STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
PETER SKOLER and PATRICIA SKOLER, PLAINTIFFS, vs. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA, DEFENDANTS.	Civil Action No. 2024-CP-10-_____ **SUMMONS**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to the said Complaint on the Subscriber at his office at 748-D St. Andrews Boulevard, Charleston, South Carolina 29407 within thirty (30) days after service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the date of such service, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

s/David W. Wolf
David W. Wolf (S.C. Bar No. 17041)
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
PETER SKOLER and PATRICIA SKOLER, PLAINTIFFS, vs. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA, DEFENDANTS.	Civil Action No. 2024-CP-10-_____ **COMPLAINT**

COME NOW Plaintiffs Peter Skoler and Patricia Skoler (hereinafter "Plaintiffs") complaining of the above-named Defendants, Vacation Inspirations (hereinafter "VI"); Destination Travel, LLC (hereinafter "DT"); Joseph Shirley (hereinafter "Shirley"); Randy Gardner (hereinafter "Gardner"); and Jeffrey Pumilia (hereinafter "Pumilia")(collectively, VI, DT, Shirley, Gardner, and Pumilia shall hereinafter be referred to as the "Defendants"), alleging and saying as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are residents and citizens of the State of Massachusetts;

2. Defendant VI is, upon information and belief, an unincorporated business association operating in Charleston County, South Carolina;

3. Defendant DT is a South Carolina limited liability company operating in Charleston County, South Carolina;

4. Defendant Shirley is, upon information and belief, the President of VI and a resident and citizen of Charleston County, South Carolina;

5. Defendant Gardner is, upon information and belief, the CEO and "Customer Contact" of VI and a resident and citizen of Charleston County, South Carolina;

6. Defendant Pumilia, the Director of Member Services at VI, is a resident and citizen of Charleston County, South Carolina;

7. The facts and circumstances which are the subject matter of this lawsuit occurred in Charleston County, South Carolina;

8. This Honorable Court has personal and subject matter jurisdiction over the parties because the Defendants committed statutory violations and tortious acts in whole or in part in the State of South Carolina, County of Charleston.

9. Venue is proper in Charleston County pursuant to S.C. Code Ann. § 15-7-30(A)(10) & (B) because: 1) VI's and DT's sales activities occur in Charleston County; and 2) each of the individual defendants are residents of Charleston County;

FACTS

10. Plaintiffs visited the County and City of Charleston, South Carolina from March 20–24, 2022;

11. On March 21, 2022, the Plaintiffs were approached on a street in the City of Charleston and were informed that they could get free tickets to local sightseeing events if Plaintiffs attended a sales presentation;

12. Plaintiffs later learned the sales presentation was for a VI travel membership and travel related services, as distributed by DT (the "Membership");

13. When Plaintiffs arrived to what seemed like a legitimate visitor's bureau, they were directed upstairs to the sales presentations where there were six or seven mostly older couples; each of whom were seated by a little table in a medium sized room;

14. Each couple then met with an individual sales representative of DT for about fifteen (15) minutes;

15. A DT salesperson approached Plaintiffs and quickly flipped through the pages of a notebook that he claimed contained the many favorable reviews that VI's Membership program had received from their members;

16. The rate at which the pages were flipped by the DT salesperson prevented the Plaintiffs from being able to read the reviews and assess their veracity or credibility;

17. The salesperson immediately put the notebook away such that Plaintiffs were not given a chance to peruse the notebook of reviews themselves;

18. The DT salesperson then asked where Plaintiffs liked to travel and whether they had made any future travel plans, to which Plaintiffs explained their travel preferences;

19. In response, the DT salesperson provided several examples of trips which Plaintiffs could expect to save as much as forty percent to sixty percent (40%-60%) in travel costs through the VI Membership;

20. The DT salesperson provided favorable responses to each of the Plaintiffs' questions intimating that the VI Membership was the solution to their travel goals;

21. At the conclusion of the individual discussions, Plaintiffs' DT salesperson gave a PowerPoint presentation to the entire group for forty-five (45) minutes;

22. At the outset of this group presentation, the DT salesperson stated that no one was to use their cellphones during the presentation or he would have to start the presentation over again;

23. Thinking the threatening statement was certainly not sincere, one of the Plaintiffs took out his phone to conduct a Google search of VI; the DT salesperson then quickly paused the presentation and instructed him to put his phone in his pocket;

24. The public scolding served to prevent the Plaintiffs and other couples from vetting the salespersons' representations about the VI services and Membership;

25. Had the Plaintiffs been able to use their cellphones, a Google search would have notified Plaintiffs of a significant number of negative reviews on a number of websites including, but not limited to, the South Carolina Department of Consumer Affairs, YELP, TripAdvisor, and the Better Business Bureau;

26. The presentation compared the VI services and booking process to Travelocity and Expedia, but touted that their simpler booking process would lead to pleasurable trips for their members;

27. At the conclusion of the group presentation, the DT salesperson offered a Two Thousand and 00/100 Dollar ($2,000.00) discount to the first couple that raised their hand to purchase a membership;

28. A couple quickly raised their hand and represented they would purchase a membership, giving the impression of a desired opportunity missed;

29. Plaintiffs were next approached by a husband-and-wife sales team who then brought Plaintiffs into an office and offered the same Two Thousand and 00/100 Dollars ($2,000.00) discount that was offered at the conclusion of the group presentation;

30. Plaintiffs appreciated that they were being offered the same "limited opportunity," but nonetheless remained reluctant to purchase a VI Membership;

31. The husband-and-wife team continued to ramp up the pressure in their sales tactics by extending additional and more favorable terms while monopolizing the conversation in discussing travel experiences;

32. Worn down from Defendants' sales tactics, Plaintiffs agreed to purchase a Membership;

33. The wife from the DT sales team produced a copy of the Agreement and stated that "in the interest of time," – a stark contrast from the protracted sales tactics just employed – the Plaintiffs sign the contract quickly;

34. The salesperson did not make herself available to answer any questions, except to instruct Plaintiffs on how to complete the responses to the Vacation Inspirations Membership Acknowledgment, which was "yes to everything, except no to #10."

35. After being handed the Agreement to sign, Plaintiffs were subjected to consistent pressure to sign quickly without the opportunity to read the documents or engage any counsel – legal or otherwise;

36. Defendants target elderly individuals who are visiting the City of Charleston and who would be more easily exploited by their deceptive sales tactics;

37. During the ordeal, Plaintiffs were subjected to high pressure and deceptive sales tactics, including:

a. A ban on cellphone usage which prevented Plaintiffs' from researching VI and perusing online reviews;

b. Rushed contracting in order to create anxiety through the fear of missing out on Defendant VI's travel membership and travel related services, which was described as a "Once in a lifetime opportunity";

c. Rushed contracting in order to create anxiety through the representation that the discounted Memberships were only available on the day of the presentation and would not be available afterwards;

d. Presented deceptive claims regarding customer satisfaction reviews provided by other members relating to the services provided to consumers through the Membership;

e. Utilized coercive sales tactics that prevented Plaintiffs from making a free and informed choice;

f. Fostered an environment that created the impression that the Defendants' business was a City of Charleston operated location, like a visitor's bureau;

g. Created the appearance of scarcity of discounted Memberships in order incentivize purchases;

h. Coerced participants into purchasing a Membership as a means to escape the undue influence that Defendants' sales tactics generated;

i. Upon information and belief, planted imposter presentation participants to announce they desire to purchase a Membership in order to encourage the other attendees to purchase a Membership as well;

38. Immediately upon exiting the facility after purchasing a Membership by way of a Purchase Agreement (the "Agreement"), attached hereto as Exhibit A and incorporated herein by reference, at a purchase price of Four Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($4,995.00), plus a Documentation Fee of Three Hundred Ninety-Nine and 00/100 Dollars ($399.00), and first year dues of One Hundred Ninety-Nine and 00/100 Dollars ($199) for a grand total of Five Thousand Five Hundred Ninety-Three and 00/100 Dollars ($5,593.00), Plaintiffs discovered an overwhelming majority of the online reviews regarding the Membership sold by the Defendants were negative and complained about the deceptive tactics employed by the Defendants, the falsity of the representations by the Defendants as to what the services actually were and the poor quality of the services provided by VI for owners of a Membership;

39. The online reviews included many testimonials of relatable experiences, such as being unable to use a cellphone during the presentation and the threat of restarting the presentation in the event of noncompliance; detailed descriptions of the substantial shortcomings in savings

VI's membership provided; complications often experienced in the booking process; and statements regarding the poor customer service received from VI;

40. The Agreement was a form contract in which a representative of Defendants VI and DT filled in the blanks with information provided by the Plaintiffs;

41. The Agreement provided that:

a. Plaintiffs were entitled "to request up to two week(s) of condominium accommodations per year provided by VI.";

b. "THE UNDERSIGNED MEMBER ACKNOWLEDGES **THIS IS A NON-CANCELABLE CONTRACT**. THIS IS NOT A TIMESHARE, HEALTH CLUB, BUYERS CLUB, NOR DOOR TO DOOR SALES CONTRACT AGREEMENT. PLEASE MAKE YOUR DECISION ACCORDINGLY.";

c. "Client acknowledges that this agreement is not subject to any "right of recission";

d. "Any controversy, claim or dispute arising out of or relating to this Purchase Agreement, shall be resolved and decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") (however, not under the auspices of AAA), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall be selected by VI. Upon final award, arbitrator compensation and cost of the location shall be paid by the non-prevailing party. The arbitration shall take place in Charleston, S.C. at the Charleston County Courthouse or other location determined by VI;"

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

42. The Plaintiffs reaffirm and reiterate all of the allegations in Paragraphs 1 through 41 as if fully repeated and incorporated herein verbatim;

43. South Carolina law requires arbitration agreements to be "geared towards achieving an unbiased decision by a neutral decision maker";

44. The Agreement's Terms and Conditions contains an arbitration clause buried in its final article inconspicuously titled "Dispute Resolution";

45. The arbitration clause contains no differentiated font in order to call attention to its terms nor did the sales presentation or salesperson explain there was an arbitration agreement included;

46. The terms of the arbitration clause lack mutuality, by granting VI the rights to select the arbitrator and the location of the arbitration, should it not occur at the Charleston County Courthouse;

47. The arbitration clause also requires that the "arbitrator compensation and cost of the location shall be paid by the non-prevailing party;"

48. The arbitration clause requiring that arbitration be held "not under the auspices of [American Arbitration Association]" introduces further doubt about the arbitration process's fairness and impartiality;

49. The practical implication of a majority of the arbitration provision is to grant VI unfair control over the process and expenses of the arbitration proceedings so as to inhibit a Member from seeking dispute resolution and to permit a biased result from an arbitrator who may not be neutral;

50. The one-sided arbitration clauses contained in the "Dispute Resolution" provision have an *in terrorem effect* because Members may decline to exert their rights when the only path is an unfair and potentially costly unknown out-of-court process;

51. The arbitration clause as a whole undermines the neutrality of any potential arbitration proceeding and violates federal and state law;

52. Whether pursuant to S.C. Code Ann. § 15-48-10, the Federal Arbitration Act, or under its own terms, the arbitration clause is not enforceable and the Agreement is not subject to

mandatory arbitration since it is fundamentally unfair for lack of mutuality and fails to promote a neutral and unbiased arbitral forum;

53. The Agreement, including the arbitration provisions contained within, is a form contract which was completed at the conclusion of Defendants' presentation and was presented on a "take it or leave it" basis;

54. The Agreement's terms were not negotiable such that Plaintiffs lacked a meaningful choice of entering into the contract;

55. Application of the arbitration clause's terms create a substantial lack of mutuality between the parties and allow Defendant VI to both discourage members from seeking dispute resolution by manipulating the expenses to the detriment of the opposing party, while also securing a biased decision from a biased arbitrator;

56. The arbitration clause's terms are so oppressive that no reasonable person would make them and no fair and honest person would accept them;

57. Pursuant to S.C. Code Ann. § 15-53-10, et. seq., Plaintiffs are entitled to a declaratory judgment that the arbitration clause in the Agreement is invalid and unenforceable due to its unconscionable terms and Plaintiffs' inability to realize an unbiased decision by a neutral arbitrator;

58. Pursuant to Rule 57, SCRCP, the Plaintiffs request a speedy hearing of this action;

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices)

59. Plaintiffs incorporate the allegations of Paragraphs 1 through 41 as if restated verbatim herein;

60. Defendants VI and DT, through the actions of their agents, violated S.C. Code Ann. § 39-5-20 of the South Carolina Unfair Trade Practices Act (the "Act"), as a result of the utilization

or employment of unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce;

61. Defendants Shirley, Gardner, and Pumilia, each violated the Act as a result of their commission, participation, training, directing or authorizing the utilization or employment of the unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce;

62. Defendants Shirley and Gardner were individually named defendants in a State of Georgia enforcement action (No. 2012CV211716) for similar unfair and deceptive conduct;

63. The Assurance of Voluntary Compliance in the State of Georgia action stated "Gardner and Shirley manage and direct the business activities" of a similar entity in which they assume materially the same directorial roles;

64. Defendants Shirley and Gardner were also named in connection with a State of Texas enforcement action (No. 2017CI11368) for similar unfair and deceptive conduct;

65. Defendant Pumilia is the Director of Member Services at VI and; as indicated by his title and his statements to the media; is training, directing or authorizing the unfair and deceptive sales practices;

66. The Membership materials also contained a letter "From [VI's] Board of Directors" indicating their authorization, at a minimum, of the sales process and tactics used;

67. Plaintiffs were misled by the Defendants' representations and other practices utilized to entice them to purchase an inferior travel membership that no reasonable person would purchase without the representations and practices employed or authorized by the Defendants;

68. Defendants' unfair and deceptive acts have been repeated on numerous occasions in the past and are capable of continuing to be repeated in the future such that they affect the public interest;

69. Defendants' actions, in large part relating to their high pressure and deceptive sales tactics, are a violation of the Act because these actions are immoral, unethical, oppressive, and offensive to public policy;

70. As a result of Defendants' unfair and deceptive acts, Plaintiffs have suffered monetary losses;

71. The deceptive representations and unfair practices employed on the Plaintiffs were unconscionable and materially prevented the discovery of the true nature of the purported travel membership, past victims, and its public perception, such that Plaintiffs were unable to avoid the injuries that resulted from the Defendants' conduct;

72. The unfair methods of competition and unfair and deceptive acts or practices in the conduct of commerce by the Defendants and/or their directing or authorizing such acts and practices proximately caused the Plaintiffs injury;

73. Plaintiffs have been damaged in the amount of Five Thousand Five Hundred Ninety-Three and 00/100 Dollars ($5,593.00) as a result of the Defendants violations of the Act;

74. Defendants have willfully or knowingly employed the unfair and deceptive acts or practices;

75. Defendants knew or should have known that their oppressive and high-pressure sales tactics violated the Act given the centrality of Defendants' sales process to their business and the connectiveness to two prior state enforcement actions for similar conduct against the same or related individuals and entities;

76. Plaintiffs are therefore entitled to actual and treble damages, as well as attorneys' fees and costs for this Cause of Action;

FOR A THIRD CAUSE OF ACTION
(Injunctive Relief Pursuant to §39-5-38(D)(1))

77. Plaintiffs incorporate the allegations of Paragraphs 1 through 41 as if restated verbatim herein;

78. Through Defendants' actions targeting visitors to the City of Charleston through the unfair and deceptive practices previously outlined, there exist conditions of ongoing violations or attempted violations of the Chapter 5 of Title 39, the South Carolina Unfair Trade Practices Act;

79. Defendants have and will continue to employ these unfair and deceptive tactics if not stopped;

80. Other participants will be subjected to irreparable harm if Defendants are permitted to continue their predatory practices upon visitors to Charleston;

81. The City of Charleston and State of South Carolina will realize continued reputational diminishment as a result of Defendants' predatory practices upon visitors to Charleston;

82. Upon information and belief, the Plaintiffs believe an injunction of Defendants' actions would best serve the public interest and would petition the Court for an injunction against the Defendants pursuant to S.C. Code Ann.§ 39-5-38(D)(1);

FOR A FOURTH CAUSE OF ACTION
(Equitable Relief – Rescission)

83. Plaintiffs incorporate the allegations of Paragraphs 1 through 41 as if restated verbatim herein;

84. Plaintiffs entered into the Agreement based upon a mistake of fact;

85. That the Defendants' representations with regard to the scarcity of discounted memberships, quality of reviews, services that meet participant's expectations were false;

86. The misrepresentations were each material in that they were significant, essential to, and of such a nature that knowledge of their falsity would have reasonably affected the Plaintiffs' decision to enter into the Agreement with VI and DT;

87. That Defendants fraudulently misrepresented to Plaintiffs, the scarcity of discounted memberships, quality of reviews, and their ability to provide services that meet participants' expectations, all with knowledge of each representation's falsity or a reckless disregard for the truth or falsity of Defendants' statements;

88. Defendants made the misrepresentations to Plaintiffs, with the intent that Plaintiffs would act upon that information in deciding whether or not to purchase a Membership for Five Thousand Five Hundred Ninety-Five and 00/100 Dollars ($5,593.00);

89. That Plaintiffs were without knowledge that the representations outlined above were false;

90. That Plaintiffs relied on the representations outlined above in proceeding with the purchase of the Membership;

91. Plaintiffs' reliance on Defendants' representations was reasonable under the circumstances, and based on the fundamental principles of good faith and fair dealing to which both parties are subject;

92. Defendants made the representations without intention of being able to honor them when Plaintiffs purchased a Membership;

93. Over the period since the Agreement was executed, the Plaintiffs have discovered the falsity of Defendants' representations regarding the scarcity of discounted memberships, the

quality of other members' reviews of Defendants' services, and the quality of the services Defendants provide to members were false and have been directly and proximately injured in the following respects:

94. That Plaintiffs were induced to purchase the Membership from VI and DT based upon Defendants' fraud, deceit, misrepresentations, and concealment;

95. That Plaintiffs were not negligent in entering into the Agreement;

96. Plaintiffs are entitled to the equitable remedy of rescission of the Agreement and compensate them for their related court costs;

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

97. Plaintiffs incorporate the allegations of Paragraphs 1 through 41 as if restated verbatim herein;

98. That the Defendants' representations with regard to the scarcity of discounted memberships, quality of reviews, services that meet participant's expectations were false;

99. The misrepresentations were each material in that they were significant, essential to, and of such a nature that knowledge of their falsity would have reasonably affected the Plaintiffs' decision to enter into the Agreement with VI and DT;

