FAA.

35. Here, it is undisputed the Service Agreement in this case was for the repair and/or maintenance of Plaintiff’s Vessel; therefore, the Service Agreement constitutes a maritime transaction covered by the FAA.

36. Further, the fact “the arbitration shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.” demonstrates it is a maritime transaction covered by the FAA.

37. Based on the foregoing, Plaintiff is bound to mandatory, binding arbitration.

D. The Service Agreement’s Implication and Involvement of Interstate Commerce

38. There is not only a basis for the enforceability of the arbitration provision here due to the Service Agreement constituting a maritime transaction covered by the FAA, but it is also one that involves interstate commerce.

39. “The United States Supreme Court has held that the phrase ‘involving commerce’ is the same as ‘affecting commerce,’ which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent.” *Blanton v. Stathos*, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002).

40. In other words, the FAA’s reaches expansively “as coinciding with that of the Commerce Clause.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 122, 747 S.E.2d 461, 464 (2013) (“The United States Supreme Court ‘has previously described the [FAA]’s reach expansively as coinciding with that of the Commerce Clause.”).

41. Under the reach of the Commerce Clause, “Congress has authority to regulate (1) ‘the use of the channels of interstate commerce,’ (2) ‘the instrumentalities of interstate commerce, or persons or things in interstate commerce . . .’ and (3) ‘those activities having a substantial relation to interstate commerce.’” *Id.* (*United States v. Gould*, 568 F.3d 459, 470 (4th Cir. 2009)).

42. “Channels of commerce are ‘the interstate transportation routes through which persons and goods move,’” which includes “navigable waterways.” *See id.* (quoting *United States v. Ballinger*, 395 F.3d 1218, 1225 (11th Cir. 2005)).

43. “Instrumentalities of interstate commerce, by contrast, are the people and things themselves moving in commerce . . . ,” which includes “boats.” *Id.*

44. “Although diversity of citizenship—or lack thereof—is not by itself enough to determine the nature of a transaction,” *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697 (4th Cir. 2012), the Court need not exclusively rely upon diversity here.

45. First, the Vessel is an instrumentality of interstate commerce. *See Cape Romain*, 405 S.C. at 122, 747 S.E.2d at 464.

46. Second, realistically, the Service Agreement could not be completed without the use of materials in interstate commerce, which is sufficient to trigger FAA coverage. *See Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 123–24, 747 S.E.2d 461, 465 (2013); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 594–95, 553 S.E.2d 110, 117–18 (2001); *Blanton v. Stathos*, 351 S.C. 534, 540–41, 570 S.E.2d 565, 568–69 (Ct. App. 2002); *Episcopal Hous. Corp. v. Federal*

Ins. Co., 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977); *Thornton v. Trident Med. Ctr., L.L.C.*, 357 S.C. 91, 97, 592 S.E.2d 50, 53 (Ct. App. 2003).

47. Likewise, realistically, the transport of the Vessel to be repaired, maintained, and stored by the Safe Harbor Defendants could not be completed without the use of navigable waters subject to federal law and, importantly, a channel of interstate commerce. *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 124, 747 S.E.2d 461, 465 (2013) (“[T]he location of the construction site, the transportation of out-of-state materials through the channels of interstate commerce, and the use of barges and other instrumentalities of interstate commerce all support application of the FAA in this instance.”); *United States v. Rands*, 389 U.S. 121, 122–23 (1967) (“The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States.”); *United States v. Ballinger*, 395 F.3d 1218, 1226 (11th Cir. 2005) (noting that shipments of goods and boats themselves are instrumentalities of interstate commerce); *United States v. Deaton*, 332 F.3d 698, 706 (4th Cir. 2003) (“The power over navigable waters is an aspect of the authority to regulate the channels of interstate commerce.”).

48. Third, “in deciding to apply the FAA, [this Court] need not identify any specific effect upon interstate commerce, so long as ‘in the aggregate the economic activity in question would represent “a general practice . . . subject to federal control.”’” *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697–98 (4th Cir. 2012) (quoting *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56–57 (2003) (citation omitted)).

49. Here, the broad impact of maritime repair, maintenance, and storage on the national economy is self-evident. *See id.* (finding the broad impact of consumer automobile lending on the national economy was evident).

50. Based on the foregoing, the Service Agreement involves interstate commerce, such that

Plaintiff is bound to mandatory, binding arbitration on this ground as well.

E. Dismissal versus Staying and Compelling Arbitration

51. Whether to dismiss the lawsuit outright or stay the action and compel arbitration is left to this Court's discretion. As a general rule, the FAA requires a court to stay an action pending arbitration rather than dismissing the case. 9 U.S.C. § 3 (stating courts "shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement").

52. However, there is an exception to this general rule that affords the Court discretion to dismiss a plaintiff's causes of action rather than stay them if it is clear the entire controversy between the parties will be resolved in the arbitration. *See 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."); *Cox v. Assisted Living Concepts, Inc.*, No. 6:13-00747, 2014 WL 1094394, at *7 (D.S.C. Mar. 18, 2014) (finding all of plaintiff's claims in the complaint were subject to arbitration and, therefore, dismissing plaintiff's claims and compelling arbitration); *Ingram-Allen v. Iveys*, No. 1:03CV00196, 2004 WL 1462024, at *2 (M.D.N.C. Feb. 26, 2004), *aff'd*, 98 F. App'x 944 (4th Cir. 2004) (holding that because all of plaintiff's claims are covered by the arbitration agreement, "and because courts read the FAA as permitting dismissal in these circumstances, this court will grant Defendant's motion to dismiss").²

² Recently, in *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024), the United States Supreme Court held that under the FAA, a district court must issue a stay when a party requests a stay rather than dismissing the case. However, the stay requirement only applies when a party requests a stay pending arbitration. *See Mod. Perfection, LLC v. Bank of Am., N.A.*, 126 F.4th 235, 244 (4th Cir. 2025) ("*Smith* says nothing about what happens when the appealing party never requests a stay. We agree with the Seventh Circuit that *Smith* 'does not require' an appellate court to vacate a 'district court's dismissal order' under such circumstances."). Because Plaintiff has not requested a stay to date, this Court can therefore dismiss this case without prejudice.