100. That Defendants fraudulently misrepresented to Plaintiffs, the scarcity of discounted memberships, quality of reviews, and their ability to provide services that meet participants' expectations, all with knowledge of each representation's falsity or a reckless disregard for the truth or falsity of Defendants' statements;

101. Defendants made the misrepresentations to Plaintiffs, with the intent that Plaintiffs would act upon that information in deciding whether or not to purchase a Membership for Five Thousand Five Hundred Ninety-Three and 00/100 Dollars ($5,593.00);

102. That Plaintiffs were without knowledge that the representations outlined above were false;

103. That Plaintiffs relied on the representations outlined above in proceeding with the purchase of the Membership;

104. Plaintiffs' reliance on Defendants' representations was reasonable under the circumstances, and based on the fundamental principles of good faith and fair dealing to which both parties are subject;

105. Over the period since the Agreement was executed, the Plaintiffs have discovered the falsity of Defendants' representations regarding the scarcity of discounted memberships, the quality of other members' reviews of Defendants' services, and the quality of the services Defendants provide to members were false and have been directly and proximately injured in the following respects:

a. Five Thousand Five Hundred Ninety-Three and 00/100 Dollars ($5,593.00) in actual damages, and,

b. The costs of bringing this action, including court costs, expenses and legal fees;

<u>FOR A SIXTH CAUSE OF ACTION</u>
(Negligent Misrepresentation)

106. Plaintiffs reaffirm and reiterate all of the allegations in Paragraph 1 through 41 as if fully repeated and incorporated herein verbatim;

107. That Defendant made false representations to the Plaintiffs in stating that: 1) discounted memberships were scarce; 2) the reviews provided by prior Membership purchasers were materially positive; and 3) Defendants were able to provide services that meet participants' expectations;

108. The Defendants had a pecuniary interest in making the false representations to Plaintiffs because these facts, either considered in isolation or as a whole, supported the asking

price for the discounted Membership presented to Plaintiffs and without such circumstances the Plaintiffs would not have paid the asking price or purchased the Membership;

109. That Defendants owed a duty of care to the Plaintiffs, to see that they communicated truthful information to the Plaintiffs while attempting to maximize the sales price of a Membership;

110. That Defendants breached that duty of care to the Plaintiffs when they communicated false information or otherwise recklessly disregarded the truth in their dealings with the Plaintiffs with regard to the scarcity of discounted membership, quality of purchaser reviews, and their ability to provide services that meet participants' expectations;

111. That Plaintiffs, having no other reliable information related to the scarcity of discounted memberships, the actual and substantial negative reviews from past participants regarding Defendants sales practices and services, or Defendants' ability to provide the services to purchasers as outlined in their presentation to Plaintiffs, justifiably relied on the false information communicated by the Defendants prior to executing the Agreement;

112. That as a result of the Defendants' negligent misrepresentations, the Plaintiffs would not have purchased a Membership, which proximately and consequently caused the following damages:

a. Five Thousand Five Hundred Ninety-Three and 00/100 Dollars ($5,593.00) from the purchase of the Membership, and,

b. The costs of bringing this action, including court costs, expenses and legal fees;

WHEREFORE, the Plaintiffs request that this Court enter its judgment:

(1) declaring that the arbitration clause contained in the Agreement is invalid and unenforceable;

(2) ruling that Defendants have willfully violated the South Carolina Unfair Trade Practices Act and Plaintiffs are entitled to trebled damages, based upon their actual damages of Five Thousand Five Hundred Ninety-Three and 00/100 Dollars

($5,593.00) from the purchase of the Membership, and their reasonable attorneys' fees;

(3) ruling that Defendants are committing ongoing violations or attempted violations of the Chapter 5 of Title 39, the South Carolina Unfair Trade Practices Act and issue an injunction against Defendants from acting in violation of the Act;

(4) ruling that Defendants' induced Plaintiffs to enter into the Agreement by way of fraudulent representations which they did not intend to perform and that Plaintiffs are entitled to rescind the Agreement;

(5) ruling that Defendants fraudulently misrepresented their program and services to be provided under the Agreement and award Five Thousand Five Hundred Ninety-Three and 00/100 Dollars ($5,593.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiffs;

(6) ruling that Defendants negligently misrepresented their program and services to be provided under the Agreement and award Five Thousand Five Hundred Ninety-Three and 00/100 Dollars ($5,593.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiffs;

(7) such other and further relief as the Court may deem appropriate.

Respectfully submitted,

s/David W. Wolf
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s/ Abby Edwards Saunders
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Attorney for Plaintiffs

May 21, 2024
Charleston, South Carolina

VERIFICATION OF COMPLAINT

I, Peter Skoler, being first duly sworn, depose and say that I have read the foregoing Verified Complaint and know the contents thereof, and that the information is true and correct to the best of my knowledge, except as to those matters and things alleged upon information and belief, and as to those things, I believe them to be true.

Peter Skoler

Sworn to before me this 20th day of May, 2024.

Notary Public for the State of Massachusetts
My Commission Expires:
august 30, 2024

I, PatriciaSkoler, being first duly sworn, depose and say that I have read the foregoing Verified Complaint and know the contents thereof, and that the information is true and correct to the best of my knowledge, except as to those matters and things alleged upon information and belief, and as to those things, I believe them to be true.

Patricia Skoler

Sworn to before me this 20th day of May, 2024.

Notary Public for the State of Massachusetts
My Commission Expires:
august 30, 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

FRANK PERRELLI, JR.,

PLAINTIFF,

vs.

VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA,

DEFENDANTS.

Civil Action No. 2024-CP-10-____

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to the said Complaint on the Subscriber at his office at 748-D St. Andrews Boulevard, Charleston, South Carolina 29407 within thirty (30) days after service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the date of such service, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

s/David W. Wolf
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s/Abby Edwards Saunders
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Email: abigail@abbysaunderslaw.com

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
FRANK PERRELLI, JR.	)	Civil Action No. 2024-CP-10-_____
	)	
PLAINTIFF,	)	
	)	
vs.	)	**COMPLAINT**
	)	
VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA,	)	
	)	
DEFENDANTS.	)	

COME NOW Plaintiff Frank Perrelli, Jr., (hereinafter "Plaintiff") complaining of the above-named Defendants, Vacation Inspirations (hereinafter "VI"); Destination Travel, LLC (hereinafter "DT"); Joseph Shirley (hereinafter "Shirley"); Randy Gardner (hereinafter "Gardner"); and Jeffrey Pumilia (hereinafter "Pumilia")(collectively, VI, DT, Shirley, Gardner, and Pumilia shall hereinafter be referred to as the "Defendants"), alleging and saying as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident and citizen of the State of Connecticut;

2. Defendant VI is, upon information and belief, an unincorporated business association operating in Charleston County, South Carolina;

3. Defendant DT is a South Carolina limited liability company operating in Charleston County, South Carolina;

4. Defendant Shirley is, upon information and belief, the President of VI and a resident and citizen of Charleston County, South Carolina;

5. Defendant Gardner is, upon information and belief, the CEO and "Customer Contact" of VI and a resident and citizen of Charleston County, South Carolina;

6. Defendant Pumilia, the Director of Member Services for VI, is a resident and citizen of Charleston County, South Carolina;

7. The facts and circumstances which are the subject matter of this lawsuit occurred in Charleston County, South Carolina;

8. This Honorable Court has personal and subject matter jurisdiction over the parties because the Defendants committed statutory violations and tortious acts in whole or in part in the State of South Carolina, County of Charleston.

9. Venue is proper in Charleston County pursuant to S.C. Code Ann. § 15-7-30(A)(10) & (B) because: 1) VI's and DT's sales activities occur in Charleston County; and 2) each of the individual defendants are residents of Charleston County;

FACTS

10. Plaintiff, with his girlfriend, visited the County and City of Charleston, South Carolina from October 7-11, 2022;

11. On or about October 8, 2022, the Plaintiff was approached by an individual offering discounts to local sightseeing events and approximately One Hundred Dollars ($100.00) if Plaintiff sat through a presentation that would give him the ability to save twenty to fifty percent on hotel and airfare expenses, as well as, 1 to 4 weeks vacation at select condominiums offered by Defendants VI and DT;

12. Plaintiff, with his girlfriend, arrived at the location on the pamphlet that day and was directed to another room with separate tables for each couple (all appeared to be older and retired) were provided with name tags, and instructed to "turn off your phones;"

13. Plaintiff now understands the instruction regarding the use of cell phones served to prevent either of the Plaintiff or his girlfriend and other couples from vetting the sales persons' representations about the VI services and Membership;

14. A Google search would have notified Plaintiff or his girlfriend of a substantial number of negative reviews online;

15. After a short wait, the participants were introduced to a speaker, who gave a sales presentation for a VI travel membership and travel related services, as distributed by DT (the "Membership") and that VI had such great offers that it had the ability to choose who they would allow to be members;

16. A speaker made a presentation with photos of locations and vistas on the large screen monitor and explained that VI was a "wholesaler" of vacation packages and could provide their members with packages far below those offered by travel agencies;

17. The speaker explained that resorts and cruise lines could only make money if their rooms were filled, so wholesaling unfilled rooms benefitted the industry by contributing to overhead expenses and generating additional income from on-site service and add-on activity sales;

18. The speaker also explained that, as one of only two wholesalers world-wide, VI could obtain travel packages far below the retail price, which VI would then sell to their members;

19. The speaker further explained that VI could sell a hotel night for less than if it was booked directly through the hotel because wholesaler's buy in bulk, which brings a lot of buying power to the wholesaler from booking a block of rooms from the hotel;

20. The speaker likened VI's Membership to that of a Costco or Netflix membership, but that it was like booking sites such as Kayak or Expedia, just that it grants access to wholesale travel pricing, which are bottom line prices without any mark up;

21. The speaker stated that VI has been the recipient of awards from cruise lines based upon the amount of business it had generated through the sale cruise line packages to its membership and displayed images of such awards;

22. The speaker described how he had generated so much business that he had been gifted a trip to a Five (5) star hotel in Hawaii for approximately ten percent (~10%) of the advertised cost, including airfare;

23. The final graphic of the speaker's presentation described the Platinum Membership benefits, which the speaker explained was only available the day of the presentation at that location;]

24. At the conclusion of the 1.5 hour presentation, the speaker offered that if any of the couples signed up that day, the Defendants would waive the Three Hundred Ninety-Nine and 00/100 Dollars ($399.00) document fee and the first year's dues of One Hundred Ninety-Nine and 00/100 Dollars ($199.00);

25. Plaintiff was offered a 4 week condominium per year package for Nine Thousand Nine Hundred Ninety-Five and 00/100 Dollars; a 2 week condominium package per year for Seven Thousand Nine Hundred Ninety-Five and 00/100 Dollars; or a one week condominium package per year for Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars and would receive "huge" savings on the vacations booked through the travel membership;

26. Given all of the representations made in the presentation and the offered discounts, Plaintiff agreed to purchase a Membership for a one week condominium per year package;

27. The presenter produced a Purchase Agreement (the "Agreement") and filled in its blanks with the date, Plaintiff's information, the purchase price of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00), and reflected that the Documentation Fee of Three Hundred Ninety-Nine and 00/100 Dollars ($399.00) and first year dues of One Hundred Ninety-Nine and 00/100 Dollars ($199) were waived for a grand total of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00). Plaintiff remembers two other couples purchasing more expensive packages after the presentation.

28. The presenter had Plaintiff sign the Agreement and instructed Plaintiff how to complete the responses to the Vacation Inspirations Membership Acknowledgment (the "Acknowledgment"), which was "yes to everything, except no to #10 and N/A to #11, before having Plaintiff sign it;

29. The presenter, in response to the Plaintiff's question about the term "right of rescission," stated that it dealt with real estate and since the Plaintiff was not buying a timeshare it did not relate or pertain to the Membership;

30. Presenter also represented to the Plaintiff that VI's primary source of revenue was from the annual dues and not the Member Purchase Price payments;

31. After running Plaintiff's credit card presenter compiled the signed paperwork, including the Agreement and the Acknowledgment, and provided them to the Plaintiff;

32. The presenter then provided Plaintiff with a coupon and a check for One Hundred and 00/100 Dollars ($100.00);

33. As Plaintiff was escorted to the door to leave, the speaker stated to Plaintiff and his girlfriend, "Welcome to the family;"

34. Plaintiff first attempted to utilize the travel membership on a trip to Sante Fe, New Mexico, when Plaintiff discovered the membership may have provided a savings of five to ten percent (5 – 10%) of the inflated online pricing, which was not the promised discount;

35. Plaintiff contacted the Defendants VI and DT and was connected with Defendant Pumilla;

36. Defendant Pumilia and another representative, Lucinda, refused to listen to Plaintiff's concerns and simply restated their claims that the travel membership provided the promised savings;

37. Plaintiff scheduled a second trip through Defendant VI to Chatham Cape Cod, Massachusetts;

38. Plaintiff worked with VI operator, Jennifer, and upon arrival to his hotel discovered that VI cost him an extra Forty-Six and 00/100 Dollars ($46.00), because Jennifer quoted the wrong price to Plaintiff, so Plaintiff had to pay that difference;

39. Plaintiff attempted to schedule a third trip to Montreal for three nights and were quoted a price of One Thousand Three Hundred Thirty-Three and 00/100 Dollars ($1,333.00);

40. However, during his planning, Plaintiff determined that a similar trip using an online application could be scheduled for One Thousand Four Hundred Five and 00/100 Dollars ($1,405.00);

41. As a result, Plaintiff calculated that VI's pricing only afforded him a five percent (5%) discount compared to the online pricing available through other applications;

42. Following this discovery, Plaintiff spoke with two supervisors in Defendant Pumilia and the other named Kari, in an effort to claim that VI services had not lived up to the promises the Defendants' presenter had made to him in order to entice him to purchase the Membership;

43. Defendant Pumilia and Kari attempted to convince Plaintiff that their discounts were from inflated pricing which Plaintiff knew to be inaccurate based upon the research performed in preparation of scheduling his trip to Montreal;

44. Plaintiff explained that he knew Defendant Pumilia and Kari were lying to him and refused to accept their representations without verification, but neither Defendant Pumilia, nor Kari, would provide verification for their claims of savings of twenty to fifty percent (20 – 50%);

45. Plaintiff requested the cancellation of his Membership and the return of his initial Membership fee and his One Hundred Ninety-Nine and 00/100 Dollars ($199.00) annual fee, but the Defendants refused;

46. After Plaintiff filed a complaint with the Better Business Bureau, Defendants returned Plaintiff's One Hundred Ninety-Nine and 00/100 Dollars ($199.00) annual fee, but the Defendants continue to refuse to return the Membership fee of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00)

47. Plaintiff has since learned of the reviews by other purchasers of Defendant VI's travel membership regarding the deceptive tactics employed by the Defendants and the poor quality of the services offered by VI for owners of a Membership;

48. Defendants target individuals who are visiting the City of Charleston and would be more receptive to their deceptive sales tactics;

49. During the presentation, Plaintiff were subjected to high pressure and deceptive sales tactics, including:

a. A ban on cellphone usage which prevented Plaintiff from researching Defendants and reviewing online reviews prior to purchasing a Membership;

b. Rushed contracting in order to create anxiety through the fear of missing out on Defendant VI's travel membership and travel related services, which was described as a "Once in a lifetime opportunity;"

c. Rushed contracting in order to create anxiety through the representation that the discounted Memberships were only available on the day of the presentation and would not be available afterwards;

d. Presented deceptive claims regarding awards presented to Defendant VI by cruise lines with regard to the services provided to consumers through the Membership;

e. Utilized coercive sales tactics that prevented Plaintiff from making a free and informed choice;

f. Ingratiating themselves with attendees by telling an attendee who purchased a Membership "Welcome to the family;"

g. Creating an incentive for participants to purchase a Membership in order to escape the undue influence that Defendants' sales tactics generated;

50. The Agreement was a form contract in which a representative of Defendants VI and DT filled in the blanks with information provided by the Plaintiffs;

51. The Agreement provided that:

a. Plaintiff was entitled "to request up to a week of condominium accommodations per year provided by VI."

b. "THE UNDERSIGNED MEMBER ACKNOWLEDGES **THIS IS A NON-CANCELABLE CONTRACT**. THIS IS NOT A TIMESHARE, HEALTH CLUB, BUYERS CLUB, NOR DOOR TO DOOR SALES CONTRACT AGREEMENT. PLEASE MAKE YOUR DECISION ACCORDINGLY."

c. "Client acknowledges that this agreement is not subject to any "right of recission" and may not be cancelled."

d. "Any controversy, claim or dispute arising out of or relating to this Purchase Agreement, shall be resolved and decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") (however, not under the auspices of AAA), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall be selected by VI. Upon final award, arbitrator compensation and cost of the location shall be paid by the non-prevailing party. The arbitration shall take place in Charleston, S.C. at the Charleston County Courthouse or other location determined by VI."

52. Plaintiff attempted to utilize the services covered through the Agreement, but found the representations made by Defendants VI and DT, through their representatives, including the other Defendants, were false, misleading, deceptive and fraudulent;

53. Plaintiff contacted Defendants on several occasions, including Defendant Pumilia, to discuss his complaints regarding the false, misleading, deceptive and fraudulent representations, which he relied upon in purchasing the Membership, but Defendants have only refunded Plaintiff's One Hundred Ninety-Nine and 00/100 Dollars ($199.00) and have refused to refund the Membership purchase price of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00).

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Declaratory Judgment)

54. The Plaintiff reaffirms and reiterates all of the allegations in Paragraphs 1 through 53 as if fully repeated and incorporated herein verbatim;

55. South Carolina law requires arbitration agreements to be 'geared towards achieving an unbiased decision by a neutral decision maker;'

56. The Agreement's Terms and Conditions contains an arbitration clause buried in its final article inconspicuously titled "Dispute Resolution";

57. The arbitration clause contains no differentiated font in order to call attention to its terms nor did the sales presentation or any salesperson explain there was an arbitration agreement included;

58. The terms of the arbitration clause lack mutuality, by granting VI the rights to select the arbitrator and the location of the arbitration, should it not occur at the Charleston County Courthouse;

59. The arbitration clause also requires that the "arbitrator compensation and cost of the location shall be paid by the non-prevailing party;"

60. The arbitration clause requiring that arbitration be held "not under the auspices of [American Arbitration Association]" introduces further doubt about the arbitration process's fairness and impartiality;

61. The practical implication of a majority of the arbitration provision is to grant VI unfair control over the process and expenses of the arbitration proceedings so as to inhibit a Member from seeking dispute resolution and to permit a biased result from an arbitrator who may not be neutral;

62. The one sided arbitration clauses contained in the "Dispute Resolution" provision have an *in terrorem* effect because Members may decline to exert their rights when the only path is an unfair and potentially costly unknown out-of-court process;

63. The arbitration clause as a whole undermines the neutrality of any potential arbitration proceeding and violates federal and state law;

64. Whether pursuant to S.C. Code Ann. § 15-48-10, the Federal Arbitration Act, or under its own terms, the arbitration clause is not enforceable and the Agreement is not subject to mandatory arbitration since it is fundamentally unfair for lack of mutuality and fails to promote a neutral and unbiased arbitral forum;

65. The Agreement, including the arbitration provisions contained within, is a form contract which was completed at the conclusion of Defendants' presentation and was presented on a "take it or leave it" basis;

66. The Agreement's terms were not negotiable such that Plaintiff lacked a meaningful choice of entering into the contract;

67. Application of the arbitration clause's terms create a substantial lack of mutuality between the parties and allow Defendant VI to both discourage members from seeking dispute

resolution by manipulating the expenses to the detriment of the opposing party, while also securing a biased decision from a biased arbitrator;

68. The arbitration clause's terms are so oppressive that no reasonable person would make them and no fair and honest person would accept them;

69. Pursuant to S.C. Code Ann. § 15-53-10, et. seq., Plaintiff is entitled to a declaratory judgment that the arbitration clause in the Agreement is invalid and unenforceable due to its unconscionable terms and Plaintiff's inability to realize an unbiased decision by a neutral arbitrator;

70. Pursuant to Rule 57, SCRCP, the Plaintiff requests a speedy hearing of this action;

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Unfair Trade Practices)

71. Plaintiff incorporate the allegations of Paragraphs 1 through 53 as if restated verbatim herein;

72. Defendants VI and DT, through the actions of their agents, violated S.C. Code Ann. § 39-5-20 of the South Carolina Unfair Trade Practices Act (the "Act"), as a result of the utilization or employment of unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce;

73. Defendants Shirley, Gardner, and Pumilia, each violated the Act as a result of their commission, participation, training, directing or authorizing the utilization or employment of the unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce;

74. Defendants Shirley and Gardner were individually named defendants in a State of Georgia enforcement action (No. 2012CV211716) for similar unfair and deceptive conduct;

75. The Assurance of Voluntary Compliance in the State of Georgia action stated "Gardner and Shirley manage and direct the business activities" of a similar entity in which they assume materially the same directorial roles;

76. Defendants Shirley and Gardner were also named in connection with a State of Texas enforcement action (No. 2017CI11368) for similar unfair and deceptive conduct;

77. Defendant Pumilia is the Director of Member Services at VI and; as indicated by his title and his statements to the media; is training, directing or authorizing the unfair and deceptive sales practices;

78. The Membership materials also contained a letter "From [VI's] Board of Directors" indicating their authorization, at a minimum, of the sales process and tactics used;

79. Plaintiff was misled by the Defendants' representations and other practices utilized to entice them to purchase an inferior travel membership that no reasonable person would purchase without the representations and practices employed or authorized by the Defendants;

80. As evidenced, in the first instance, by the vast record of victims, Defendants' unfair and deceptive acts have been repeated on numerous occasions in the past and are capable of continuing to be repeated in the future such that they affect the public interest;

81. Defendants' actions, in large part relating to their high pressure and deceptive sales tactics, are a violation of the Act because these actions are immoral, unethical, oppressive, and offensive to public policy;

82. As a result of Defendants' unfair and deceptive acts, Plaintiff has suffered monetary losses;

83. The deceptive representations and unfair practices employed on the Plaintiff were unconscionable and materially prevented the discovery of the true nature of the purported travel

membership, past victims, and its public perception, such that Plaintiff was unable to avoid the injuries that resulted from the Defendants' conduct;

84. The unfair methods of competition and unfair and deceptive acts or practices in the conduct of commerce by the Defendants and/or their directing or authorizing such acts and practices proximately caused the Plaintiff injury;

85. Plaintiff has been damaged in the amount of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00) as a result of the Defendants violations of the Act;

86. Defendants have willfully or knowingly employed the unfair and deceptive acts or practices;

87. Defendants knew or should have known that their oppressive and high-pressure sales tactics violated the Act given the centrality of Defendants sales process to their business and the connectiveness to two prior state enforcement actions for similar conduct against the same or related individuals and entities;

88. Plaintiff is therefore entitled to actual and treble damages, as well as attorneys' fees and costs for this Cause of Action;

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Injunctive Relief Pursuant to §39-5-38(D)(1))

89. Plaintiff incorporates the allegations of Paragraphs 1 through 53 as if restated verbatim herein;

90. Through Defendants' actions targeting visitors to the City of Charleston by the unfair and deceptive practices previously outlined, there exist conditions of ongoing violations or attempted violations of the Chapter 5 of Title 39, the South Carolina Unfair Trade Practices Act;

91. Defendants have and will continue to employ these unfair and deceptive tactics if not stopped;

92. Other participants will be subjected to irreparable harm if Defendants are permitted to continue their predatory practices upon visitors to Charleston;

93. The City of Charleston and State of South Carolina will realize continued reputational diminishment as a result of Defendants' predatory practices upon visitors to Charleston;

94. Upon information and belief, the Plaintiff believes an injunction of Defendants' actions would best serve the public interest and would petition the Court for an injunction against the Defendants pursuant to S.C. Code Ann.§ 39-5-38(D)(1);

FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Equitable Relief – Rescission)

95. Plaintiff incorporates the allegations of Paragraphs 1 through 53 as if restated verbatim herein;

96. Plaintiff entered into the Agreement based upon a mistake of fact;

97. That the Defendants' representations with regard to the scarcity of discounted memberships, quality of reviews, industry awards, services that meet participant's expectations were false;

98. The misrepresentations were each material in that they were significant, essential to, and of such a nature that knowledge of their falsity would have reasonably affected the Plaintiff's decision to enter into the Agreement with VI and DT;

99. That Defendants fraudulently misrepresented to Plaintiff, the scarcity of discounted memberships, quality of reviews, their receipt of industry awards, and their ability to provide services that meet participants' expectations, all with knowledge of each representation's falsity or a reckless disregard for the truth or falsity of Defendants' statements;

100. Defendants made the misrepresentations to Plaintiff, with the intent that Plaintiff would act upon that information in deciding whether or not to purchase a Membership for Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00);

101. That Plaintiff was without knowledge that the representations outlined above were false;

102. That Plaintiff relied on the representations outlined above in proceeding with the purchase of the Membership;

103. Plaintiff's reliance on Defendants' representations was reasonable under the circumstances, and based on the fundamental principles of good faith and fair dealing to which both parties are subject;

104. Defendants made the representations without intention of being able to honor them when Plaintiff purchased a Membership;

105. Over the period since the Agreement was executed, the Plaintiff has discovered the falsity of Defendants' representations regarding the scarcity of discounted memberships, the quality of other members' reviews of Defendants' services, Defendants' receipt of industry awards for the quality of the services Defendants provide; and the quality of the services Defendants provide to members were false and have been directly and proximately injured in the following respects:

106. That Plaintiff was induced to purchase the Membership from VI and DT based upon Defendants' fraud, deceit, misrepresentations and concealment;

107. That Plaintiff was not negligent in entering into the Agreement;

108. Plaintiff is entitled to the equitable remedy of rescission of the Agreement and compensate him for their related court costs;

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

109. Plaintiff incorporates the allegations of Paragraphs 1 through 53 as if restated verbatim herein;

110. That the Defendants' representations with regard to the scarcity of discounted memberships, industry awards, services that meet participant's expectations were false;

111. The misrepresentations were each material in that they were significant, essential to, and of such a nature that knowledge of their falsity would have reasonably affected the Plaintiff's decision to enter into the Agreement with VI and DT;

112. That Defendants fraudulently misrepresented to Plaintiff, the scarcity of discounted memberships, their receipt of industry awards, and their ability to provide services that meet participants' expectations, all with knowledge of each representation's falsity or a reckless disregard for the truth or falsity of Defendants' statements;

113. Defendants made the misrepresentations to Plaintiff, with the intent that Plaintiff would act upon that information in deciding whether or not to purchase a Membership for Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00);

114. That Plaintiff was without knowledge that the representations outlined above were false;

115. That Plaintiff relied on the representations outlined above in proceeding with the purchase of the Membership;

116. Plaintiff's reliance on Defendants' representations was reasonable under the circumstances, and based on the fundamental principles of good faith and fair dealing to which both parties are subject;

117. Over the period since the Agreement was executed, the Plaintiff has discovered the falsity of Defendants' representations regarding the scarcity of discounted memberships, Defendants' receipt of industry awards for the quality of the services Defendants provide; and the quality of the services Defendants provide to members were false and have been directly and proximately injured in the following respects:

a. Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00) in actual damages, and,

b. The costs of bringing this action, including court costs, expenses and legal fees;

<u>FOR A SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS</u>
(Negligent Misrepresentation)

118. Plaintiff reaffirms and reiterates all of the allegations in Paragraph 1 through 53 as if fully repeated and incorporated herein verbatim;

119. That Defendants made false representations to the Plaintiff in stating that: 1) discounted memberships were scarce; 2) Defendants had received industry awards based upon the quality of the services provided, and 3) Defendants were able to provide services that meet participants' expectations;

120. The Defendants had a pecuniary interest in making the false representations to Plaintiff because these facts, either considered in isolation or as a whole, supported the asking price for the discounted Membership presented to Plaintiff and without such circumstances the Plaintiff would not have paid the asking price or purchased the Membership;

121. That Defendants owed a duty of care to the Plaintiff, to see that they communicated truthful information to the Plaintiff while attempting to maximize the sales price of a Membership;

122. That Defendants breached that duty of care to the Plaintiff when they communicated false information or otherwise recklessly disregarded the truth in their dealings with

the Plaintiff with regard to the scarcity of discounted membership, quality of purchaser reviews, receipt of industry awards, and their ability to provide services that meet participants' expectations;

123. That Plaintiff, having no other reliable information related to the scarcity of discounted memberships, Defendants' receipt of industry awards for their services, or Defendants' ability to provide the services to purchasers as outlined in their presentation to Plaintiff, justifiably relied on the false information communicated by the Defendants prior to executing the Agreement;

124. That as a result of the Defendants' negligent misrepresentations, the Plaintiff would not have purchased a Membership, which proximately and consequently caused the following damages:

a. Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00) from the purchase of the Membership, and,

b. The costs of bringing this action, including court costs, expenses and legal fees;

WHEREFORE, the Plaintiff requests that this Court enter its judgment:

(1) declaring that the arbitration clause contained in the Agreement is invalid and unenforceable;

(2) ruling that Defendants have willfully violated the South Carolina Unfair Trade Practices Act and Plaintiff is entitled to trebled damages, based upon their actual damages of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00) from the purchase of the Membership, and their reasonable attorneys' fees;

(3) ruling that Defendants are committing ongoing violations or attempted violations of Chapter 5 of Title 39, the South Carolina Unfair Trade Practices Act and issue an injunction against Defendants from acting in violation of the Act;

(4) ruling that Defendants induced Plaintiff to enter into the Agreement by way of fraudulent representations which they did not intend to perform and that Plaintiff is entitled to rescind the Agreement;

(5) ruling that Defendants fraudulently misrepresented their program and services to be provided under the Agreement and award Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiff;

(6) ruling that Defendants negligently misrepresented their program and services to be provided under the Agreement and award Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiff;

(7) such other and further relief as the Court may deem appropriate.

Respectfully submitted,

s/David W. Wolf
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Attorney for Plaintiff

September 5, 2024
Charleston, South Carolina

VERIFICATION OF COMPLAINT

I, Frank Perrelli, Jr., being first duly sworn, depose and say that I have read the foregoing Verified Complaint and know the contents thereof, and that the information is true and correct to the best of my knowledge, except as to those matters and things alleged upon information and belief, and as to those things, I believe them to be true.

____
Frank Perrelli, Jr.

Sworn to before me this 4 th day of September, 2024.

____
Notary Public for the State of Connecticut
My Commission Expires:

MELISSA PANTALEO
Notary Public, State of Connecticut
My Commission Expires Apr. 30, 2025

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-02646
PETER SKOLER and PATRICIA SKOLER Plaintiffs, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH, SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA Defendants.	)	**ANSWER AND AFFIRMATIVE DEFENSES**

COME NOW, Defendants Vacation Inspirations ("Vacation Inspirations"), Destination Travel, LLC ("Destination Travel"), Joseph Shirley ("Shirley"), Randy Gardner ("Gardner") and Jeffrey Pumilia ("Pumilia"), collectively referred to as ("Defendants"), and file their Answer, respectfully showing the Court as follows:

GENERAL DENIAL

Defendants deny all allegations in the Complaint not otherwise admitted herein.

RESPONSE TO SPECIFIC ALLEGATIONS

In response to the numbered paragraphs in the Complaint, Defendants respond as follows:

PARTIES, JURISDICTION AND VENUE

1. Defendants do not know the current State of which Plaintiffs are residents and citizens; however, to the best of Defendants' knowledge, information, and belief the allegation is correct.

2. Denied.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Jurisdiction is admitted and the remainder of the allegations are denied.

9. Admitted.

FACTS

10. Defendants lack information sufficient to form a belief as the allegation, which is therefore denied.

11. Defendants deny the allegation of the word "approached" and admit the remaining allegations.

12. Admitted.

13. Defendants show that a proper and required sign was in the window specifically stating that the location is a "Vacation Membership Seller" and that "This business is not affiliated with the City of Charleston, The Charleston Visitor Reception and Transportation Center or the Charleston Area Convention and Visitors Bureau." The allegation as to "legitimate visitor's bureau" is therefore denied. The allegation as to "older couples" is too vague to require a response and is therefore denied. The remaining allegations are admitted.

14. Defendants are unable to admit or deny that any such meeting was for fifteen (15) minutes. However, Defendants admit that individual meetings with couples took place.

15. Defendants deny the allegation as to "quickly" and admit the remaining allegations.

16. Denied.

17. Denied. Plaintiffs made no effort or request to peruse the notebook and cannot now complain that they were prevented from reading the contents thereof.

18. Admitted

19. Denied.

20. Admitted.

21. Admitted

22. It was made clear that cellphones were not to be used during the presentation. Plaintiffs agreed and then failed to honor that agreement.

23. With regard to the allegations in this paragraph, Defendants do not know what Plaintiffs were thinking nor why Mr. Skoler took out his cellphone. However, in doing so, Mr. Skoler breached his agreement regarding cellphone usage.

24. With regard to the allegations in this paragraph, Defendants deny the allegation of "public scolding" and deny the remaining allegations.

25. With regard to the allegations in this paragraph, Defendants assert that the word "substantial" is too vague for a response. Defendants further show that there are "significant" and ongoing positive reviews.

26. Admitted.

27. Defendants do not specifically recall the allegation and therefore must deny it.

28. Defendants do not specifically recall the allegation and state that any impression contended by Plaintiffs is subjective and to any extent required, the allegations in this paragraph are denied.

29. Admitted.

30. Defendants cannot respond to the contention that Plaintiffs remained reluctant to

purchase a VI Membership, but admit the remaining allegations.

31. Denied.

32. Defendants admit Plaintiffs purchased a Membership. Defendants cannot respond to the allegation of "worn down." Defendants note that Plaintiffs could have just as easily said "no thank you" and left the premises without making the purchase.

33. Defendants admit a copy of the Agreement was presented to Plaintiffs and deny the remaining allegations.

34. Denied.

35. Denied. Plaintiffs had every opportunity to read and review the Agreement and to take whatever next steps they chose to take, including but not limited to leaving the premises without signing any documents and without completing the purchase.

36. Denied.

37. Denied.

38. Defendants agree that Plaintiffs purchased a Membership for the price noted. The remaining allegations are denied as to the online reviews.

39. Denied as alleged.

40. Admitted.

41. Admitted.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

42. Defendants adopt and incorporate the responses to paragraphs 1 through 41 as if fully set forth verbatim herein.

43. The allegations are a legal conclusion to which Defendants cannot respond.

44. Defendants deny that the arbitration clause is buried as alleged and further show that 'Dispute Resolution" is not inconspicuously titled. Plaintiffs are sophisticated, well-educated adults who certainly know what the term "Dispute Resolution" is about. The terms of the arbitration clause speak for themselves and to any extent required, the allegations are denied.

45. The document speaks for itself. To the extent necessary, the remaining allegations are denied.

46. The document speaks for itself. To the extent required, the allegations are denied.

47. The document speaks for itself. To the extent required, the allegations are admitted.

48. The allegations are a legal conclusion to which Defendants cannot respond. However, to any extent necessary, the allegations are denied.

49. The allegations are a legal conclusion to which Defendants cannot respond. However, to any extent necessary, the allegations are denied.

50. Denied.

51. Denied.

52. Denied. With regard to the allegations in this paragraph, Defendants agree that Plaintiffs were not obligated to sign the Agreement and could have left the premises at any time without concluding the purchase.

53. Denied. With regard to the allegations in this paragraph, Plaintiffs could have chosen to leave the premises without concluding the purchase; however, Plaintiffs consented to the terms of the Agreement and signed it on several pages.

54. Denied.

55. Denied.

56. Denied. As allegedly "honest persons," Plaintiffs, and both did in fact accept the terms and executed all necessary documents to complete the purchase.

57. Denied.

58. Denied.

SECOND CAUSE OF ACTION
(Unfair Trade Practices)

59. Defendants adopt and incorporate the responses to paragraphs 1 through 58 as if fully set forth verbatim herein.

60. Denied.

61. Denied.

62. The document mentioned speaks for itself.

63. The document mentioned speaks for itself.

64. The document mentioned speaks for itself.

65. Denied.

66. The document mentioned speaks for itself. To the extent further response is necessary, the remainder of the allegations are denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

THIRD CAUSE OF ACTION
(Injunctive Relief)

77. Defendants adopt and incorporate the responses to paragraphs 1 through 76 as if fully set forth verbatim herein.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

FOURTH CAUSE OF ACTION
(Equitable Relief - Recission)

83. Defendants adopt and incorporate the responses to paragraphs 1 through 82 as if fully set forth verbatim herein.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied. There were no misrepresentations.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

<u>FIFTH CAUSE OF ACTION</u>
(Fraudulent Misrepresentation)

97. Defendants adopt and incorporate the responses to paragraphs 1 through 96 as if fully set forth verbatim herein.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Defendants deny that any representations were false.