53. Here, there is no question that Plaintiff's seven causes of action will be fully resolved through arbitration.³

CONCLUSION

Based on the foregoing, Plaintiff cannot maintain this action in this Court. The arbitration provision provides the exclusive avenue for Plaintiff's causes of action and the relief he seeks. For the reasons set forth herein and set forth in their initial Memorandum in Support filed on January 8, 2025 and Supplemental Memorandum in Support filed on January 15, 2025, the Safe Harbor Defendants respectfully request this Court to grant this Motion and either dismiss this case or, in the alternative, to stay this case and compel arbitration.

Respectfully submitted,

/s/Rhett D. Ricard

Rhett D. Ricard, SC Bar No. 102353
MAYNARD NEXSEN PC
205 King Street, Suite 400
Charleston, SC 29401
Telephone: 843.577.9440
rricard@maynardnexsen.com

July 25, 2025
Charleston, South Carolina

Attorney for Defendants

³ Dismissal of this action for both Safe Harbor Defendants is warranted and it is insignificant that Safe Harbor Charleston City is not a signatory to the service agreement. South Carolina law recognizes five theories providing a basis for binding a non-signatory to an arbitration agreement: "1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 289, 733 S.E.2d 597, 601 (Ct. App. 2012); *see also Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019). Because (1) Plaintiff's claims against the nonsignatory Safe Harbor Charleston City make reference to and presumes the existence of the arbitration provision, (2) Plaintiff's claims can be reasonably interpreted to assert an agency relationship between the Safe Harbor Defendants, and (3) Plaintiff must rely upon the terms of the service agreement and the arbitration provision therein to assert his claims against Safe Harbor Charleston City, Plaintiff is just as bound to arbitration with the nonsignatory Safe Harbor Charleston City as he is with the signatory Safe Harbor City Boatyard.

EXHIBIT A

APPELLANTS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT
OF APPELLANTS' MOTION TO
DISMISS, *OR IN THE*
ALTERNATIVE, TO STAY AND
COMPEL ARBITRATION

*Refer back to Record
at pages 37-45*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
JOSEPH W. ROHE	)	CASE NO.: 2024-CP-10-03700
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	<u>PLAINTIFF'S MEMORANDUM IN</u>
SHM CHARLESTON CITY MARINA,	)	<u>OPPOSITION TO DEFENDANTS' MOTION</u>
LLC d/b/a Safe Harbor Charleston City;	)	<u>TO ALTER OR AMEND</u>
and SHM CHARLESTON BOATYARD,	)	
LLC d/b/a Safe Harbor City Boatyard,	)	
	)	
DEFENDANTS.	)	
	)	

COMES NOW the Plaintiff JOSEPH W. ROHE ("Plaintiff") and respectfully submits this Memorandum in Opposition to Defendants' Motion to Alter or Amend filed July 25, 2025 (the "Motion"). For the reasons set forth hereinbelow, Defendants' Motion should be DENIED.

FACTUAL BACKGROUND

Pursuant to S.C. R. Civ. P. 59(e), Defendants now seek an order altering or amending the July 16, 2025 judgment of the Court denying Defendants' Motion to Dismiss or, in the Alternative, to Stay and Compel Arbitration. The arbitration provision Defendants seek to enforce is found on the third page of a "Hull and Service Authorization" form issued by Defendant SHM Charleston Boatyard, LLC ("Safe Harbor City Boatyard"). Despite the fact that under the Terms and Conditions set forth therein "[t]he Boatyard agrees to perform work on the above named Boat...", no work was actually performed at or by Safe Harbor City Boatyard. All work performed on Plaintiff's vessel was performed by Defendant SHM Charleston City Marina, LLC ("Safe Harbor Charleston City") while the vessel was moored at a property adjacent to Safe Harbor Charleston City. Neither the parties' relationship nor the services performed implicate interstate commerce

and the contract fails to satisfy the arbitration notice requirements of S.C. CODE ANN. § 15-48-10(a).

The crux of Defendants' current argument – that the Court need not consider the issue of interstate commerce – was not raised prior to or during the hearing held January 10, 2025. Nevertheless, Defendants' argument still fails, and this Court was correct in its denial of Defendants' motion to compel arbitration as further set forth in the Court's Order of July 16, 2025.

I. THE FAA DOES NOT AUTOMATICALLY GOVERN THIS DISPUTE AND THIS IS NOT A MARITIME TRANSACTION AS THEREIN DEFINED.

Defendants argue that “the Court need not reach the interstate commerce issue, because the FAA governs maritime transactions and it is indisputable this is a maritime transaction.” *See* Defs.' Mot. to Alter or Amend, p. 1. Despite Defendants' claim, Plaintiff does in fact dispute that the services rendered or to have been rendered constitute a “maritime transaction” as that term is defined in the FAA.

Under the FAA, “‘Maritime transactions’...means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction.” 9 U.S.C. § 1. Defendants were hired to provide routine maintenance to Plaintiff's vessel. Defendants did not provide any wharfage or supplies such as power, provisions or water to the vessel. In fact, Plaintiff even supplied the filters, oil and coolant for the engines. While “maritime transactions” is statutorily defined to include “supplies furnished vessels or repairs¹ to vessels,” nowhere does it specifically state that it includes general, routine

¹ “Repair” is defined as “to restore by replacing a part or putting together what is torn or broken.” *Merriam-Webster Dictionary* (www.merriam-webster.com/dictionary/repair).

maintenance or service. Moreover, it was the manner in which Defendants performed or failed to perform this maintenance or service and damages caused thereby that is the subject of this dispute.