103. Defendants deny that any representations were false.

104. Defendants deny that any representations were false.

105. Defendants deny that any representations were false. Defendants deny the remaining allegations in this paragraph.

<u>SIXTH CAUSE OF ACTION</u>
(Negligent Misrepresentation)

106. Defendants adopt and incorporate the responses to paragraphs 1 through 105 as if fully set forth verbatim herein.

107. Denied.

108. Denied. There were no false representations. The remaining allegations in this paragraph are denied.

109. To the extent Defendants owed any duty to Plaintiffs, Defendants complied with all such duties. All remaining allegations in this paragraph are denied.

110. To the extent Defendants owed any duty to Plaintiffs, Defendants complied with all such duties. All remaining allegations in this paragraph are denied.

111. To the extent Defendants owed any duty to Plaintiffs, Defendants complied with all such duties. All remaining allegations in this paragraph are denied.

112. To the extent Defendants owed any duty to Plaintiffs, Defendants complied with all such duties. All remaining allegations in this paragraph are denied.

FIRST AFFIRMATIVE DEFENSE

113. Arbitration is required pursuant to the Agreement and the parties should be ordered to arbitration and this litigation should be dismissed.

SECOND AFFIRMATIVE DEFENSE

114. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and should be dismissed under South Carolina Rule of Civil Procedure 12(b)(6).

THIRD AFFIRMATIVE DEFENSE

115. Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

116. Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

117. Plaintiffs' claims for punitive damages as alleged are not permitted by South Carolina law.

SIXTH AFFIRMATIVE DEFENSE

118. Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

119. Plaintiffs' claims are barred by the doctrine of merger as contained in the subject Agreement.

EIGHT AFFIRMATIVE DEFENSE

120. Defendants reserve the right to amend their Answer and assert such additional affirmative defenses as may become available or apparent to Defendants during discovery or trial.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants pray the Court to:

i. Order the parties to arbitration as provided in the Agreement;
ii. Enter and order dismissing Plaintiffs' Complaint with prejudice and declaring that Plaintiffs shall have and recover nothing from Defendants.
iii. That all relief sought by Plaintiffs be denied;
iv. Tax the costs of litigation against Plaintiffs; and
v. Provide such other and further relief in this action as may be just and proper.
vi. In the event this matter is not ordered to arbitration, Defendants request a trial by jury.

URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK, & KEITH, P.A.

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(Pending Pro Hac Vice)

Attorneys for Defendants

July 3, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-4606
FRANK PERRELLI, JR. Plaintiff, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH, SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA Defendants.	**ANSWER AND AFFIRMATIVE DEFENSES**

COME NOW, Defendants Vacation Inspirations ("Vacation Inspirations"), Destination Travel, LLC ("Destination Travel"), Joseph Shirley ("Shirley"), Randy Gardner ("Gardner") and Jeffrey Pumilia ("Pumilia"), collectively referred to as ("Defendants"), and file their Answer, respectfully showing the Court as follows:

GENERAL DENIAL

Defendants deny all allegations in the Complaint not otherwise admitted herein.

RESPONSE TO SPECIFIC ALLEGATIONS

In response to the numbered paragraphs in the Complaint, Defendants respond as follows:

PARTIES, JURISDICTION AND VENUE

1. Defendants do not know the current State in which Plaintiff resides and is a citizen; however, to the best of Defendants' knowledge, information, and belief the allegation is correct.
2. Denied.
3. Admitted.
4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted that this Honorable Court has personal and subject matter jurisdiction herein; Defendants deny the remaining allegations.

9. Admitted.

FACTS

10. Defendants lack sufficient information to form a belief as to the allegation, which is therefor denied.

11. Defendants deny the allegation of the word "approached," deny "the ability to save twenty to fifty percent on hotel and airfare expenses, as well as, 1 to 4 weeks vacation at select condominiums . . ." and admit the remaining allegations.

12. Defendants lack sufficient information to form a belief as to the allegation of "older and retired" and admit the remaining allegations.

13. Defendants lack sufficient information to form a belief as to what Plaintiff understands and denies the remaining allegations.

14. Defendants note that there are substantial positive reviews online as well as some negative reviews.

15. Defendants admit the allegations and show that VI has the right to choose who would become Members.

16. Defendants deny the allegation of the word "wholesaler" and admit the remaining allegations.

17. Defendants deny the allegations as written.

18. Defendants deny the allegations as written.

19. Defendants deny the allegations as written.

20. Defendants deny the allegations as written.

21. Defendants admit the allegations.

22. Defendants deny the allegations.

23. Defendants deny the allegations as written

24. Defendants deny the allegations as to the length of the presentation and admit the remaining allegations.

25. Defendants admit the allegations as written.

26. Defendants admit the allegations as written.

27. Defendants lack sufficient information to form a belief as to what Plaintiff remembers and admit the remaining allegations.

28. Defendants deny the allegations as written.

29. Defendants agree that Plaintiff did not buy a timeshare and deny the remaining allegations.

30. Defendants deny the allegations as written.

31. Defendants admit the allegations as written.

32. Defendants admit the allegations as written.

33. Defendants do not specifically recall whether the allegation is correct or not as to Plaintiff.

34. Defendants deny the allegations as written.

35. Defendants admit the allegations as written.

36. Defendants deny the allegations as written.

37. Defendants believe that the allegation is accurate.

38. Defendants deny the allegations as written.

39. Defendants believe that the allegation is accurate.

40. Defendants do not have sufficient information necessary to admit or deny the allegation.

41. Defendants do not have sufficient information necessary to admit or deny the allegations.

42. Defendants admit that conversations took place and show that Plaintiff was rude and offensive and unwilling to listen to explanations provided to him.

43. Defendants deny the allegations as written.

44. Defendants show that Plaintiff did not explain anything; instead, he refused to listen to what he was being told and was rude and offensive. To the extent necessary, the allegations are denied.

45. Defendants show that Plaintiff never requested anything; he simply made unreasonable demands and refused to listen to what he was being told. Defendants admit that cancellation was not acceptable.

46. Defendants acknowledge Plaintiff filed a complaint with the Better Business Bureau and that a proper response was made to the complaint. Defendants admit that the annual fee was returned to Plaintiff and that no other refund was offered or required. Defendants further show that Plaintiff filed a dispute with his credit card provider and that Plaintiff LOST the dispute.

47. Defendants show that there are negative reviews and many, many more positive reviews. Defendants further show that VI and DT are fully accredited by the Better Business Bureau and enjoy an A+ rating.

48. Defendants deny the allegations.

49. Defendants deny the allegations.

50. Defendants show that the document speaks for itself and was signed in several places by Plaintiff.

51. Defendants show that the Agreement speaks for itself and was signed in several places by Plaintiff.

52. Defendants deny the allegations as written.

53. Defendants acknowledge that the Membership purchase price was not refunded, with good reason.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

54. Defendants adopt and incorporate the responses to paragraphs 1 through 53 as if fully set forth verbatim herein.

55. The allegations are a legal conclusion to which Defendants cannot respond.

56. Defendants deny that the arbitration clause is buried as alleged and further show that "Dispute Resolution" is not inconspicuously titled. Plaintiff claims to be a sophisticated, well-educated adult who certainly knows what the term Dispute Resolution is about.

57. The terms of the arbitration clause speak for themselves and to any extent required, the allegations are denied.

58. The terms of the arbitration clause speak for themselves and to any extent required, the allegations are denied.

59. The terms of the arbitration clause speak for themselves and to any extent required, the allegations are denied.

60. The terms of the arbitration clause speak for themselves and to any extent required, the allegations are denied.

61. The terms of the arbitration clause speak for themselves and to any extent required, the allegations are denied.

62. The terms of the arbitration clause speak for themselves and to any extent required, the allegations are denied.

63. The allegations are denied.

64. The allegations are a legal conclusion to which Defendants cannot respond. To the extent necessary, the allegations are denied.

65. Denied. With regard to the allegations in this paragraph, Defendants agree that Plaintiff was not obligated to sign the Agreement and could have left the premises at any time without concluding the purchase.

66. Denied. With regard to the allegations in this paragraph, Plaintiff could have chosen to leave the premises at any time without concluding the purchase; however, Plaintiff consented to the terms of the Agreement and signed it on several pages.

67. Denied.

68. Denied. As an allegedly "honest person," Plaintiff did in fact accept the terms and executed all necessary documents to complete the purchase.

69. Denied.

70. Denied.

SECOND CAUSE OF ACTION
(Unfair Trade Practices)

71. Defendants adopt and incorporate the responses to paragraphs 1 through 53 as if fully set forth verbatim herein.

72. Denied.

73. Denied.

74. The document mentioned speaks for itself. To the extent any further response is necessary, the allegations are denied.

75. The document mentioned speaks for itself.

76. The document mentioned speaks for itself.

77. Denied.

78. The document mentioned speaks for itself and to the extent necessary, the allegations are denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

THIRD CAUSE OF ACTION
(Injunctive Relief Pursuant to Section 39-5-38(D)(1))

89. Defendants adopt and incorporate the responses to paragraphs 1 through 53 as if fully set forth verbatim herein.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

FOURTH CAUSE OF ACTION
(Equitable Relief-Rescission)

95. Defendants adopt and incorporate the responses to paragraphs 1 through 53 as if fully set forth verbatim herein.

96. Denied. There were no misrepresentations or false representations.

97. Denied. There were no misrepresentations or false representations.

98. Denied. There were no misrepresentations or false representations.

99. Denied. There were no misrepresentations or false representations.

100. Denied. There were no misrepresentations or false representations.

101. Denied. There were no misrepresentations or false representations.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

109. Defendants adopt and incorporate the responses to paragraphs 1 through 53 as if fully set forth verbatim herein.

110. Denied.

111. Defendants deny that there were any misrepresentations and deny the remaining allegations.

112. Defendants deny that there were any misrepresentations and deny the remaining allegations.

113. Defendants deny that there were any misrepresentations and deny the remaining allegations.

114. Defendants deny that there were any misrepresentations and deny the remaining allegations.

115. Defendants deny that there were any misrepresentations and deny the remaining allegations.

116. Defendants deny that there were any misrepresentations and deny the remaining allegations.

117. Defendants deny that there were any misrepresentations and deny the remaining allegations.

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

118. Defendants adopt and incorporate the responses to paragraphs 1 through 53 as if fully set forth verbatim herein.

119. Denied. There were no false representations.

120. There were no false representations and the remaining allegations are denied.

121. To the extent that Defendants owed any duty to Plaintiff, Defendants complied with all such duties.

122. Denied.

123. Denied. There was no false information.

124. Denied.

FIRST AFFIRMATIVE DEFENSE

Arbitration is required pursuant to the Agreement and the parties should be ordered to arbitration and this litigation should be dismissed.

SECOND AFFIRMATION DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted and should be dismissed under South Carolina Rule of Civil Procedure 12(b)(6).

THIRD AFFIRMATION DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages as alleged are not permitted by South Carolina law.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to amend their Answer and assert such additional affirmative and other defenses as may become available or apparent to Defendants during the course of discovery and/or trial.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray the Court to:

i. Order the parties to arbitration as provided in the Agreement;

ii. Enter an Order dismissing Plaintiff's Complaint with prejudice and declaring that Plaintiff shall have and recover nothing from Defendants.

iii. That all relief sought by Plaintiff be denied;

iv. Tax the costs of litigation against Plaintiff; and

v. Provide such other and further relief in this action as may be just and proper.

URICCHIO, HOWE, KRELL, JACOBSON,
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Attorneys for Defendants

November 4, 2024
Charleston, South Carolina

Exhibit E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
PETER SKOLER and PATRICIA SKOLER,	)	Civil Action No. 2024-CP-10-02646
PLAINTIFFS,	)	
	)	
vs.	)	**MOTION TO RECONSIDER THE COURT'S ORDER COMPELLING ARBITRATION AND STAYING PROCEEDINGS UNDER RULES 52(b) AND 59(e)**
	)	
VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA,	)	
	)	
DEFENDANTS.	)	

Plaintiffs submit this Memorandum in Support of its Motion for Reconsideration of the Court's July 25, 2025 Order Compelling Arbitration and Staying the Proceedings.

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SUMMARY OF ARGUMENTS

Plaintiffs respectfully submit that this Court's Order should be reconsidered on two primary grounds:

First, the Court applied the wrong legal standard. It is well-settled that motions to compel arbitration under the FAA are decided under the same standard as motions for summary judgment pursuant to Rule 56. The Verified Complaint—treated as evidence at this stage—sets out detailed, sworn facts showing material disputes over contract formation, assent, and unconscionability. Defendants, by contrast, submitted no evidence at all to rebut Plaintiffs' sworn allegations or to create any evidentiary dispute. With no competing evidence and discovery still outstanding due to Defendants' refusal to respond, the record was insufficient to compel arbitration.

Second, **the Court's Conclusions of Law must be remediated**. The Court assumed a valid contract without resolving threshold formation challenges and misapplied *Henry Schein* and *Masters*, both of which require a court to decide formation disputes before delegating issues to an arbitrator. The Court further erred in concluding that the parties clearly and unmistakably delegated arbitrability—an untenable conclusion where elderly, unsophisticated consumers signed a rushed, non-negotiable contract with buried terms, including a one-party arbitrator selection and no-cancellation clause. These provisions, coupled with Defendants' high-pressure sales tactics make reconsideration necessary.

STANDARD OF REVIEW

Plaintiffs respectfully submit this Motion pursuant to South Carolina Rules of Civil Procedure 52(b) and 59(e). The Supreme Court of South Carolina recognizes that Rule 59(e) serves "as a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. Dep't of Transp.*, 361

S.C. 9, 21–22 (2004) (acknowledging the South Carolina rule is "practically identical" with the federal rule) (citation omitted). Rule 59(e) is proper when a party "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.* at 24. The motion "shall be served not later than 10 days after receipt of written notice of the entry of the order." SCRCP 59(e). Rule 52(b) provides a similar mechanism relating to requesting reconsideration of a court's findings. *See* SCRCP 59(b); *accord Doe v. Howe*, 367 S.C. 432, 440 n.4 (Ct. App. 2005).

PROCEDURAL BACKGROUND

Plaintiffs filed the Summons and Verified Complaint on May 21, 2024. Defendants were served on June 5, 2024. Defendants answered on July 3, 2024. Plaintiffs served discovery requests, including document requests and interrogatories on November 5, 2024. On November 12, 2024, Defendants filed the Motion to Compel Arbitration and Stay Proceedings with no accompanying brief in support or memorandum of law. On November 22, 2024, Defendants' counsel notified Plaintiffs' counsel that Defendants would not be responding to the discovery requests. By Notice dated February 28, 2025, the parties were informed that hearing on the Defendants' motion was scheduled for oral arguments to take place on March 27, 2025. Without the benefit of a moving brief from Defendants, Plaintiffs filed their Opposition Brief on March 13, 2025. Defendants then filed a Memorandum in Support of their Motion two days before the oral arguments on March 25, 2025. Plaintiffs filed a surreply the next day. The Court held oral arguments on March 27, 2025. On July 25, 2025, the Court electronically filed and entered its Order granting the Motion to Compel Arbitration and Stay Proceedings.

FACTUAL SUMMARY

The Plaintiffs respectfully incorporate the comprehensive set of facts put forth in their Complaint and their Opposition Brief as well as highlights the pertinent facts in this Motion.

While visiting Charleston, Plaintiffs—elderly, out-of-state consumers—were drawn into Defendants' inconspicuous sales facility. Prohibited from using their phones, they could not discover the extensive negative reviews or prior enforcement actions against Defendants' principals for similar schemes.

In a controlled, high-pressure setting, Plaintiffs were steered into a take-it-or-leave-it form contract (with no ability to cancel), and rushed to sign without meaningful review or explanation. Buried in the document was an arbitration clause allowing Defendants alone to choose the arbitrator, set the venue, and impose fees on the non-prevailing party—terms that were neither understood nor explained.

These facts, combined with Defendants' refusal to answer discovery directly relevant to formation and fairness, leave disputed material issues regarding assent, validity, and unconscionability unresolved—making reconsideration of the July 25, 2025 Order necessary.

ARGUMENT

A. THE COURT DID NOT APPLY THE PROPER STANDARD FOR MOTIONS TO COMPEL ARBITRATION UNDER THE FEDERAL ARBITRATION ACT

"Using the proper standard of review is critical to determine the proper outcome." *Barrett v. Charleston Cnty. Sch. Dist.*, 348 S.C. 426, 431 (Ct. App. 2001); *see also Davenport v. Summer*, 269 S.C. 382, 385 (1977) (Reversing the decision because "the lower court erred by failing to apply the correct legal standard"). The Court did not employ the proper standard in its Order. Thus, it is appropriate to reconsider the decision under the correct standard. If the Court does not correct its decision on reconsideration, it must be corrected on appeal. *See Carrier v. State*, 441 S.C. 547, 557 (Ct. App. 2023) ("[W]e will reverse the lower court's decision if it is controlled by an error of law." (quoting *Milledge v. State*, 422 S.C. 366, 374 (2018))).

If a motion to compel arbitration "can be decided 'based on the face of a complaint, and documents relied upon in the complaint,' a motion-to-dismiss standard should be used; otherwise, the summary judgment standard should be applied." *Adler v. Gruma Corp.*, 135 F.4th 55, 63 (3d Cir. 2025) (quoting *Guidotti v. Legal Helpers Debt Resol., LLC*, 716 F.3d 764, 776 (3d Cir. 2013). In the first instance, Plaintiffs posit that the Court should have applied a motion-to-dismiss standard because the Court decided the motion without the benefit of ***any*** discovery. In fact, Plaintiffs sent formal discovery requests to Defendants in November 2024 but never received the discovery requested. Therefore, given the posture, the Court should have applied the motion-to-dismiss standard and taken all allegations in the Complaint as true for the purposes of deciding the motion to compel arbitration. *See Fabian v. Lindsay*, 410 S.C. 475, 481 (2014) (recognizing that the motion-to-dismiss standard "must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true"). Further, under this standard, all the alleged facts must be viewed "in the light most favorable to the [plaintiff] and presume those facts to be true." *Id.*

Plaintiffs' Verified Complaint specifically alleges that the arbitration provision: 1) lacks mutuality; 2) introduces doubt as to the fairness and impartiality of the arbitration process; 3) inhibits a party from seeking dispute resolution; 4) undermines the neutrality of any potential arbitration proceeding and violates federal and state law; 5) is not enforceable since it is fundamentally unfair; 6) was not negotiable and Plaintiffs lacked a meaningful choice of entering into it; 7) terms are so oppressive that no reasonable person would make them and no fair and honest person would accept them; and utilizes *in terrorem* effect *i.e.*, provisions designed to deter consumer victims from pursuing their legal rights. Compl. ¶¶ 45 – 56. Had the Court applied the motion-to-dismiss standard set by *Fabian* and taken all allegations in the Complaint as true for the purposes of deciding the motion to compel arbitration, it could have only properly denied the Defendants' motion. The Court should have viewed Plaintiffs' allegations in the light most favorable to them.