Though Defendants cite a number of cases in support of their position, none of them stand for the propositions Defendants suggest. Firstly, none of the cited cases addressed the issue of application of the FAA but rather considered questions of federal admiralty jurisdiction under 28 U.S.C. § 1333. Though Defendants urge otherwise, *Koechli v. BIP Int'l, Inc.*, 870 So.2d 940 (Fla. Dist. Ct. App. 2004) is not “instructive.” *Koechli* involved an agreement to refurbish and substantially modify a vessel to operate as a luxury charter yacht. *See id.*, 870 So.2d at 942. Therein, the parties did not challenge application of the FAA but rather challenged whether an arbitration clause could be invoked by a non-signatory to the agreement. *See id.* at 943 (Issues on Appeal). *Koechli* did however note that “[b]ecause this case involves interstate commerce...the Federal Arbitration Act applies.”) *See id.* [emphasis added]. Accordingly, *Koechli* does not stand for the proposition Defendants claim.

Secondly, all but one of cases cited by Defendants concerned commercial vessels, rather than private pleasure vessels. The exception is *Sisson v. Ruby*, 497 U.S. 358 (1990). Therein, a private pleasure yacht caught fire while docked on Lake Michigan, causing extensive damage to the vessel, the marina and several adjacent vessels. *See id.* at 360. Again, *Sisson* did not deal with the question of application of the FAA; however, *Sisson* did note that “protecting *commercial* shipping is at the heart of admiralty jurisdiction.” *See id.* at 362 [emphasis added]. As such, and while recognizing that admiralty jurisdiction is not “restricted to those individuals actually *engaged* in commercial maritime activity,” non-commercial maritime activity must have an effect on maritime commerce. *See id.* “[A] court must assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt commercial activity. Here, the

general features—a fire on a vessel docked at a marina on navigable waters—plainly satisfy the requirement of potential disruption to commercial maritime activity.” *Id.* at 363. Unlike *Sisson*, the wrongs alleged of Defendants in the present matter have no likelihood of disrupting commercial maritime activity. See *Sisson*, 497 U.S. at 362 (“a fire that began on a noncommercial vessel...has a potentially disruptive impact on maritime commerce, as it can spread to nearby commercial vessels or make the marina inaccessible to such vessels.”).

II. DEFENDANTS FAIL TO SHOW THE REQUISITE EFFECT ON MARITIME COMMERCE.

Even if Defendants were correct that the dispute involves a “maritime transaction,” Defendants still must satisfy the nexus test. “The nexus test involves two queries: (1) Did the incident have a ‘potentially disruptive impact on maritime commerce’ and (2) Does a ‘substantial relationship’ exist ‘between the activity giving rise to the incident and traditional maritime activity’?” *Sea Vessel, Inc. v. Reyes*, 23 F.3d 345, 349-350 (11th Cir. 1994)(citing *Sisson*, 497 U.S. at 363-64). For the reasons already stated above, Plaintiff asserts that Defendants satisfy neither of the two queries.

As to the first query of the nexus test, “a court must assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt *commercial* activity.” *Reyes*, 23 F.3d at 350 [emphasis added]. *Reyes*, like *Sisson*, dealt with a fire aboard a vessel on navigable waters. Because the fire “*could* have spread to other vessels and *could* have resulted in the obstruction of a navigable waterway,” the Court held that the fire “constituted a potential disruption to maritime commerce” and thus satisfied the first query of the nexus test. See *Reyes*, 23 F.3d at 350. Unlike *Sisson* and *Reyes*, the wrongs alleged of Defendants in the present matter have no likelihood of disrupting commercial maritime activity and thus fail to satisfy the first query.

As to the second query of the nexus test, Defendants must show a “substantial relationship” with a “traditional maritime activity.” As noted above, while “vessel repairs” have been held to constitute a “traditional maritime activity,” the cases cited by Defendants do not stand for the proposition that “routine maintenance” of a vessel constitutes a “traditional maritime activity.” While *Reyes* noted that “[i]n *Sisson*, the Supreme Court held that ‘maintenance of a vessel at a marina on navigable waters is substantially related to traditional maritime activity,’” a reading of *Sisson* clearly demonstrates that “maintenance of a vessel at a marina” refers not to work performed but to the *storage* of a vessel at a marina. See *Reyes*, 23 F.3d at 351; see also *Sisson*, 497 U.S. at 358 (“A fire erupted in the washer/dryer area of petitioner *Sisson*’s pleasure yacht while it was docked at a Lake Michigan marina, destroying the yacht and damaging several neighboring vessels and the marina.”).

Accordingly, even if this Court finds that Defendants have satisfied the second query of the nexus test, they still have failed in the first query and therefore have failed to demonstrate the requisite effect on maritime commerce.

III. DEFENDANTS FAIL TO SHOW THE REQUISITE CONNECTION WITH INTERSTATE COMMERCE.

In *Koechli*, a case cited by Defendants, the Court found the FAA applicable “[b]ecause this case involves interstate commerce.” *Koechli*, 870 So.2d at 943. As noted, *Koechli* involved a disagreement arising from a contract to substantially renovate a vessel to operate as a luxury charter yacht. While the issue on appeal in *Koechli* did not involve application of the FAA, it is worth noting that the case seemingly rejects Defendants’ current position that this Court “need not reach the interstate commerce issue.” See Defs. Mot. to Alter or Amend, p. 1.

As Plaintiff has previously argued, the FAA has no application to this dispute as the transaction between the parties and which is the subject of this litigation did not involve interstate or foreign commerce. See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360 (2001)(“Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that *in fact* involves interstate commerce...” [emphasis added]); Soil Remediation Co. v. Nu-Way Envt’l, 323 S.C. 454, 460, 476 S.E.2d 149 (1996)(“For the [FAA] to apply, the commerce involved in the contract must be interstate or foreign.”); Mathews v. Flour Corp., 312 S.C. 404, 407, 440 S.E.2d 880 (1994)(“Interstate commerce is a necessary basis for application of the [FAA], and a contract or agreement not so predicated must be governed by state law.”).² Additionally, the burden falls upon Defendants to prove a nexus between the contract and interstate commerce. See Hicks Unlimited, Inc. v. Unifirst Corp., 439 S.C. 623, 632, 889 S.E.2d 564 (2023)(“a party seeking to compel arbitration under the FAA must demonstrate that the contract implicates interstate commerce.”).