Given that the Court did not take all allegations in the Complaint as true and view them in the light most favorable to the Plaintiffs, the only other possible standard is a summary judgment standard. The Court did not apply this standard either and thus redetermination by the Court under the proper standard is required. *See Karl Sitte Plumbing Co. v. Darby Dev. Co. of Columbia*, 295 S.C. 70, 77 (Ct. App. 1988) ("Because the circuit court applied the wrong standard of review, the judgment below is reversed and the case is remanded for redetermination by the circuit court.").

1. <u>It Is Well-Established that the Summary Judgment Standard Must be Applied</u>

"It is well settled that a motion to compel arbitration is analogous to a motion for summary judgment." *Ex parte Greenstreet, Inc.*, 806 So. 2d 1203, 1208 (Ala. 2001). Federal and state courts alike recognize that the summary judgment standard is appropriate on motions to compel arbitration in general and particularly those, as here, under the FAA. The Plaintiffs provide a ***sampling*** below of authorities but emphasize that there are ***innumerable other examples***:

- ***South Carolina Courts***: *Briody v. THI of South Carolina at Magnolia Place at Greenville, LLC*, No. 2009-CP-23-6381, 2010 WL 9935409, at *4 (S.C.Com.Pl. July 13, 2010) ("When ruling on a motion to compel arbitration, the court uses a standard analogous *to* the summary judgment standard."); *Floyd v. SSC Sumter East Operating Co., LLC*, No. 2022-CP-43-00355, 2022 WL 22592977, at *2 (S.C.Com.Pl. Oct. 4, 2022) ("A motion to compel arbitration pursuant to the FAA is 'akin to the burden on summary judgment.").

- ***Federal Appellate Courts***: *Rowland v. Sandy Morris Fin. & Est. Plan. Servs., LLC*, 993 F.3d 253, 258 (4th Cir. 2021) (recognizing in "resolv[ing] the parties' dispute over whether they agreed to arbitrate . . . the district court must employ the summary judgment standard"). "Most other circuits apply the summary judgment standard to motions under § 4." *Air-Con, Inc. v. Daikin Applied Latin Am., LLC*, 21 F.4th 168, 174 (1st Cir. 2021) (collecting Federal Court of Appeals cases indicating that the First, Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. all apply the summary-judgment standard to motions to compel arbitration).

- ***State Appellate Courts***: *Brown v. Child Advocs., Inc.*, No. 14-24-00012-CV, 2025 WL 1107095, at *3 (Tex. App. Apr. 15, 2025) ("[A] motion to compel arbitration is procedurally akin to a motion for summary judgment and is subject to the same evidentiary standards"); *Oaks v. Parkerson Constr., LLC*, 303 So. 3d 1141, 1144 (Ala. 2020) ("A motion to compel arbitration is analogous to a motion for summary judgment.")

- ***Courts in Fourth Circuit***: *Marshall v. Georgetown Mem'l Hosp.*, No. 221CV02733RMGJDA, 2022 WL 5434226, at *4 (D.S.C. July 7, 2022) ("When ruling on a motion to compel arbitration, courts employ the summary judgment standard." (citing *Rowland*, 993 F.3d at 258)), *report and recommendation adopted*, No. CV 2:21-2733-RMG, 2022 WL 4078024 (D.S.C. Sept. 6, 2022), *aff'd*, 112 F.4th 211 (4th Cir. 2024); *Wolford v. United Coal Co. LLC*, 764 F. Supp. 3d 329, 334 (W.D. Va. 2025) ("The standard for deciding a motion to compel arbitration brought under the FAA . . . is similar to the standard applicable to a motion for summary judgment." (quoting *Ayers v. Markiewicz*, 733 F. Supp. 3d 435, 441 (E.D.N.C. 2024))), *aff'd*, No. 24-1541, 2024 WL 4490699 (4th Cir. Oct. 15, 2024).

As evidenced by the case law *supra*, the overwhelming authority indicates that the summary judgment standard is appropriate on a motion to compel arbitration. In doing so, the Court should have applied the South Carolina summary judgment standard, including the critical principles as laid out below.

2. South Carolina Summary Judgment Standard

Although it is unclear exactly what standard the Court applied in its Order, it is not sufficiently close to the summary judgment standard.

a) All Reasonable Inferences Must Favor Non-Moving Party

"When faced with a motion to compel arbitration that is opposed based on whether an agreement to arbitrate has been made between the parties, the court must give to the opposing party the benefit of all reasonable doubts and inferences that may arise." *Estate of Clinkscales v. Fundamental*

Clinical and Operational Services, LLC, No. 2018-CP-23-05088, 2019 WL 9573826, at *2 (S.C.Com.Pl. Feb. 05, 2019); *Acevedo v. Hunt Valley Holdings, LLC*, No. 2018-CP-42-03421, 2020 WL 12919238, at *1 (S.C.Com.Pl. July 10, 2020) (same); *Rowland*, 993 F.3d at 257 ("[I]n reviewing the district court's denial of a motion to compel arbitration, we accept as true the allegations of the . . . Complaint that relate to the underlying dispute between the parties.'"). "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 15 (2006). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 11 (Ct. App. 2019); *see also Hansen v. DHL Lab'ys, Inc.*, 316 S.C. 505, 513, (Ct. App. 1994), *cert. granted, decision aff'd*, 319 S.C. 79 (1995)("[Q]uestions of credibility can make summary judgment inappropriate.") "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250 (2006). At a minimum, the Court's Order was an improper weighing of Defendants' denials in their Answer (which is not treated as evidence) over Plaintiffs' evidence in its Verified Complaint.

3. The Court did not Properly Review the Verified Complaint

The Court did not take all reasonable inferences in the Verified Complaint in favor of the non-moving party nor did it recognize the disputed material facts precluding compelling arbitration.

a) The Verified Complaint is Summary Judgment Evidence

The Supreme Court of South Carolina recognizes that "a verified complaint is equivalent of an affidavit" for the purposes of a summary judgment standard under South Carolina law. *Dawkins v. Fields*, 354 S.C. 58, 67 (2003) (aligning with federal courts and "numerous state courts" and holding that a verified complaint is akin to an affidavit). The Verified Complaint would still need to comply with Rule 56(e) in that it be based on personal knowledge, set forth facts that would be admissible in evidence, and show that the "affiant" is competent to testify. *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 224 (Ct. App. 2013) (citing *Dawkins*, 354 S.C. at 64). Those requirements are easily met here: The Verified Complaint is not made up of allegations made "upon information and belief" or conclusory allegations. Rather, it largely involves a recounting of the circumstances leading up to the purported formation of the agreement at issue here. (*See generally* Verified Complaint.) Thus, the total lack of applying the appropriate consideration to the Verified Complaint provides sufficient reason to reverse on its own.

b) Defendants did not put forth Competing Evidence

Defendants submitted no evidence to refute the weight of the evidence in the Verified Complaint.[1] This alone is reason to deny the motion to compel arbitration. Even if the Court were to somehow treat all of Defendants' pleadings, including its Answer, Motion, and Memorandum in Support of its Motion as evidence (which would be totally contrary to basic law), it would still not result in a grant of the motion to compel arbitration because the Verified Complaint (which is evidence under Rule 56(e)) at an absolute minimum, creates a dispute of material fact.[2]

c) Disputed Material Facts Preclude Compelling Arbitration

Plaintiffs' Verified Complaint provides ample evidence precluding granting the motion. If "[g]enuine issues of material fact exist, [it] preclud[es] summary judgment." *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 464 (2020). "Only when there is no genuine issue of fact concerning the formation of the agreement should the court decide as a matter of law that the

[1] Plaintiffs acknowledge that at 6:11PM the day before the March 27, 2025 hearing, Defendants filed an Amended Memo in Support of their Motion. It included three excerpts of the AAA Commercial rules as exhibits. Even if these were to be considered evidence at this juncture, they clearly have no bearing on the material facts and are not something that the Court could have already taken judicial notice of. They are of no consequence.

[2] For the avoidance of doubt, Plaintiffs are not suggesting that the Court should treat Defendants' pleadings and briefs as evidence.

parties did or did not enter into such an agreement" *Briody*, No. 2009-CP-23-6381, 2010 WL 9935409, at *4. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452 (2001). "A jury trial on the existence of an arbitration agreement is warranted when there are genuine issues of material fact regarding the parties' agreement." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 38, 524 S.E.2d 839, 844 (Ct. App. 1999). Importantly, "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362 (2002).

As discussed, even if there were competing evidence, the Court would not be able to grant a motion to compel arbitration on those grounds as it is well-settled that it cannot weigh conflicting evidence. *See John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 435 (Ct. App. 2024) ("At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." (citation omitted)).

While Plaintiffs are not seeking a jury trial as to the issue of the arbitration agreement, they posit that the grant of the motion to compel at this stage was improper.

4. Plaintiffs did not have the Benefit of Discovery

a) Plaintiffs Sought Discovery from Defendants That Would Have Aided the Decision on the Motion to Compel Arbitration

Plaintiffs served Discovery Requests on all Defendants on November 5, 2024. Defendants declined to answer the requests, responding 17 days later declining to respond to all discovery served upon Defendants.

It is well-established that "[a] party served with written discovery has a ***duty to answer it***, unless the party objects based on a stated reason or moves for a protective order." *Richardson on*

Behalf of 15th Cir. Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry, 430 S.C. 594, 598 (Ct. App. 2020) (emphasis added) (citing Rules 26(c), 33(a), 34, and *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 83 (2011)).

Plaintiffs sought discovery from Defendants regarding the circumstances of the Purchase Agreement's formation, Defendants' standard practices, and other issues relevant to unconscionability before Defendants' motion to compel arbitration was filed and decided. This discovery was necessary to sufficiently develop the factual record required to decide the motion to compel. Courts in South Carolina have long recognized the need to conduct limited discovery prior to deciding a motion to compel arbitration. *See Rich v. Walsh*, 357 S.C. 64, 67 (Ct. App. 2003) ("Limited discovery was conducted in the interval between the filing of the complaint and the motion to compel arbitration."); *see also Casale v. Stivers Chrysler-Jeep, Inc.*, No. 2006-UP-074, 2006 WL 7285736, at *1 (Ct. App. Feb. 9, 2006) ("[T]he court permitted the parties to conduct further discovery on the limited issue of whether [Plaintiff] accepted the arbitration agreement.").

Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, an affirmance of a denial of a motion to compel arbitration, is instructive here on the issue of discovery before deciding a motion to compel arbitration. 422 S.C. 544 (Ct. App. 2018). Our case stands in stark contrast to the facts in *Hodge*, where the Court of Appeals affirmed a Circuit Court's denial of *further* discovery for a motion to compel arbitration where (a) "the facts material to the court's decision [were] not contested"; (b) and "because the parties submitted, without objection, all documents that they wished the court to consider." *Id*. at 576. The *Hodge* Court concluded that further discovery "would not provide any additional material facts that would be helpful to the court in reaching its decision." *Id*. Here, we have the total opposite situation: the material facts *are* in dispute and Plaintiffs were never given an opportunity to engage in discovery because Defendants obstructed. In another case examining *Hodge*, the Court of Appeals noted that the trial court "rejected [] request for leave to conduct discovery" because it found the party had "opportunity to use the South Carolina Rules of Civil Procedure to conduct discovery related to arbitration." *Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 645 (Ct. App. 2023). The Court of Appeals concurred with the trial court and declined to allow for further discovery because "the record does not contain any discovery requests [plaintiff] ignored or any subpoenas to which she objected." *Id*. at 650. Here, Defendants *did* ignore discovery requests and Plaintiffs were denied an opportunity to gather appropriate evidence.[3]

Plaintiffs request that the Court first vacate the July 25, 2025 Order and analyze the issues under the proper standard. Then in doing so, the Court should deny the Defendants' Motion to Compel Arbitration and Stay Proceedings in this Case Until Completion of Arbitration. Plaintiffs respectfully further request that the Court instruct Defendants to respond to Plaintiffs' discovery requests—**served on Defendants over eight months ago**—or otherwise allow Plaintiffs to move to compel discovery. *See Richardson*, 430 S.C. at 598 ("If no answer, objection, or motion is received, the discovering party may—but is not required to—move for a court order compelling discovery.")[4]

[3] In lieu of discovery, an evidentiary hearing was never conducted nor were the parties ever provided an opportunity to present any evidence.

[4] The Supreme Court of North Carolina acknowledges another option for the Court at this posture: "an intermediate option we could have pursued in this case was remanding to the trial court, where any disputed facts revealed by the record could have been addressed in an evidentiary hearing with the opportunity to test statements through cross-examination; this Court has remanded for such hearings in a variety of contexts." *Tillman v. Com. Credit Loans, Inc.*, 362 N.C. 93, 118 (N.C. 2008) (collecting cases).

b) Factual Record was not Sufficiently Developed

Given the timing of the moving brief two days before oral arguments and the failure of Defendants to respond to Plaintiffs' discovery requests, Plaintiffs were not in a fair and just position to present further evidence for the motion to compel arbitration. Where, as here, there are unresolved questions of fact, the South Carolina Supreme Court mandates that trial courts "must engage in a full inquiry" into the circumstances surrounding the purported formation of the arbitration agreement "prior to any attempt to enforce the Agreement." *See Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 388 n.13 (2014). Without discovery, the Court has not met its obligation, imposed by the FAA and envisioned by *Dean*, to conduct a full inquiry into the facts surrounding the formation of the agreement.

In cases, such as this, "with no factual record . . . summary judgment [i]s premature." *Baxter v. Pilgrim's Pride Corp.*, 443 S.C. 463, 467 (Ct. App. 2024). Granting a motion on a summary judgment standard is a "drastic remedy" and necessitates that the motion "must not be granted until the opposing party has had a full and fair opportunity to complete discovery" on the contested issue.[5] *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112 (1991) (collecting authorities). To grant a motion under a summary-judgment standard, "it must be shown that further inquiry into the facts is not needed to clarify the application of the law." *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 478 (Ct. App. 1995); *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362 (2002) ("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.").

Additionally, allowing for discovery prior to ruling on the motion to compel arbitration should have been required in the case *sub judice*. "Plaintiffs have demonstrated a likelihood that

[5] For the avoidance of doubt, Plaintiffs are certainly not positing that all discovery should be conducted, rather, limited discovery to the issues regarding the motion to compel arbitration is proper.

further discovery will uncover additional evidence relevant to the issue[s] of [the case].” *Baughman*, 306 S.C. at 112. As indicated by the allegations in the Complaint, Plaintiffs will put forth evidence, at a minimum, evidencing genuine issues of material facts as to whether the contract was properly formed, whether there was mutual assent to the terms, and whether the agreement was unconscionable. *Second*, “Plaintiffs were not dilatory in seeking discovery” as made clear by their still-pending November 2024 discovery requests. *Baughman*, 306 S.C. at 113. In *Baughman*, the Supreme Court of South Carolina reversed the grant of summary judgment until “Plaintiffs have been afforded an adequate opportunity to complete discovery on the issue of [contract formation].” *Id.* at 114.

Finally, discovery on these issues is particularly important as discussed in more detail *infra* because the issues raised by Plaintiffs, including contract formation, validity, assent, unconscionability are fact-intensive under South Carolina law.[6] *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25 (2007) (“A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case.”); *Hardee v. Hardee*, 348 S.C. 84, 95–96 (Ct. App. 2001) (“In determining unconscionability, courts are limited to considering facts and circumstances existing when the contract was executed.” (citing Restatement (Second) of Contracts § 208 (1981))), *aff’d as modified,* 355 S.C. 382 (2003). “Both state and federal law supports plaintiffs’ limited discovery request to develop their claim that the arbitration clause is unconscionable.” *Dunlap v. Green Tree Servicing, LLC*, No. CIV.A. 2:05-0311, 2005 WL 3178593, at *2 (S.D.W. Va. Nov. 28, 2005) (collecting cases).

[6] For the avoidance of doubt, even though the Motion to Compel Arbitration is brought under the FAA, contract issues are still considered under South Carolina law. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539 (2001) (“General contract principles of state law apply to arbitration clauses governed by the FAA.”).

5. Next Steps

As an initial matter, the Court's July 25, 2025 Order should be reversed given the overwhelming evidence in the Verified Complaint and the total lack of evidence put forth by Defendants. If the Court feels it more appropriate to vacate and proceed with limited discovery before deciding the motion, then Plaintiffs should be authorized to file a motion to compel discovery from Defendants on the issues that go to issues in the motion to compel arbitration.[7]

B. The Court's Conclusions of Law Are Erroneous

All the following issues are rendered moot if the Court vacates its July 25, 2025 Order. However, at the very least to preserve these issues for appeal, Plaintiffs respectfully submit the following arguments.

1. Plaintiffs Dispute the Contract on Formation Grounds not Enforceability

As a threshold matter, Plaintiffs posit that Defendants' and the Court' mischaracterization of Plaintiffs' arguments as disputing the *enforceability* and *arbitrability* (rather than formation and validity) of the agreement is the impetus for what it views as an erroneous ruling. "There is a difference between disputes over arbitrability and disputes over contract formation." *Rowland*, 993 F.3d at 258. Plaintiffs here, in fact, contest the contract formation and related issues such as assent in invoking the purported agreement's unconscionability. *See Meadows v. Cebridge Acquisition, LLC*, 132 F.4th 716, 730 (4th Cir. 2025) ("Procedural ***unconscionability*** is concerned with inequities, improprieties, or unfairness in the bargaining process and ***formation of the contract***." (emphasis added)).

Again, the Court should apply South Carolina law to the contract issues. *See* n.6. The law of our State recognizes challenges to "the arbitration provision on grounds of unconscionability,

[7] If needed, the Court should hold an evidentiary hearing, if there are disputed material issues relating to the motion to compel arbitration that reasonably be resolved in such a forum.

bringing into question whether an arbitration agreement even existed in the first place." *Simpson v. MSA of Myrtle Beach*, Inc., 373 S.C. 14, 23 (2007). "[I]ssues of contract formation necessarily raise the question of whether an arbitration agreement was ever created, such issues are for the court to decide." *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 388 (2023).