“Commerce” is defined as “commerce among the several States or with foreign nations...” 9 U.S.C. § 1; see also Mathews, 312 S.C. at 407 (“Commerce, as defined in the [FAA], evidences transactions involving interstate or foreign commerce.”). Thus, “[t]he Court must examine the agreement, the compliant, and the facts to ascertain whether the transaction is one involving commerce within the meaning of the [FAA].” Soil Remediation, 323 S.C. at 460.

Herein, the transaction that is the subject of this dispute is confined in all respects to the State of South Carolina and, thus, has no connection or relation with interstate commerce – let alone a substantial one. Plaintiff is a citizen and resident of South Carolina, and Defendants,

² Mathews was overruled in part “to the extent it considered whether the parties *contemplated* interstate commerce as a factor in determining if the FAA applied.” See Munoz, 343 S.C. at 543 [emphasis added].

although they are Delaware limited liability companies, are registered to transact business in South Carolina and maintain their principal places of business in South Carolina. (Pl.'s Am. Compl. ¶¶ 1, 4 & 5). Moreover, there is no nexus between the contract or the services performed and interstate commerce. *See Mathews*, 312 S.C. at 440 (holding that a contractual dispute involving the sale of real estate situated in South Carolina did not involve interstate commerce where, despite the fact that contracting parties were domiciled outside of South Carolina, there was no nexus between the contract and interstate commerce.); *see also Hicks Unlimited*, 439 S.C. at 623 (where the Supreme Court held that although a contract to rent uniforms involved a Massachusetts company and a South Carolina company, there was no other sign that it was to be performed using instrumentalities or channels of interstate commerce or that it involved anything beyond South Carolina's borders, so that the FAA did not apply). The contract in question was for the provision of maintenance services in South Carolina. (Pl.'s Am. Compl. at ¶ 9). Any services that were actually performed were in fact performed in South Carolina by Defendants' agents or employees located in South Carolina. In addition, the work performed was managed from South Carolina and overseen in South Carolina. (Pl.'s Am. Compl. ¶ 6).

The arbitration provision Defendants seek to apply makes no reference to the FAA or interstate commerce, and in fact appears to intimate that the SCUAA, and not the FAA, was intended under the contract. For example, arbitration is to be conducted in Charleston, South Carolina with an arbitrator/attorney from the "Charleston metropolitan area," and even references the discovery provisions of the *South Carolina Rules of Civil Procedure*. Regardless, the South Carolina Supreme Court has made clear the Courts cannot apply the FAA, even where the parties have expressly agreed to such, without first determining that interstate commerce is in fact involved. *See Hicks Unlimited*, 439 S.C. at 632 ("Just as the parties may not prove the requisite

connection to interstate commerce by agreeing their transaction or relationship ‘contemplates’ interstate commerce, they may not make the connection by declaring or contemplating the FAA will govern.”).

As there is no nexus with interstate commerce and the arbitration provision Defendants rely upon appears to implicate the SCUAA, analysis of the arbitration provision must be governed by state law. *See Mathews*, 312 S.C. at 407 (“Interstate commerce is a necessary basis for application of the [FAA], and a contract or agreement not so predicated *must be governed by state law*.” [emphasis added]).

IV. ENFORCEMENT OF THE ARBITRATION PROVISION WOULD NOW OPERATE TO DENY PLAINTIFF RECOURSE FOR HIS CLAIMS AND THUS HAS BECOME UNCONSCIONABLE.

Pursuant to the arbitration provision Defendants seek to enforce, “[a]ll arbitration proceedings against Boatyard must be commenced within one year after work has ceased for whatever reason, or has been completed, or the Boat has been redelivered, whichever first occurs.” Work was performed on Plaintiff’s vessel between March 18, 2024 and May 6, 2024. Accordingly, if Defendants were successful in their attempt to compel arbitration, Plaintiff would be barred from asserting an arbitration claim and effectively would be denied any recourse for Defendants’ alleged wrongdoing.

The contract in question constitutes an adhesion contract. *See Munoz*, 343 S.C. at 541 (“Generally, an adhesion contract is a standard form contract offered on a take-it or leave-it basis with terms that are not negotiable.”). Though an adhesion contract is not in and of itself unconscionable, an adhesion contract becomes unconscionable when its terms “are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *See Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898 (Ct. App. 1998). Though

Plaintiff does not present an argument as to the arbitration provision's conscionability or lack thereof when the form was signed, due to the delay that Defendants have managed to effect in this relatively minor dispute, the arbitration provision has become unconscionable to the extent that its limitation provisions could now operate to bar Plaintiff from bringing a claim.

CONCLUSION

For the reasons set forth herein, Defendants' Motion should be DENIED. Respectfully submitted this 18th day of August 2025.

s/ Joseph W. Rohe
Joseph W. Rohe (S.C. Bar No. 79313)
100 East Washington Street, Suite 64
Greenville, South Carolina 29601
Tel: (843) 530-1318
Email: jrohe@6125trade.com

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
2 COUNTY OF CHARLESTON CASE NO.:2024-CP-10-3700

3 **** TRANSCRIPTION OF WEBEX HEARING ****

4 -----

5 January 10, 2025

6 **BEFORE:** The Honorable Deadra Jefferson

7 -----

8 JOSEPH ROHE,

9 Plaintiff,

10 vs.