As will be illuminated in the following sections, this issue is outcome determinative in the Court's analysis.

2. <u>The Court's Order Misapplied *Henry Schein*</u>

The Court overlooked a crucial fact: unlike in *Henry Schein*, no valid agreement exists here. Plaintiffs dispute whether any contract was ever formed.

The Court's Order quoted *Henry Schein, Inc. v. Archer & White Sales, Inc.*: "When the parties' contract delegates the arbitrability question to the arbitrator, the courts must respect the parties' decision as embodied in the contract…" (Order at 3 (citing 586 U.S. 63, 68, 139 S. Ct. 524, 529 (2019).) That statement was made in connection with the Supreme Court's rejection of the "wholly groundless" exception, not at issue here. *See Henry Schein*, 586 U.S. at 71. In any event, this quote does not fully capture the rule the Supreme Court set in that case. Instead, the Supreme Court set this analytical framework for this Court to consider: "[B]efore referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists. But if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." *Henry Schein*, 586 U.S. at 69 (internal citation omitted).

In other words, the rule is that a Court is to decide an arbitrability issue *unless* two conditions are satisfied: (a) a valid agreement exists and (b) agreement delegates the arbitrability issue to an arbitrator. Both conditions are required. The Court in its Order here decided (b) before and without deciding (a). And decided (a) summarily without engaging in the fact-intensive unconscionability analysis and without discovery or evidence submitted.

As stated, the Court's decision assumed the parties reached an agreement: "The parties specifically incorporated the Commercial Arbitration Rules into the Purchase Agreement." (Order at 3.) Plaintiffs specifically dispute whether the parties came to a meeting of the minds. Thus, the analysis excluded the critical first step.

3. *Masters*' Facts are so Distinct Rendering it Ineffective

Masters involved a ***post-formation*** breach of contract dispute. It is therefore clearly distinct from the present case, which specifically contests formation and related issues.

As stated in the Court's Order, "In *Masters*, the purchaser of a car challenged the Dealer's claim for arbitration on grounds that execution of subsequent agreements rendered the original agreement 'moot and unenforceable.'" (Order at 3 (citing *Masters v. KOL, Inc.*, 431 S.C. 28 (S.C. Ct. App. 2020).) *Masters* involved totally inapposite facts.

First, *Masters* does not involve any questions as to whether there were any contracts formed between the parties. The plaintiffs in *Masters* did not dispute that they entered into the Purchase Order. Rather they asserted, among other claims, "breach of contract" causes of action, which, in and of itself, acknowledges that a contract was formed as it is a post-formation issue. *Id.* at 32. In contrast, Plaintiffs specifically dispute formation and related issues.

Second, the facts in *Masters* are unique and not to be broadly applied. Unlike our case, *Masters* involved "execution of subsequent contracts" and the contract principle of "novation." *Id.* at 34, 35. The circuit court found that subsequent contracts rendered an earlier contract "moot and unenforceable." *Id.* at 36. The Court of Appeals reversed the circuit court's finding of a novation, "substitution of a new obligation between the parties with the intent to extinguish the old obligation." *Id.* at 35, 36. (citing *Moore v. Weinberg*, 373 S.C. 209, 217 (Ct. App. 2007). That case and its invocation of novation is nothing like the situation here.

4. The Court Erred in its Conclusion that the Agreement "Clearly and Unmistakably" Delegated the Question of Arbitrability to the Arbitrator

The Court's Order stated summarily, without analysis, that it "concludes as a matter of law that the parties agreed to delegate issues regarding the enforceability of the Purchase Agreement to the arbitrator." (Order at 4.) The Order provided no case citation, authority, or analysis for this crucial conclusion of law as to "clear and unmistakable" delegation. In any event, the conclusion of law should be reversed.

As an initial matter, Plaintiffs maintain that they never entered into *any* contract, including the entire agreement, the arbitration agreement, or the delegation provision. As such, a "challenge to formation of that agreement, however, applies equally to the whole [agreement]." *Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.,* 130 F.4th 396, 402 (4th Cir. 2025) ("*Berkeley II*") ("Provisions requiring the arbitration of arbitrability questions do not . . . preclude a court from deciding that a party never made an agreement to arbitrate any issue (which would necessarily encompass an arbitrability issue) (citing *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024) and *Berkeley County School District v. Hub International Limited*, 944 F.3d 225, 234 n.9 (4th Cir. 2019) ("*Berkeley I*")).) This would necessarily preclude any finding that the parties "clearly and unmistakably" agreed to anything, including the delegation provision.

Given the clear dispute between the parties as to whether the delegation clause was intended by each to require the arbitration of arbitrability, there was no factual basis for the Court's conclusion "as a matter of law" the parties "clearly and unmistakably" agreed to the purported delegation provision. The Court's conclusion the agreement's language that "[a]ny controversy . . . relating to this Purchase Agreement, shall be resolved and decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") (however, not under the auspices of AAA)" delegates anything to the Arbitrator

(Agreement at 4.) is unsupported by the facts and falls short of the standard for showing a valid delegation.

"The clear and unmistakable standard is exacting, and the presence of an expansive arbitration clause, without more, will not suffice" to show a valid delegation." *Mod. Perfection, LLC v. Bank of Am., N.A.*, 126 F.4th 235, 241 (4th Cir. 2025). In the Fourth Circuit's decision in *Simply Wireless, Inc. V. T-Mobile US, Inc*, involving two competing providers of cellular telephone services, the Court held "in the context of a ***commercial contract*** between ***sophisticated parties***, the explicit incorporation of JAMS Rules serves as 'clear and unmistakable' evidence of the parties' intent to arbitrate arbitrability." *Simply Wireless, Inc v. T-Mobile US, Inc*, 877 F.3d 522, 528 (4th Cir. 2017) (emphasis added), *abrogated on other grounds by Henry Schein, Inc.*, 586 U.S. 63. The Fourth Circuit, later in its Opinion, confirmed that its decision should be cabined: "In sum, we hold that when, as here, ***two sophisticated parties*** expressly incorporate into a contract JAMS Rules that delegate questions of arbitrability to an arbitrator, then that incorporation constitutes the parties' clear and unmistakable intent to let an arbitrator determine the scope of arbitrability." *Id.* at 529 (emphasis added). It is axiomatic that Plaintiffs here—with their lack of sophistication as, among other things, out-of-town elderly consumers—cannot be analogized to the cell phone providers at issue in *Simply Wireless*.

Courts applying *Simply Wireless* have recognized this. In *Gordon v. Zeroed-In Tech.*, the Court stated "this Court, like Judge Hollander, is ***skeptical*** that a cross-reference to the JAMS Rules provides "clear and unmistakable" evidence of the parties' intent to arbitrate arbitrability, given that ***one party is unsophisticated***." *Gordon v. Zeroed-In Tech., LLC*, No. CV 23-3284-BAH, 2025 WL 941365, at *23 (D. Md. Mar. 26, 2025) (citing *Stone v. Wells Fargo Bank, N.A.*, 361 F. Supp. 3d 539, 555 (D. Md. 2019)); *accord Collins v. Discover Fin. Servs.*, No. CV PX-17-03011, 2018 WL 6434503, at *3 (D. Md. Dec. 7, 2018) (same). As *Stone* stated aptly, "[i]t strains credulity to believe that the consumer knew—much less intended—that the cross-reference directed an arbitrator to decide arbitrability. To treat the Agreement as evidencing clear and unmistakable evidence of plaintiff's intent would be to take a good joke too far." *Stone*, 361 F. Supp. 3d at 555 (citation omitted); *see Barmby v. Ourisman Chevrolet, Co.*, No. CV DLB-22-2312, 2023 WL 4549739, at *9 n.5 (D. Md. July 14, 2023) (indicating the unsophistication of the party in *Stone* "weighed heavily in this court's analysis" on clear and unmistakable evidence). In fact, *In re Little*, a case cited in *Masters* for the rule on the very topic of *clear and unmistakable evidence* "concur[ed]] with the reasoning in *Stone*." 610 B.R. 558, 568 (Bankr. D.S.C. 2020). *In re Little*, stated the obvious: "how unlikely it would be that an unsophisticated party would know what a set of arbitration rules were, and even less so, the specific contents of a particular rule within that set." *Id*.

In examining disputed material facts and in taking all reasonable inferences in Plaintiffs' favor, it is unclear how the agreement's invocation of the AAA rules could provide the requisite "clear and unmistakable" evidence. Unsophisticated consumers, such as the Plaintiffs, have no understanding of the AAA Commercial rules. They are especially unlikely to know that AAA rules purportedly delegates arbitrability of disputes to the arbitrator.[8]

In all, the agreement under the facts in the Verified Complaint, even if it were to be properly formed (which Plaintiffs dispute), does not "clearly and unmistakably" delegate validity and arbitrability to the arbitrator.[9]

[8] Moreover, all the evidence in the Verified Complaint (and in the publicly-available complaints) surrounding the high-pressure conditions that the agreement was purportedly formed under, casts doubt on this even more.

[9] If needed, because this is such a critical and dispositive issue here, Plaintiffs would welcome supplemental briefing on this issue (and any issues as the Court wishes).

5. The Court of Appeals for the Fourth Circuit, in Analyzing *Henry Schein* Under Similar Facts, Confirms Plaintiffs' Position

South Carolina courts frequently look to the Fourth Circuit for guidance on interpreting law, especially in the context of a federal law, such as the Federal Arbitration Act here. The Fourth Circuit's decision in *Berkeley I* interpreted the Supreme Court's precedent on the Federal Arbitration Act. 944 F.3d at 234 n.9. That case began by recounting the same principle from *Henry Schein*: "[P]arties may agree to have an arbitrator decide not only the merits of a particular dispute but also gateway questions of arbitrability." *Id.* (citing *Henry Schein, Inc.*, 586 U.S. at 67–68). Further, it dealt with an analogous purported delegation clause: "[T]he Arbitration Clauses incorporate the Commercial Rules of the American Arbitration Association, which provide that an arbitrator has the power to rule on arbitrability issues." *Id.*

Critically at this step, the Fourth Circuit came to an opposite conclusion as this Court did in its Order. The Fourth Circuit stated: "Such provisions requiring the arbitration of arbitrability questions do not, however, undermine § 4 of Title 9 and ***preclude a court from deciding that a party never made an agreement to arbitrate any issue (which would necessarily encompass an arbitrability issue)***." *Id.* (emphasis added) (citing sources). This is precisely the situation here: Plaintiffs contest that they ever made an agreement at all: neither the Purchase Agreement, or the Arbitration provision in it, or the purported delegation clause within that. The Fourth Circuit reaffirmed this position in a recent decision in the same underlying dispute. *See Berkeley II* ("***The challenge to formation of that agreement, however, applies equally to the whole [agreement].***" 130 F.4th at 402 (citing *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024) and *Berkeley I*, 944 F.3d at 234 n.9) (emphasis added). It reaffirmed that "Provisions requiring the arbitration of arbitrability questions do not . . . preclude a court from deciding that a party never made an agreement to arbitrate any issue (which would necessarily encompass an arbitrability issue).” *Id.* (quoting *Berkeley I*).

For the avoidance of doubt this is consistent with the Supreme Court’s 2024 decision in *Coinbase*. 602 U.S. at 151. Again, it applied the same principle from *Henry Schein*: “Before referring a dispute to an arbitrator, therefore, the court determines whether a valid arbitration agreement exists.” *Id.* (quoting *Henry Schein*, 586 U.S. at 69) (internal quotations omitted). And just like the *Berkeley* decisions, the Supreme Court stated “Where a ***challenge applies ‘equally’ to the whole contract*** and to an arbitration or delegation provision, a court must address that challenge.” *Id.* (citation omitted) (emphasis added).

6. The Court’s Purported Unconscionability Analysis was Devoid of any Mention of it and Was an Improper Advisory Opinion as Written

Despite purportedly finding that “the Court must refer this matter to arbitration for the arbitrator to decide all such issues,” the Court went on to analyze contract formation and whether it was an adhesion contract. (Order at 3.) Under the Court’s own conclusions of law, these would be improper advisory opinions. In any event, Plaintiffs posit that the limited analysis as to these issues was erroneous.

As any initial matter, there is no mention here of unconscionability—the core argument Plaintiffs raise. The Court’s analysis starts and concludes with the presumption that one is to have read and understood the document he signs. (Order at 4.) Plaintiffs do not disagree with this general proposition of law. However, the detailed Verified Complaint, the reasonable inferences viewed in favor of the Plaintiffs, and the fact-intensive inquiry required for unconscionability determinations belies resting on this presumption. As stated above, at an absolute minimum, Plaintiffs should be afforded time to gather and present evidence on this issue.[10] *See Naimoli v. Pro-Football, Inc.*, 120 F.4th 380, 390 (4th Cir. 2024) ("[C]ourt may resolve the relevant factual disputes by, as necessary, affording targeted discovery, conducting an evidentiary hearing, conducting a summary trial, making findings of fact and conclusions of law, all as necessary and appropriate to resolve the motion.").

The Court's Order contained no discussion of procedural or substantive unconscionability in contravention of the well-established principle that alleged unconscionable arbitration clauses necessitate "a case-by-case analysis . . . to address the unique circumstances inherent in the various types of consumer transactions." *One Belle Hall Prop. Owners Ass'n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 62 (Ct. App. 2016) (citation omitted). Plaintiffs reemphasize the need to engage in the unconscionability analysis under South Carolina contract law as discussed in *Damico v. Lennar Carolinas, LLC* and its progeny. 437 S.C. 596 (2022). In *Damico*, the Court explained the "touchstone of the analysis begins with the presence or absence of meaningful choice." *Id.* at 612. "Thus, in determining whether an absence of meaningful choice taints a contract term, such as an arbitration provision, courts must consider, among all facts and circumstances, the relative disparity in the parties' bargaining power, the parties' relative sophistication, and whether the plaintiffs are a substantial business concern of the defendant." *Id.* at 613 (citing authorities).

Indeed, the Court's Order did discuss adhesion contracts, which is not dispositive on unconscionability. In any event, the Court's analysis of adhesion contract was flawed and again,

[10] Relevant discovery to the motion to compel arbitration that Plaintiffs seek includes, among other things: Defendants' training materials to sales staff generally and the specific presenter in Plaintiffs' case, its practice on presenting the arbitration clauses and the customer's right to have the agreement reviewed by counsel, other consumer complaints and disputes, as well as any Defendants' dealings with the Texas Attorney General and Georgia Attorney General in its resolutions regarding similar conduct alleged in the Complaint.

did not give all reasonable inferences to the Plaintiffs. (Order at 4.) As an initial matter, this section in the Court's Order finds no support in the Court's factual findings. The statement, without citation, that "Plaintiff in fact requested changes to the standard Purchase Agreement which were included in the Addendum/Exception to Contract as part of the Purchase Agreement" is belied by the record. In fact, the Addendum/Exception to the Contract did not include any sort of changes requested by Plaintiffs, instead it included terms that Defendants decided to include in this point of the contract. Nevertheless, all inferences must be viewed in the light most favorable to Plaintiffs. *See Russell*, 370 S.C. at 15. This is not what the Court did in its Order. Moreover, the Court improperly concluded that the agreement, both the agreement as a whole and the arbitration agreement contained therein, were not "take it or leave it" contracts without engaging in *Damico's* fact-intensive analysis and without making inferences in the light most favorable to Plaintiffs.

C. ONE-PARTY ARBITRATOR SELECTION

As a final point, to the extent, an arbitration is compelled, the Court cannot do so without striking the arbitration selection procedure in the agreement. The agreement states: "The arbitrator shall be selected by VI." (Agreement at 4.) In analyzing claims of unconscionability in the context of arbitration agreements, the focus is on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker. *See Simpson*, 373 S.C. at 25, 69 (citing *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999)).

The *Hooters* decision struck down an arbitration clause because it gave "Hooters control over the entire [arbitrator] panel." 173 F.3d at 939. The Fourth Circuit said these rules were so "warped" and did not comport with "minimum due process standards and thus any arbitration under them would have been a "sham." *Hooters*, 173 F.3d at 940. Thus, in connection with

Hooters and in the interest of justice, the arbitration selection procedure, which allows only Defendants to select the arbitrator, must be stricken. Otherwise, any arbitration is a total "sham."

CONCLUSION AND PRAYER FOR RELIEF

When taking all reasonable inferences in the Verified Complaint in favor of Plaintiffs, it is clear that, at a minimum, the disputes of material facts indicate the Motion to Compel Arbitration must be denied. In accordance with Rule 11, undersigned counsel certify that consultation would serve no useful purpose and could not be timely held.

For the foregoing reasons, Plaintiffs respectfully request that this Honorable Court:

1. GRANT this Motion Under South Carolina Rules of Civil Procedure 52(b) and 59(e);
2. VACATE the Order Granting Motion to Compel Arbitration and Stay Proceedings;
3. DENY the Motion to Compel Arbitration;
4. LIFT the stay of proceedings;
5. ORDER the case to proceed;
6. AUTHORIZE Plaintiffs' Motion to Compel Discovery;
7. STRIKE the Agreement's Arbitrator Selection Procedure as void as a matter of law and against public policy;
8. GRANT such other and further relief as this Court deems just and proper.

Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
PETER SKOLER and PATRICIA SKOLER,	)	Civil Action No. 2024-CP-10-02646
PLAINTIFFS,	)	
	)	
vs.	)	**REPLY TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER ORDER COMPELLING ARBITRATION AND STAYING PROCEEDINGS UNDER RULES 52(b) AND 59(e)**
	)	
VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA,	)	
	)	
DEFENDANTS.	)	

Plaintiffs submit this Reply Memorandum in Support of its Motion for Reconsideration of the Court's July 25, 2025 Order Compelling Arbitration and Staying the Proceedings.

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SUMMARY OF ARGUMENTS

On reconsideration, the Court should do the following:

First, reconsider the motion to compel arbitration under the proper summary judgment standard—taking all inferences in Plaintiffs' favor and recognizing the genuine disputes of material fact that preclude summary judgment.

Second, follow *Henry Schein* and *Coinbase*, which mandate that courts *always* decide whether a contract was formed. This threshold question belongs here.

Third, even assuming *arguendo* that the parties could delegate such a question to the arbitrator, the text of the arbitration provision which purports to incorporate AAA rules does not meet the "exacting" standard to "clearly and unmistakably" delegate such question in putative agreements involving unsophisticated senior citizen consumers.

Fourth, at a minimum, Plaintiffs raise genuine disputes of material facts as to whether a valid contract was formed and whether the arbitration provision is unconscionable (as well as the rest of the agreement). The Court must examine the totality of circumstances—not just whether a signature appears. Contract formation, validity, and unconscionability demand meaningful review, especially given the allegations of unfair and deceptive practices here.