11 SAFE HARBOR MARINAS, LLC, SHM CHARLESTON CITY
12 MARINA, LLC, et al.,

13 Defendants.

14 -----

15

16 APPEARANCES:

17

18 Joseph Rohe, Esq.
19 Appearing Pro Se/Plaintiff.

20 Rhett Ricard, Esq.
21 Appearing for the Defendants.

22

23

24 Recorded by: Webex Video Courtroom

25 Transcriber: Natalie Dahl, RPR
 SC Official Court Reporter

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

INDEX

Description	Page
(NONE)	

EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

P R O C E E D I N G S

THE COURT: This is Joseph Rohe, R-O-H-E --
Joseph W. Rohe versus SHM Charleston City Marina,
LLC, doing business as Safe Harbor Charleston City
-- no, that's not correct.

MR. RICARD: Good morning, Your Honor.

THE COURT: Good morning. Bear with me one
second, please.

Safe Harbor Charleston. It is right. Okay.
Versus SHM Charleston City Marina, LLC, doing
business as Safe Harbor Charleston City, and SHM
Charleston Boatyard, LLC, doing business as Safe
Harbor City Boatyard, LLC. 2024-CP-10-3700.

And, let's see, is Mr. Rohe representing
himself?

MR. ROHE: Yes. Yes, Your Honor.

THE COURT: Okay. And, Mr. Ricard, you are
appearing for the defendants?

MR. RICARD: Yes, Your Honor.

THE COURT: There is Plaintiff's motion to
declare facts admitted. Defendant SHM's motion to
dismiss on the alternative to stay and compel
arbitration, filed 9/19/24. Motion to stay
discovery for protective order filed 11/6/24. And
the Plaintiff's motion was filed 11/12/24. So

1 we'll hear the motions in the order they were
2 filed. So we'll deal with the motion to dismiss --

3 MR. ROHE: Okay. Your Honor --

4 THE COURT: Yes.

5 MR. ROHE: The Plaintiff will withdraw the
6 motion to declare facts admitted.

7 THE COURT: Okay. All right. So then we'll
8 hear the motion to dismiss and compel arbitration,
9 and then we'll hear the motion to stay discovery
10 and for a protective order.

11 You may proceed.

12 MR. RICARD: Thank you, Your Honor, and good
13 morning.

14 THE COURT: Good morning.

15 MR. RICARD: My name is Rhett Ricard, and I
16 represent the Defendants in this matter. I'll just
17 cut to the chase, Your Honor. The parties had an
18 arbitration agreement. That arbitration agreement
19 states, quote, "Any and all disputes of any type,
20 whatsoever, relating to or arising out of this
21 contract shall be resolved through binding
22 arbitration," end quote.

23 The Plaintiff --

24 THE COURT: Where is that language located on
25 the agreement?

1 MR. RICARD: It's located on Page 3 of 3, and
2 it's right above Mr. Rohe's signature block, and --

3 THE COURT: Is it in compliance with the
4 South Carolina statute?

5 MR. RICARD: Your Honor, we're proceeding
6 under the Federal Arbitration Act.

7 THE COURT: So you concede that doesn't
8 comply with South Carolina?

9 MR. RICARD: Yes, Your Honor. But we're not
10 -- we're not proceeding under the South Carolina --

11 THE COURT: I understand that, but I needed
12 the record to be clear so I can know what analysis
13 I need to perform.

14 MR. RICARD: Yes, Your Honor.

15 In this particular case, Plaintiff is relying
16 upon the agreement itself, the contract itself,
17 that contains this arbitration provision to pursue
18 his claims against the Defendants. And simply put,
19 Your Honor, this Court does not have jurisdiction
20 to hear this case, and the proper remedy is either
21 to dismiss the case, or stay the case and compel
22 arbitration.

23 As the Court well knows --

24 THE COURT: So is your second motion
25 basically a duplicate of this first motion?

1 MR. RICARD: Well, Your Honor, discovery was
2 requested by the Plaintiff in this case and
3 wouldn't --

4 THE COURT: But if I compel arbitration,
5 doesn't that make that motion moot?

6 MR. RICARD: It does, Your Honor. But we
7 felt compelled under the case law to file a motion
8 for protective order so that we would benefit from
9 the protections of the discovery rules from having
10 to respond to the discovery requests that Plaintiff
11 served upon us. We were just simply trying to do
12 our due diligence in protecting ourselves from
13 having to respond to discovery. Because had we
14 engaged in discovery, it could subject us to an
15 argument from Plaintiff's counsel or -- well,
16 Plaintiff is an attorney himself, but it could
17 subject us from an argument from Plaintiff that
18 we've waived the right to arbitration. And, as the
19 Court knows, there is a heavy presumption in favor
20 of arbitration, both in the state and in the
21 country. In all of the claims --

22 THE COURT: I need you to go ahead and cut to
23 the chase for me. How does this fit within the
24 federal analysis, and why would it be appropriate?

25 MR. RICARD: Your Honor, the federal law has

1 a heavy presumption in favor of arbitration. And
2 even -- even the scope of what is and is not
3 arbitrable is left to the arbiter and the --

4 THE COURT: I got that part, but I need to
5 know how it fits within the federal statutes and
6 how -- and the analysis and the case interpreting
7 that. You just don't default to the federal
8 analysis. It has to fit within the categories
9 where it is appropriate for the court to consider
10 that.

11 MR. RICARD: Yes, Your Honor. In this
12 particular case, it's -- it's -- we're talking a
13 bread and butter type of case here. I mean, it's a
14 breach of contract that Plaintiff is pursuing, and
15 that falls under the "any and all disputes of any
16 type, whatsoever."

17 THE COURT: No. It has to involve interstate
18 commerce. So I'm trying to figure out how do you
19 default to the federal position, and I need some
20 clarity on that analysis.

21 MR. RICARD: Yes, Your Honor. So in this --
22 in this particular case, we've got -- Defendants
23 are -- they operate marinas and boatyards in and
24 around Charleston, South Carolina.

25 THE COURT: You said the Defendant?

1 MR. RICARD: Defendants, yes, Your Honor.

2 And the boat itself is -- it's a catamaran
3 that the contract is for. And that catamaran is a
4 vehicle of interstate commerce itself. Defendants
5 do work all across state lines, and they have
6 service all across state lines, and residents and
7 folks all --

8 THE COURT: It has to apply specifically to
9 this situation. I need to know how the federal law
10 is implicated in this particular situation.

11 It's not a catch-all, and our courts have
12 been very clear about that. While mediation is
13 favored, if you don't comply with the South
14 Carolina statute, that meaning it being bold type
15 faced, underlined, at the very top of the first
16 page of the document, then you need to tell me how
17 it fits within -- that's the only way you default
18 to the federal analysis, and I need to know how it
19 fits within that analysis.

20 MR. RICARD: Yes, Your Honor. And this --
21 this contract is for service that is being
22 conducted on a vehicle of interstate commerce. I
23 mean, it is a catamaran. It is a vessel that is
24 able to traverse up and down the eastern seaboard,
25 all the way down to the Caribbean. This is an

1 object that is a part and parcel of interstate
2 commerce, and that the contract itself is for
3 service.

4 The service that is being done is using parts
5 that have to be manufactured, is using all sorts of
6 type of service that can come from out of state.
7 And so when we're talking about implications of
8 interstate commerce, everything about the service
9 agreement is going to touch on interstate commerce.
10 The fuel that has to be used to fuel that vessel to
11 run it, the power that is required to conduct the
12 service, all of that is coming from interstate
13 commerce. This is, again, bread and butter, a type
14 of service that is being provided in interstate
15 commerce, Your Honor.

16 THE COURT: And how does that specifically
17 relate to this situation?

18 MR. RICARD: Because we're talking about
19 service that is going to require parts from outside
20 the state of South Carolina, fuel, power outside of
21 the state of South Carolina.

22 The vessel itself was -- our understanding
23 was -- manufactured in Switzerland. That vessel
24 had to come from overseas. So, you know, we're not
25 even just talking interstate commerce, we're also

1 talking, you know, global travel.

2 So, in this particular case, again, we've got
3 the requirements met for interstate commerce, and
4 it reaches to the extent of federal law in this
5 case for arbitration to be granted and compelled.

6 THE COURT: Mr. Rohe, would you like to
7 respond?

8 MR. ROHE: Thank you, Your Honor. May it
9 please the Court?

10 THE COURT: Yes, sir.

11 MR. ROHE: The Federal Arbitration Act and
12 interstate commerce has absolutely no application
13 in this dispute. The -- this transaction involves
14 and is confined, in all respects, in the state of
15 South Carolina. I, Plaintiff, citizen and resident
16 of South Carolina. The Defendants, although they
17 are registered in -- as Delaware LLCs, the
18 principal place of business is South Carolina. The
19 entirety of the ownership of their interest are in
20 South Carolina. They are de facto a South Carolina
21 company.

22 And, to that point, I would also point out
23 that under Maxum Foundations v. Salus Corp., which
24 is a Fourth Circuit decision from '85, diversity of
25 citizenship alone is irrespective for implicating

1 FAA.

2 So the fact they are a Delaware LLC, their
3 principal place of business is the state of South
4 Carolina. So both the parties are -- there is no
5 diversity between the parties or in the state of
6 South Carolina. The work was performed in the
7 state of South Carolina. It was performed by
8 employees and agents of the Defendants that are
9 residents and in the state of South Carolina.

10 The suggestion that this vessel is engaged in
11 interstate commerce or international commerce is
12 ridiculous. It's a private pleasure vessel. It's
13 not a commercial vessel. It's never engaged in
14 interstate commerce. It's never been engaged in
15 interstate commerce certainly not since I've owned
16 the vessel. So all work and services were
17 performed here in South Carolina.

18 There's just zero that really touches -- and
19 in regards to this agreement, this service
20 agreement and the work that was performed, it
21 simply has nothing to do with interstate commerce.
22 It's wholly confined to the state of South
23 Carolina.

24 I would also note that, you know, this is
25 sort of the first time that I've seen an argument

1 from the Defendants that the FAA is applicable.
2 There was certainly some references to the Federal
3 Arbitration Act in their motion, but certainly no
4 argument or real claim or evidence that interstate
5 commerce was impacted here, and that the Federal
6 Arbitration Act, and not the South Carolina Uniform
7 Arbitration Act, were the -- you know, the
8 controlling rules.

9 So there is simply no nexus between
10 interstate commerce and the arbitration provisions
11 Defendants rely upon. I would argue it must be
12 governed under South Carolina Uniform Arbitration
13 Act because that necessary requirement is lacking.

14 There are --

15 THE COURT: Did you get a copy of his memo?

16 MR. ROHE: I did, Your Honor.

17 THE COURT: Okay. I just wanted to make
18 sure.

19 You may continue.

20 MR. ROHE: Your Honor, I would just point out
21 a couple of cases from South Carolina: Mathews v.
22 Fluor Corp., which is a '94 supreme court case,
23 holding interstate commerce is a necessary basis
24 for application of the FAA, and a contract or an
25 agreement not so predicated must be governed by

1 state law. That would be 15-48-10(a), which is the
2 statutory notice provision of the South Carolina
3 Uniform Arbitration Act, and that the burden falls
4 upon the Defendants to prove that there is some
5 nexus between the contract and interstate commerce.

6 I would also point the Court's attention to
7 Hicks Unlimited. That was a 2023 supreme court
8 case. It was Hicks Unlimited v. UniFirst, in which
9 the court held that although a contract to rent
10 uniforms involving a Massachusetts company and a
11 South Carolina company, there was no other sign it
12 was performed using instrumentalities or channels
13 of interstate commerce, or that it involved
14 anything beyond South Carolina's borders, and so
15 the Federal Arbitration Act did not apply there.

16 To make the argument that fuel to put in this
17 vessel -- which, again, the work performed had
18 nothing to do with putting fuel in the vessel, but
19 to make that argument that that implicates
20 interstate commerce would render almost every
21 movement that any person made -- if you went and
22 filled up your car with gas at the gas station that
23 wasn't refined in South Carolina, so now, you know,
24 you are buying gas from a gas station down the road
25 is implicating interstate commerce, I think that is

1 a little too broad. What is required under the law
2 is a substantial relationship to interstate
3 commerce, not a hypothetical, you know, connection.