Fifth, while Plaintiffs maintain that it is proper to deny the motion to compel arbitration without discovery, Plaintiffs indeed sought discovery before the motion to compel arbitration was ever filed. In raising a lack of discovery, Plaintiffs assert that it is impossible to find for Defendants on such a record, when the only evidence they've put forth that has any relevance at all is the putative agreement itself.

Sixth, the Court should strike arbitrator selection provision as overtly unconscionable and against public policy. In so deciding, the Court should consider the totality of the circumstances, the underlying allegations on the merits, and how Defendants' brazen attempt to maintain a one-sided arbitrator goes against the clear holding in the Fourth Circuit's *Hooters* decision. The Court should reject this attempt to rig the forum.

ARGUMENT

A. Summary Judgment Standard

While the facts and precedent applicable to this case were extensively briefed prior to and during the hearing on the motion, the legal standard that applies to that motion was ignored by Defendants and disregarded by the Court when it adopted, in large part, the proposed order submitted by Defendants' counsel. Similarly, while the order entered by the Court did include purported findings of fact, those findings contravened the applicable legal standard requiring that the Court consider all facts in the light most favorable to the non-moving party. As a result, Plaintiffs filed the Motion to Reconsider to address these oversights in the order.

In their Memorandum in Opposition Defendants do not contest that the summary judgment standard should apply nor do they put forth an alternative standard. (*See* Defs' Opp at 2–3.) Ironically, it is Defendants who seek to "confuse the issues" by purporting that the FAA is somehow in conflict with the summary judgment standard. (*See id*. at 3.) Not so. Plaintiffs do not dispute that the FAA governs and, in fact, it is the FAA that necessitates the summary judgment standard. *See Ayers v. Markiewicz*, 733 F. Supp. 3d 435, 441 (E.D.N.C. 2024), *aff'd*, No. 24-1541, 2024 WL 4490699 (4th Cir. Oct. 15, 2024) ("The standard for deciding a motion to compel arbitration brought under the FAA . . . is similar to the standard applicable to a motion for summary judgment."); *see also Austin v. Experian Info. Sols., Inc.*, No. 23-2301, 2025 WL 2177331 (4th Cir. Aug. 1, 2025) ("A party's burden . . . [on] a motion to compel arbitration under Federal Arbitration

Act (FAA), is akin to the burden on summary judgment."). The law is clear: under the FAA, courts have no discretion and must employ the summary judgment standard.

B. DEFENDANTS CONTINUE TO MISREPRESENT THE HOLDING IN *HENRY SCHEIN*

Defendants obfuscate the holding in *Henry Schein* and current jurisprudence in this area. A plain reading of *Henry Schein* aligns with Plaintiffs' position, as well as other decisions interpreting and applying *Henry Schein*.

Notably, Defendants do not address Plaintiffs' arguments about *Henry Schein* head on. (*Compare* Pls' Recon. Mtn. at 17–18, 22–23, *with* Defs' Opp. at 3.). Rather, Defendants are more hopeful that quoting sections of *Henry Schein* out of context can win the day. Defendants point to sections of *Henry Schein*, which involve the "wholly groundless" exception at issue, which has no application here (and has never been raised by Plaintiffs).

The Fourth Circuit in *Gibbs v. Haynes Investments, LLC* refuted the position of similarly positioned defendants as Defendants' here:

> The Haynes Defendants rely on *Henry Schein, Inc. v. Archer & White Sales, Inc.* as reinforcement for the proposition that if the contract "delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." (citation omitted). However, ***Schein is inapposite because that case "dealt with an exception to the threshold arbitrability question—the so-called 'wholly groundless' exception*** which concerns the arbitrability or non-arbitrability of certain issues—***not a challenge to the validity*** of an arbitration clause itself." (citation omitted). Further, as Schein itself noted, "***before referring a dispute to an arbitrator, the court must determine under 9 U.S.C. § 2 whether a valid arbitration agreement exists***."

Gibbs v. Haynes Invs., LLC, 967 F.3d 332, 339 n.4 (4th Cir. 2020) (emphasis added); *Gibbs v. Sequoia Cap. Operations, LLC*, 966 F.3d 286, 292 n.3 (4th Cir. 2020) (same). Just as in *Gibbs*, Plaintiffs are disputing formation, validity, and unconscionability—***not*** the "wholly groundless" exception.

Henry Schein states clearly: "To be sure, ***before referring a dispute to an arbitrator***, the court determines whether a valid arbitration agreement exists. But ***if a valid agreement exists***, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019) (citing 9 U.S.C. § 2) (emphasis added); accord *Coinbase, Inc. v. Suski*, 602 U.S. 143, 149 (2024) ("Before referring a dispute to an arbitrator, therefore, the court determines whether a valid arbitration agreement exists." (quoting *Henry Schein*, 586 U.S., at 69) (internal quotation marks omitted)).

In other words, a Court can consider the question of delegation of arbitrability ***only after*** the Court determines a valid arbitration agreement exists. See *Rowland v. Sandy Morris Fin. & Est. Plan. Servs., LLC*, 993 F.3d 253, 258 (4th Cir. 2021) ("Thus the incorporation of the rules of the American Arbitration Association . . . does not obviate the need for courts to decide the threshold issue of contract formation.")

C. No "Clear and Unmistakable" Delegation In Putative Agreement Involving Unsophisticated Consumers

1. "Exacting Standard"

The *clear and unmistakable* standard is not something that may just be summarily decided without analysis. Rather, "[t]he 'clear and unmistakable' standard is exacting, and the presence of an expansive arbitration clause, without more, will not suffice." *Peabody Holding Co., LLC v. United Mine Workers of Am., Int'l Union*, 665 F.3d 96, 102 (4th Cir. 2012).

"[T]o meet the 'clear and unmistakable' standard, an agreement must contain language specifically and plainly reflecting the parties' intent to delegate disputes regarding arbitrability to an arbitrator." *Novic v. Credit One Bank, Nat'l Ass'n*, 757 F. App'x 263, 265–66 (4th Cir. 2019). In considering the facts alleged in the Verified Complaint, it is impossible to conclude that the Plaintiffs both "clearly" and "unmistakably" delegated *any* questions to the arbitrator under that standard. Plaintiffs, like other unsophisticated, senior citizen consumers from out of town, could not reasonably be expected to know what the American Arbitration Association is, to be familiar with its rules, or to appreciate that those rules purport to delegate threshold questions of arbitrability to the arbitrator. This point is all the more compelling given circumstances under which this dispute is borne out of: Defendants' unfair and deceptive practices in its high-pressure sales presentation.

2. Fourth Circuit's Explicit Treatment of Unsophisticated Consumers Differently

It is true that if this dispute involved two sophisticated entities who negotiated an arms-length agreement, this analysis would be very different. After all, the Fourth Circuit in *Simply Wireless*, held that "***in the context of a commercial contract between sophisticated parties***, the explicit incorporation of JAMS Rules serves as 'clear and unmistakable' evidence of the parties' intent to arbitrate arbitrability." *Simply Wireless, Inc v. T-Mobile US, Inc*, 877 F.3d 522, 528 (4th Cir. 2017), *abrogated on other grounds by Henry Schein, Inc.*, 586 U.S. (emphasis added). *Simply Wireless* was intentional in expressly limiting its holding to "commercial contract[s] between sophisticated parties." *Id*. And it even reiterated such a holding again at the end of the decision: "In sum, we hold that when, as here, ***two sophisticated parties expressly incorporate into a contract JAMS Rules*** that delegate questions of arbitrability to an arbitrator, then that incorporation constitutes the parties' clear and unmistakable intent to let an arbitrator determine the scope of arbitrability." *Id*. at 529.

As Plaintiffs explained in their Motion, there are numerous courts that have held "in context of an ***unsophisticated*** party entering an adhesion contract that includes an arbitration agreement, the incorporation of a set of arbitration rules ***does not alone create clear and unmistakable*** evidence of an intent for an arbitrator to determine threshold arbitration issues." *In re Little*, 610

B.R. 558, 569 (Bankr. D.S.C. 2020) (citing *Stone v. Wells Fargo Bank, N.A.*, 361 F. Supp. 3d 539, 555 (D. Md. 2019)) (emphasis added); (*see also* Pls' Recon. Mtn. at 20–21.) At a minimum, there is at least a dispute of material fact as to whether the incorporation of the AAA rules amounts to "clear and unmistakable" delegation of arbitrability questions to the arbitrator.

D. Evidentiary Record

1. Verified Complaint

In contending that the "Plaintiffs' argument about the Verified Complaint is wrong," Defendants assert that "the arguments offered by the Plaintiffs as to why that contract should not be enforced are not facts alleged, but legal arguments which do not create any issue about whether Plaintiffs agreed that disputes would be decided by an arbitrator." (*See* Defs' Opp. at 4.) This statement is nonsensical and is inconsistent with basic legal principles.

First, it is not "arguments" but the facts in the Verified Complaint that serve as Plaintiffs' evidence for its motion to compel arbitration. *Dawkins v. Fields*, 354 S.C. 58, 67 (2003) (citing S.C. R. Civ. P. 56(e)) (recognizing that a verified complaint is akin to an affidavit for evidentiary purposes).

Second, Defendants' suggestion that the Verified Complaint consists of legal arguments is contradicted by their own Answer. Of the Verified Complaint's many paragraphs, Defendants objected to only three on the ground that they stated legal conclusions. Even disregarding those three paragraphs, however, would have no effect on the outcome, as they are immaterial to the issues before the Court.[1]

1 The three paragraphs in the Verified Complaint that Defendants assert in the Answer were legal conclusions are: (1): "South Carolina law requires arbitration agreements to be 'geared towards achieving an unbiased decision by a neutral decision maker'"; (2) "'The arbitration clause requiring that arbitration be held "not under the auspices of [American Arbitration Association]' introduces further doubt about the arbitration process's fairness and impartiality"; and (3) "The practical implication of a majority of the arbitration provision is to grant VI unfair control over the process and

2. Defendants' Purported Competing Evidence

Defendants' position is by the mere presence of Plaintiffs' signature on a putative agreement, they win on all issues. Their position completely ignores long-standing South Carolina principles of contract formation, contract validity, and unconscionability. As evidenced by the Verified Complaint, Plaintiffs have never disputed that there exists a putative agreement with Plaintiffs' signature; rather, Plaintiffs contend that it was not properly formed, is invalid, and is unconscionable.[2]

Defendants contend that the putative agreement's boilerplate "acknowledgment"—in which Plaintiffs were required to state that no high-pressure tactics were used—conclusively resolves the question of whether such tactics occurred. That contention is extraordinary.

First, a party cannot disclaim away contract defenses in an agreement. *See Allen-Parker Co. v. Lollis*, 257 S.C. 266, 272–73 (1971) ("Even specific provisions or stipulations in a contract providing in effect for immunity from or nullification or waiver of preliminary or extraneous misrepresentations in connection with the contract are generally ineffective, and do not prevent a subsequent assertion of the misrepresentations as a basis for fraud."); *see also* 17A C.J.S. Contracts § 280 ("[T]he law will not give effect to an agreement intended to grant immunity to iniquity and fraud[;] [s]uch a stipulation contravenes public policy.")

Second, Defendants' inclusion of this provision in the agreement and now using it offensively are in and of itself evidence of high-pressure tactics and an attempt to manufacture facts. This is not a common term nor it is something that would need to be included in a properly formed contract. This comes as no surprise from individuals who previously operated a

expenses of the arbitration proceedings so as to inhibit a Member from seeking dispute resolution and to permit a biased result from an arbitrator who may not be neutral." (Verified Complaint ¶¶ 43, 48, 49.)

[2] Plaintiffs recognize the affidavit of Randy Gardner, but as Defendants admit, it only served the purpose of evidencing what Plaintiffs do not dispute: that the FAA applies to this action.

substantially similar vacation business, one that was forced to settle with the Attorneys General of Texas and Georgia for consumer protection violations nearly identical to those alleged here.

Third, Defendants' reliance on this argument underscores their recognition that high-pressure tactics constitute a critical consideration in the unconscionability inquiry. *See* § 188. Merchant's conduct—Generally, 1 Consumer Law Sales Practices and Credit Regulation ("Courts have often pointed out that unconscionability may be shown by evidence of deceptive sales practices including specific misrepresentations and high pressure sales tactics."); *see also Ashford v. PricewaterhouseCoopers LLP*, 954 F.3d 678, 684 (4th Cir. 2020) (considering, among other things, "whether deceptive or high-pressure tactics were employed") (citation omitted).

3. Discovery

a) Discovery is not Necessary to find for Plaintiffs

Importantly, the motion to compel arbitration should be denied even without discovery. However, given how fact intensive the inquiry is and the number of disputes of material fact, Plaintiffs assert that limited discovery could be fruitful. In any event, without discovery, Plaintiffs' Verified Complaint serves as sufficient evidence to deny the motion to compel arbitration.

b) Waiver

Defendants cite to two cases that hold parties cannot raise issues for the first time post-trial. (*See* Defs' Opp at 7.) The key distinction is that those cases addressed issues raised years into the litigation and after trial. The early case posture here is entirely different. Moreover, Defendants concede that Plaintiffs raised the issue and sought discovery at the outset, before the motion to compel arbitration was filed.

Defendants cannot have their cake and eat it too. Either the Verified Complaint serves as sufficient evidence to deny the motion to compel arbitration or there is an insufficient record warranting discovery.

E. UNCONSCIONABILITY

The Verified Complaint, at a minimum, creates a genuine dispute of material fact as to unconscionability. Under South Carolina law, unconscionability is a fact-intensive inquiry. *Holler v. Holler*, 364 S.C. 256, 269 (Ct. App. 2005). Every argument that Defendants make in their Opposition Brief involves an issue that, at a minimum, involves a dispute of material fact precluding a grant of the motion to compel arbitration.[3]

Beyond the points regarding meaningful choice and high-pressure sales tactics addressed above, Defendants are incorrect about a few other points. Defendants seem to contest the relative bargaining position. (*See* Defs' Opp. at 8–9.) Defendants' assertion that it is "not an essential purchase" appears to argue that the Court should not enforce South Carolina's doctrine of *caveat venditor* ("let the seller beware"). *See Dixon v. Pattee*, 442 S.C. 233, 262 (Ct. App. 2023) (in considering whether an agreement is an adhesion contract, noting that "South Carolina's courts have shifted from following the doctrine of *caveat emptor* (let the buyer beware) to the doctrine of *caveat venditor* (let the seller beware)" (internal quotation marks and citation omitted)).

[3] After the filing of Defendants' original Memorandum in Opposition to Plaintiffs' Motion to Reconsider Order Compelling Arbitration and Stay Proceedings, Plaintiffs' counsel sought to confer with Defendants' counsel regarding factual representations that Plaintiffs viewed as overtly false. Following a conference, Defendants counsel voluntarily amended their Opposition Brief. While Plaintiffs appreciate Defendants' counsel's amendment, the inclusion of such a demonstrably false statement (that any terms were "requested [] by the Plaintiffs") in the first instance underscores precisely why the Court must apply the summary judgment standard and view the evidence in the light most favorable to Plaintiffs and engage in no weighing of evidence. *See, e.g., West v. Gladney,* 341 S.C. 127, 135 (Ct. App. 2000) (on summary judgment, "this court ordinarily will not consider statements of fact presented only in an attorney's argument in determining whether a genuine issue of material fact exists"). Factual disputes at best, and outright inaccuracies at worst, pervade Defendants' submissions, demonstrating the danger of crediting their characterization of the record without careful scrutiny. This episode is not an isolated misstep but emblematic of the broader misleading and unfair tactics alleged in the Verified Complaint. Viewed properly, these disputes confirm that the purported agreement was an adhesion contract and unconscionable, and further show why Defendants' attempt to compel arbitration cannot withstand meaningful judicial review. Plaintiffs' position as to Defendants' amendment in no way serves as a waiver as to any other disputes of fact.

For transparency purposes, the sentence removed as part of the Amended Memorandum in Opposition, which appeared on pages 4–5 of Defendants' original Memorandum in Opposition, stated: "Additionally, the Defendants submitted the ADDENDUM/EXCEPTION TO CONTRACT which has hand-written changes/addenda to the Agreement ***requested and received by the Plaintiffs***." (emphasis added).

Defendants fail to explain how this point bears on the Court's decision or ameliorates the failure to follow South Carolina's expressed public policy to protect consumers from just this sort of contract.

Defendants also assert that "it is irrelevant that Plaintiffs did not have access to legal counsel or that they did not consult with an attorney prior to signing the Agreement." (*See* Defs' Opp. at 9.) This does not accurately reflect South Carolina law. The Supreme Court of South Carolina has instructed courts to, when considering whether an agreement is unconscionable, look at "whether the party asserting unconscionability . . . had the ***ability to consult an attorney***, or faced other circumstances that made signing the contract in a particular instance grossly inequitable." *Maybank v. BB&T Corp.*, 416 S.C. 541, 575 (2016) (emphasis added). Ability to engage legal counsel is certainly a factor in the unconscionability analysis under South Carolina law.

F. VI'S SOLE AUTHORITY TO SELECT ARBITRATOR

Defendants argue that their unfettered discretion to select the arbitrator is permissible solely because the AAA rules purport to ensure impartiality. By Defendants' logic, nothing would prevent them from naming their own in-house lawyer, David Levine, or even their outside counsel as an arbitrator—so long as that individual "pledged" impartiality. Such a result underscores the untenable nature of their position. As stated, on numerous occasions in Plaintiffs' briefing, *Hooters of America, Inc. v. Phillips* completely invalidates their theory. 173 F.3d 933, 940 (4th Cir. 1999). *Hooters* makes clear that the process of selection must be neutral, not just the arbitrator's subjective pledge of impartiality. Importantly, Defendants never address or otherwise contend with *Hooters* head on.

CONCLUSION AND PRAYER FOR RELIEF

For the Court's ruling in the prior Order Granting Motion to Compel Arbitration and Stay Proceedings to comport with *Schein*, the Court has to make the following findings of fact:

1. The existence of a purported agreement containing Plaintiffs' signature providing for Arbitration (which was acknowledged by Plaintiffs' counsel at the hearing on the Motion to Compel on March 27, 2025);
2. Factual determination that the contract is valid and enforceable and is not subject to any defenses under South Carolina law, that would make the contract revocable (*i.e.*, fraud, duress or unconscionability), just as the Federal Arbitration Act requires. See 9 U.S.C § 2; *York v. Dodgeland of Columbia, Inc.*, 405 S.C. 67, 78 (2013) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 593 (2001) (referencing *Doctor's Assocs. v. Casarotto*, 517 U.S. 681 (1996)) (emphasis added); and
3. The contract, if valid, clearly and unmistakably delegates threshold arbitrability questions to the Arbitrator.