4 So, with that, Your Honor, we argue that
5 because the contract does not include the statutory
6 notice provision required under 15-48-40, the
7 arbitration clause is void and unenforceable.

8 MR. RICARD: If I may, Your Honor? Again,
9 our argument is that the repair requires parts and
10 service that are implicating interstate commerce.
11 These parts and service -- everything about it,
12 it's not just confined to --

13 THE COURT: Well, the summons and complaint
14 does not specifically say what repairs were done.
15 It simply says that the parties engaged in a
16 contract. And I'm assuming, based on the summons
17 and complaint, that the vessel was not purchased
18 from this company; that the only thing they did was
19 agreed to perform services for the
20 upkeep/maintenance of the vehicle -- of the vessel,
21 and that -- there's certain services they provided,
22 is all the summons and complaint says. So I don't
23 know what services were provided.

24 MR. RICARD: Right, Your Honor. And this --

25 THE COURT: So I don't know if what you are

1 saying is accurate, and I don't know if it stands
2 up to the scrutiny of our supreme court's analysis
3 of that.

4 That is almost like saying -- and there is a
5 case that talks about this, I just can't remember
6 the name of it, but it happened on 95 somewhere
7 where they tried to argue that the FAA applied
8 because the car was manufactured in another state.
9 And the supreme court said, It just doesn't hold
10 water; that cars, by their very nature, you know,
11 are made someplace else and come to other states.
12 That doesn't create an interstate issue.

13 So what I'm trying to figure out -- because
14 it is not clear from any of the documents that have
15 been provided -- exactly what services were
16 provided and how were they deficient. I cannot
17 make a presumption that parts and things came from
18 outside of South Carolina. I don't know. What was
19 done? What performs -- what -- what services were
20 provided?

21 MR. RICARD: Your Honor, if I may? There is
22 two points. The first is we provided the service
23 agreement that is --

24 THE COURT: I saw it, and I've read it, but
25 that still doesn't tell me what happened in this

1 particular case. I don't know what he says they
2 did do or didn't do. I have no idea. There's
3 nothing in any of the documents that are in this
4 file that I read that tell me that. Or did I miss
5 something? If it is, please tell me what page it's
6 on so I can read it.

7 MR. RICARD: No, Your Honor. I mean, we
8 believe -- we believe that, you know, Page 1 of the
9 service agreement just sets forth that the work --

10 THE COURT: Yeah, but that doesn't mean --
11 that doesn't mean all of those things were done.
12 What would be germane is what was done to this
13 vessel. What exactly -- what service was
14 performed?

15 MR. RICARD: Right. And the boxes that are
16 checked on the service agreement, checked shore
17 power, engine servicing --

18 THE COURT: But was all of that done, and is
19 that what he is saying was not done accurately?

20 MR. RICARD: When you read the four corners
21 of the complaint, Your Honor, yes, Mr. Rohe is
22 alleging that work was performed on the vessel --

23 THE COURT: I need to know specifically what
24 work was performed and how it was deficient, and
25 none of the documents say that. And I don't think

1 there is anything in case law that requires me to
2 make a leap and make a presumption about what was
3 done just because some boxes were checked.

4 MR. RICARD: Understood, Your Honor.

5 And so the second point is under the FAA, the
6 scope of whether arbitration should be granted or
7 not is left up to the arbitral forum. The decision
8 maker in that particular -- in this -- on this
9 particular issue is the arbitrator himself or
10 herself. They have to decide --

11 THE COURT: No. We're not talking about the
12 scope of arbitration. We haven't even gotten to
13 that yet. And you are correct, the arbitrator
14 decides what the scope of the arbitrable issues
15 are. That's not what I'm talking about. That does
16 not help me.

17 You made a blanket assertion that parts and
18 other things came from out of state. I have no
19 idea if that's accurate. I don't know what they
20 did. If they put gas in this motor, I have no
21 idea. And it doesn't say with any specificity --
22 and, I mean, it doesn't necessarily have to. That
23 is what discovery is for.

24 But, Mr. Rohe, what work are you saying was
25 provided to your vessel that fell short, exactly?

1 I mean, I've read all the causes of action, but I
2 need to know with some specificity what you're
3 saying they did or didn't do.

4 MR. ROHE: Yes, ma'am. And I don't have the
5 particulars in front of me as to every little thing
6 that was done, but effectively it was engine
7 service.

8 THE COURT: You took it to them to have the
9 engine serviced?

10 MR. ROHE: It was an engine service: An oil
11 change, an oil filter.

12 THE COURT: So you were not having problems,
13 you were simply asking -- like when someone takes
14 their car in to have it serviced?

15 MR. ROHE: That's correct, ma'am.

16 There was some adjustments made to a power
17 generator. There were some adjustments made to a
18 water maker. And there were some -- you know,
19 there were some parts and things that were ordered
20 and used -- you know, rags, washers, nuts, bolts.
21 I don't know the particulars. But even if those
22 were purchased by the Defendants from out of state,
23 well, that transaction may be one of interstate
24 commerce, but their sale of those goods once they
25 are in the state of South Carolina to me has

1 nothing to do with interstate commerce. Any parts
2 or services supplied was supplied from the state of
3 South Carolina to the state of South Carolina, and
4 there is simply no nexus of interstate commerce in
5 that transaction.

6 MR. RICARD: And, Your Honor, just as a quick
7 rebuttal, I mean, using parts, Plaintiff has just
8 admitted -- I mean, using parts that are coming
9 from out of state, that is in the stream of
10 commerce. That is implicating interstate commerce
11 in this case and makes the FAA applicable.

12 THE COURT: I don't know. The supreme court
13 has distinguished that, especially when you start
14 talking about construction litigation and other
15 things. But they've said just because you got a
16 trust from another state, it doesn't make it
17 arbitrable. I got to think about it a little bit.

18 I need you both to provide me with proposed
19 orders within five days of today, and then I'll
20 look at it and see where I land.

21 MR. RICARD: Thank you, Your Honor.

22 THE COURT: You need to make any findings of
23 fact and conclusions of law that are supported by
24 the record.

25 Was there anything --

1 MR. ROHE: Just for --

2 THE COURT: I'm sorry. Go ahead.

3 MR. ROHE: Your Honor, I apologize.

4 THE COURT: No, not at all.

5 MR. ROHE: I just wanted -- I didn't mean to
6 interrupt you, ma'am.

7 I just wanted to make one clarification to
8 something Mr. Ricard just said was that I admitted
9 that parts came from out of state. I didn't admit
10 that. Hypothetically, they may have. I don't know
11 if they were on the shelves. I don't know where
12 they came from. And I don't, again, have a list in
13 front of me of necessarily what parts may have been
14 used. So, you know, I said that hypothetically
15 that even if parts came from out of state, they
16 were purchased by the Defendant. When they were
17 sold to me, there was nothing in or out of state.
18 It was an in-state transaction.

19 THE COURT: And I had another question. Did
20 you all -- have you all mediated this case yet?

21 MR. ROHE: No, ma'am.

22 THE COURT: Have you all -- are you
23 interested in mediating it, made any attempts at
24 mediating it? How much money are we talking about?
25 Are you saying your vessel no longer works, or what

1 are you saying?

2 MR. ROHE: No, ma'am. It was -- there was
3 some damage done. The last demand made to the
4 Defendants was for the amount of \$36,000. No
5 response has been received.

6 THE COURT: Is that what it cost for you to
7 get your vessel fixed? And I may be using the
8 wrong term, because I know that in boating and
9 maritime there are different terms, but I'm just
10 using the term "vessel."

11 MR. ROHE: That's still being determined,
12 Your Honor. We haven't established all of the
13 damages yet. It is -- there is a UTPA claim in the
14 case. There is a fraud claim, so there are treble
15 damages on the table, potentially. But we haven't
16 engaged in any discovery.

17 THE COURT: What actual damage are you
18 claiming was done to -- to your catamaran? Is it
19 usable?

20 MR. ROHE: No, ma'am -- it's usable. There
21 have been a lot of things that had to have been
22 fixed and have since been fixed. We're actually
23 still finding problems. We found one about two
24 weeks ago with the work they did on the generator
25 that was not properly done, causing it to fail

1 while at sea. There's damage to the engines as a
2 result of saltwater corrosion from improperly
3 applied hoses, and things of that nature. And --
4 but, again, we haven't determined all of the
5 damages at this point, Your Honor, or monetized
6 them.

7 THE COURT: All right.

8 Anything further?

9 MR. ROHE: To answer your question, we
10 certainly would be open to mediation.

11 THE COURT: I'm just wondering if that's, you
12 know -- if that's something practical. It could
13 save you all a whole lot of money, and a whole lot
14 of appeals.

15 Is that something your client is interested
16 in, Mr. Ricard?

17 MR. RICARD: I can certainly ask, Your Honor.
18 I mean, obviously, we want to pursue the
19 arbitration provision first.

20 THE COURT: Glass half full. What if they
21 lose?

22 MR. RICARD: Understood. Understood. I
23 think my clients understand that risk.

24 THE COURT: And I have no idea, you know -- I
25 have to -- you know, I strictly adhere to the

1 analysis. I would be disingenuous if I told you
2 there weren't a whole lot of cases that are
3 contrary to your client's position.

4 MR. RICARD: Understood, Your Honor. But,
5 you know, again, we would just highlight something
6 that Plaintiff just said, I mean, he had the vessel
7 out at sea. I mean, again, we're talking --

8 THE COURT: That don't make it interstate
9 commerce.

10 MR. RICARD: Understood.

11 THE COURT: Creative, but it's not
12 persuasive. Yeah.

13 All right. I'll look to get your proposed
14 orders. In the meantime, I strongly suggest you
15 all talk about mediation.

16 MR. ROHE: Thank you for your time, Your
17 Honor.

18 THE COURT: You all have a great weekend.
19 Please stay safe in this crazy weather. They've
20 closed all the schools in the upstate, I think,
21 haven't they?

22 MR. ROHE: They're closing everything.

23 THE COURT: Yeah. I think I read something
24 that said Atlanta has already has gotten snow.

25 MR. ROHE: Yes, ma'am. I saw that this

1 morning. They said it's coming down heavy.

2 THE COURT: Yeah. They said Atlanta has
3 already gotten an inch of snow.

4 MR. RICARD: Your Honor, if I may, just to
5 clarify, would you like a proposed order on the
6 motion for protective order as well, or just --

7 THE COURT: You know, I don't -- I think it's
8 going to be moot either way. Because if I grant
9 the arbitration, it's moot. You don't have any
10 discovery. And if I deny it, it's moot because you
11 are going to have to comply with discovery.

12 MR. RICARD: Okay. Understood, Your Honor.

13 THE COURT: Yeah. So I think, really, with
14 that motion -- really, I think you probably could
15 just withdraw it. Because I think either way it's
16 going to become a moot issue. But it's up to you.

17 MR. RICARD: Okay. Understood, Your Honor.

18 THE COURT: You all be safe.

19 (Whereupon, the Webex video/audio concluded
20 for this hearing.)
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

Case Name: Joseph Rohe v. Safe Harbor Marinas,
LLC., et. al

Case No.: 2024-CP-10-3700

Date of Hearing: January 10, 2025

I, Natalie Dahl, do hereby certify that the
foregoing transcript is a true and correct record
of the recorded proceedings; that said proceedings
were transcribed to the best of my ability from
the audio recording.

I do further certify that I am neither of
kin, counsel, nor have interest to any party
hereto.

Natalie Dahl, RPR