Only with all three of these findings affirmatively made would the Court be able to order the Plaintiffs to be compelled to arbitrate the present dispute and stay the proceedings. If the proper legal standard were applied and the Court drew all reasonable inferences from the Verified Complaint in Plaintiffs' favor, no affirmative finding could be made for items 2 and 3 above. Furthermore, the existence of material factual disputes requires denial of the Motion to Compel Arbitration. For the foregoing reasons, Plaintiffs respectfully request that this Honorable Court grant the full relief requested in the Motion's moving brief.

Respectfully submitted,

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Exhibit G

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
PETER SKOLER and PATRICIA SKOLER, PLAINTIFFS, vs. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA, DEFENDANTS.	)	Civil Action No. 2024-CP-10-02646 **PLAINTIFFS' SURREPLY MEMO IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

TO THE DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEYS:

Plaintiffs Peter Skoler and Patricia Skoler (hereinafter "Plaintiffs") by and through their undersigned counsel hereby submit this Surreply Memorandum in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings in this Case Until Completion of Arbitration.

SUMMARY OF ARGUMENT

I. SOUTH CAROLINA BINDING PRECEDENT—AS WELL AS DEFENDANTS' CASE IN CHIEF *SCHIEN*— QUESTION OF UNCONSCIONABILITY IS FOR THIS COURT.

II. ARBITRATION PROVISION IS UNCONSCIONABLE UNDER SOUTH CAROLINA BINDING PRECEDENT.

III. AAA RULES PROVIDE THAT EVEN IF A CONSUMER AGREEMENT "SPECIFIES A PARTICULAR SET OF RULES OTHER THAN THE CONSUMER ARBITRATION RULES," THE CONSUMER ARBITRATION RULES SHALL APPLY.

Plaintiffs' put forth this brief surreply[1] in opposition to Defendants' March 25, 2025 Memorandum ("Def. Memo"). Plaintiffs will integrate facts as needed throughout this Memorandum but otherwise incorporates their prior recitation of the facts from the Complaint and their March 13, 2025 Memorandum in Opposition.

I. THE QUESTION OF UNSCONSCIONABILITY IS FOR THIS COURT

"[I]n South Carolina, if an arbitration provision is challenged on grounds of unconscionability, the **question of the clause's validity is for courts to decide**, **even if the clause delegates issues of validity** by incorporating the AAA's Commercial Arbitration Rules." *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, 444 S.C. 521, 530 (Ct. App. 2024) (citing *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 23–24 (2007) (emphasis added)).

Defendants put forth *Schein* as their case in chief for the proposition that the parties delegated the issues to the arbitrator. (Def. Memo at 3 (citing *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019)). This position is erroneous and at odds with the procedure and precedent established by the United States Supreme Court and South Carolina's Appellate Courts. Defendants' arguments here are faulty for two reasons: (i) it misrepresents *Schein*'s clear language and (ii) ignores binding South Carolina Supreme Court case law more on point and more recent than *Schein*.

First to *Schein*, whose language could not be clearer in imposing a two-part inquiry:

> "This Court has consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence**. To be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists.** But if a valid

[1] This situation is the quintessential scenario mandating a surreply: where the non-movant is presented with arguments for the first time. *Genesis Health Care, Inc. v. Soura*, 165 F. Supp. 3d 443, 456 (D.S.C. 2015) (allowing the plaintiff to file a sur-reply to address an issue first raised after a motion was fully briefed); *Thompson v. Toney*, No. 2019CP4302375, 2022 WL 22587957, at *1 (S.C.Com.Pl. Aug. 29, 2022) (considering surreply); *Pavilion Development Corp. v. Nexsen Pruet, LLC*, No. 2011CP1005774, 2013 WL 5925732, at *8 (S.C.Com.Pl. Oct. 09, 2013) (considering surreply).

> agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue."

Henry Schein, Inc., 586 U.S. at 69 (citations omitted) (emphasis added). Defendants completely ignore the initial threshold question established by their case in chief on this issue. This Court's job is to answer the first question: "whether a valid arbitration agreement exists." *Id.* Defendants posit it does, Plaintiffs posit that it does not.

Plaintiffs' unconscionability arguments do not go to the question of arbitrability, but rather whether a valid arbitration agreement exists. *315 Corley*, which is binding precedent on this Court, also makes the same clear: "if an arbitration provision is challenged on grounds of unconscionability, the question of the clause's validity is for courts to decide, even if the clause delegates issues of validity by incorporating the AAA's Commercial Arbitration Rules." *315 Corley CW LLC*, 444 S.C. at 530 (citing *Simpson*, 373 S.C. at 23–24).

Therefore, this Court must take the first step and determine whether the arbitration provision invalid on the basis on unconscionability.

<u>II. THE ARBITRATION AGREEMENT IS UNCONSCIONABLE</u>

Section II of Defendants' memorandum amounts to general legal propositions that have no bearing on these facts, while Section III is full of obfuscations. Plaintiffs incorporate all unconscionability arguments from its prior memorandum and refutes Defendants' arguments head-on below.

The parties agree that this question is ultimately one of contract interpretation. (*See* Def. Memo at 5.) However, Plaintiffs assert that the issue of contract interpretation must await determination of whether a contract existed. In spite of clear precedent to the contrary, Defendants rely on outdated and inapposite South Carolina cases for their propositions. For example, Defendants point to *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 (2001) for the proposition that "[t]he arbitration provision . . . cannot be set aside on the ground that the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it." (Def. Memo at 5.) But the sparce analysis in *Munoz* was disapproved in the Supreme Court of South Carolina's seminal *Simpson* decision. *Simpson*, 373 S.C. at 17 (in finding the adhesion contract provided the consumer with no meaningful choice, declared the holding in *Munoz* "fail[ed] to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender"). *Munoz* is no longer good law in South Carolina with respect to adhesion contracts.[2]

Defendants' position that "Plaintiffs had the choice and opportunity to alter or otherwise modify the arbitration provision" belies common sense and the facts. (*See* Def. Memo at 5.) Defendants' position is that just with the inclusion of an "Addendum/Exception to Contract," the entire contract, including the arbitration provisions contained therein, is precluded from being an adhesion contract. Not so.

If a contract would be precluded from being considered one of adhesion if it contained any addendum or handwritten appendix, then there would exist no doctrine of adhesion contracts and the entire underlying rationale of protecting the non-drafter would be eliminated. This cannot be. At best, the Addendum represents a few additional terms all determined by and written into the contract by Defendants and their agents—not Plaintiffs. A separate written portion of an otherwise boilerplate agreement does not make it avoid adhesion contract status. All the handwritten terms here are new, rather than modifications of terms contained in the rest of the form contract. Further,

[2] Remarkably Defendants cite to *Hood* (*see* Def. Memo at 5), a 1934 case, rather than any of the recent Supreme Court of South Carolina decisions on point such as *Damico*, *Simpson*, or *Huskins v. Mungo Homes, LLC, (Op. Num. 28245 Dec. 11, 2024)*.

there is nothing to indicate that it would have been possible, had Plaintiffs proposed, to amend the arbitration provisions, or any other provisions of the agreement for that matter.

Defendants' position completely ignores the context in which the purported agreement was signed. As explained in the Complaint and the prior Memorandum, Defendants employed classic high pressure sales tactics—there was no opportunity or time to reasonably negotiate or understand the terms of this agreement. It is axiomatic that consumer form agreements, such as the subject agreement, are not subject to negotiation by the consumer. *See, e.g., Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 614 (2022) ("'**A consumer transaction which is essentially a contract of adhesion** may be examined by the courts with special scrutiny to assure that it is not applied in an unfair or unconscionable manner against the party who did not participate in its drafting.'" (quoting 17 C.J.S. Contracts § 9) (emphasis added)).

Further, Defendants argue that because the contract asked Plaintiffs to disclaim any "high pressure sales tactics," they could not have possibly been employed here. (*See* Def. Memo at 7.) In fact, just the opposite is true. Defendants' inclusion of such a clause is itself evidence of high pressure sales tactics. Said differently, no ordinary non-high pressure sales process would need to include such a disclaimer. Its inclusion in the contract is fatal.

In fact, the employment of high pressure sales tactics is one of the factors courts consider in determining whether a contract was unconscionable. *See, e.g., Ashford v. PricewaterhouseCoopers LLP*, 954 F.3d 678, 684 (4th Cir. 2020) (considering, among other things, "whether deceptive or high-pressure tactics were employed") (citation omitted). Since Plaintiffs refute the contract on the basis of unconscionability, they cannot disclaim a material fact that goes to the contract's unconscionability.

Defendants say "Plaintiffs could have just listened to the presentation and left at any time without signing the Purchase Agreement. It is not unusual for those who listen to the Defendants' sales presentation to do only that and then decline to purchase." (Def. Memo at 7.) These statements belie the circumstances and run counter to publicly available information to which the Court can take judicial notice of. One-hundred and eleven (111) complaints have been lodged with the South Carolina Department of Consumer Affairs against Vacation Inspirations as of March 26, 2025. *See:*

https://applications.sc.gov/DCAComplaintSystem/Public%20Information/PublicBusinessProfile.aspx?bid=297. Nearly all the complaints are for "high pressured deceptive sales practices" or "misleading deceptive practices." These complaints speak for themselves. And the ban on cell phones served to bar potential victims from learning of the many complaints against and negative news of Defendants.[3]

III. THE CONSUMER ARBITRATION RULES CLEARLY APPLY ACCORDING TO THEIR PLAIN LANGUAGE

Rule R-1(a)(4) of the AAA Consumer Arbitration Rules provides that the Consumer Arbitration rules apply to any dispute where the parties' agreement selects AAA to administer the dispute and the arbitration agreement is contained in a consumer agreement, even if the agreement specifies a particular set of rules other than the Consumer Arbitration Rules. *See, e.g., Graham v. Mascio*, 6 Wash. App. 2d 1028 n.2 (2018). This is further corroborated by the AAA Commercial Rules themselves. Footnote of Rule R-1 of the AAA Commercial Arbitration Rules, a copy of

[3] Also in their Section III arguments, Defendants ignore South Carolina law that provides that "[i]In determining whether a party lacked a meaningful choice to arbitrate, courts should consider, *inter alia*, the relative disparity in the parties' bargaining power, the parties' relative sophistication, **whether the parties were represented by independent counsel**, and whether the plaintiff is a substantial business concern." *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49 (2016) (internal quotations and citation omitted) (emphasis added).

which is attached as an exhibit, states "the Consumer Arbitration Rules apply to any dispute where the parties' agreement selects AAA to administer the dispute and the arbitration agreement is contained in a 'consumer agreement,' even if the agreement specifies a particular set of rules other than the Consumer Arbitration Rules." Therefore, assuming *arguendo* that the arbitration clause was valid, the AAA Consumer Rules would apply. Thus, all of Defendants arguments relating to and stemming from the AAA Commercial Rules are invalid.

CONCLUSION

Based upon this Memorandum and Plaintiffs' prior Memorandum, applicable case law, and any other documents filed with this Court, Plaintiffs respectfully request that this Honorable Court deny Defendants' Motion to Compel Arbitration and Stay Proceedings.

Respectfully submitted,

s/David W. Wolf
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s/Abby Edwards Saunders
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Exhibit H

Vacation Inspirations Membership

PURCHASE AGREEMENT **MEMBER #**[redacted]

Distributed by Destination Travel, LLC

This agreement, made and entered into this 27 day of May 2021, by and between Vacation Inspirations (hereinafter referred as VI), and Destination Travel, LLC (hereinafter referred as DT), and:

Name: Last Sawyer First Christopher Spouse Terese Polcha

E-Mail: [redacted]

Address: [redacted]

City: Mechanicsburg State: PA Zip Code 17055

Phone: (C): [redacted] (C): [redacted]

hereinafter referred to as Client.

By this agreement the Client shall be entitled to all rights and benefits of the Vacation Inspirations Travel Membership, and allowed to request up to [Four] week(s) of condominium accommodations per year provided by VI. The location and week(s) shall be determined by using the reservation procedures as set forth in VI Membership materials.

The Term of usage of this agreement will be for 12 months.

Client can elect to engage in a new contract each 12 month period after the end of the initial contract term by using the VI Draft Authorization. Member will only be required to pay dues annually to renew the membership agreement.

This agreement does not convey any interest or ownership in real estate or resort property.

Membership Purchase Price is $ 5995, ~~Documentation Fee is $399; first year dues is $199, for a total of $~~ (waived)

In the event that VI extends credit to the client for the purchase price, the terms of credit are set forth in the "Federal Truth in Lending Act Disclosure" printed below.

FEDERAL TRUTH-IN-LENDING ACT DISCLOSURE

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate:	FINANCE CHARGE The dollar amount the credit will cost you:	AMOUNT FINANCED The amount of credit provided to you or on your behalf:	TOTAL OF PAYMENTS The amount you will have paid if you have made all payments as scheduled:	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of: $
N %	$ /A	$ N	$ /A	$

Your payment schedule will consist of, and Client agrees to pay VI a total of ______ payments, in the amount of $______ per month (P&I) with the first payment to be made on the 1st day of ______, 20____ and succeeding payments to be made on the same day of each month thereafter. Client shall have the option of the direct draft option offered by VI. N/A

LATE CHARGE: For each payment made ten (10) days after the due date there will be a late charge of FIVE PERCENT (5%) of the payment amount or $15.00, whichever is greater. N/A

Membership must be paid in full to be eligible for Rewards. PREPAYMENT: There is no prepayment penalty.

NOTICE TO BUYER: THE UNDERSIGNED MEMBER ACKNOWLEDGES THIS IS A NON-CANCELABLE CONTRACT. THIS IS NOT A TIMESHARE, HEALTH CLUB, BUYERS CLUB, NOR DOOR TO DOOR SALES CONTRACT AGREEMENT. PLEASE MAKE YOUR DECISION ACCORDINGLY. CS TP

C Sawyer
Client/Purchaser

Client/Purchaser

Sales Representative

Manager

MEMBERSHIP TERMS AND CONDITIONS

These Terms and Conditions are part of the Membership Agreement

I. ANNUAL MEMBERSHIP FEE (AMF) and Term of the Contract:
Additional to the contract with Vacation Inspirations, the client will pay VI an Annual Membership Fee of $199.00. Payment of the AMF will be due and payable each year according to the annual draft acknowledgment. Failure to pay AMF will result in loss of privileges.

II. VS RESERVATION SYSTEM:

1. A vacation week is an 8 day/ 7 night condominium in venues normally considered a vacation venue, and may be booked using a Vacation Voucher.
2. A Vacation Voucher is used to request a Vacation Week and must be completely filled out in writing and mailed to VI no earlier than 360 days prior to and no less than 60 days prior to the vacation week. To greatly increase confirmation allow 90 days notice for a prime season week, or 180 days for a Holiday or Special Event week.
3. Reservation request, as to the location of the vacation, shall be an area designated as a vacation venue by VI. Destinations are listed as a reference to help determine Prime Season and Swing Seasons and may change from time to time as client demands change, and shall be defined as a venue normally utilized as a vacation area.
4. All reservations are handled on a first come first serve basis, and VI makes no warranties or guarantees as to the availability in any particular resort or destination. Accommodations are based on wholesale availability. Confirmation for accommodations will be mailed to client. No more than two weeks can be booked consecutively or concurrently at any one location without special permission.

III. USE AND OCCUPANCY:
Purchaser agrees that the purchase of the vacation week(s) is for personal use, and shall be used by the purchaser, their immediate family or their guests providing the occupancy limits are not exceeded. Purchaser agrees to be responsible for damages by those utilizing the accommodations as the result of this agreement, and also to abide by all rules and regulations established by any resort. None of the monies collected by VI shall be used for any personal charges incurred by purchaser, including fees such as cleaning fees, gratuities, state, local or national taxes, energy surcharges, foreign departure fees, etc.

IV. CANCELLATION OF ACCOMODATION:
In the event a confirmed reservation must be cancelled by purchaser, a credit on a future vacation will be issued only if VI can resell the accommodations, and if the cancellation is in writing 30 days prior to the vacation date.

V. DELAY OR IMPOSSIBILITY OF PERFORMANCE:
Where the delay or impossibility of performance due to circumstances beyond the control of VI occur (other than the act or omission by purchaser), VI will have the sole and absolute discretion to offer the following: (1) Provide an alternative accommodation the same year space available, (2) Provide additional accommodations in subsequent year or years provided said accommodation does not occur after the termination of this agreement, (3) Refund any fees paid by purchaser for the accommodations. Should the purchaser not use the vacation week allotted by this agreement, due to no act by VI, VI is not obligated to refund or provide alternative week.

VI. RIGHT OF ASSIGNMENT:
VI retains the absolute privilege to assign the rights and delegate any or all of the duties imposed upon VI by the terms of this agreement or to assign the entire agreement to others, provided that no such transfer shall affect any rights of the purchaser. (2) Purchaser shall have the privilege to assign their rights under this agreement with the prior written consent of VI, which shall not be unreasonably withheld. Purchaser shall not assign this agreement for a consideration that exceeds the consideration paid by the purchaser.

VII. BINDING NATURE AND MODIFICATION:
The terms and conditions of this agreement and any other document executed in conjunction herewith are intended to bind the parties' hereto and represent the entire agreement. The parties further agree this agreement may not be amended or modified other than in writing and duly executed by both parties, and that this agreement will be in full force and effect from date of its execution. Client acknowledges that this agreement is not subject to any "right of rescission" and may not be cancelled.

VIII. DISPUTE RESOLUTION
Any controversy, claim or dispute arising out of or relating to this Purchase Agreement, shall be resolved and decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") (however, not under the auspices of AAA), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall be selected by VI. Upon final award, arbitrator compensation and cost of the location shall be paid by the non-prevailing party. The arbitration shall take place in Charleston, S.C. at the Charleston County Courthouse or other location determined by VI.

VACATION INSPIRATIONS

ADDENDUM/EXCEPTION TO CONTRACT

MEMBER NUMBER [redacted]

THIS ADDENDUM/EXCEPTION IS PART OF THE MEMBERSHIP AGREEMENT

The member number in the box above shall be entitled to the following exceptions for the Vacation Inspirations membership:

Annual dues frozen $199 forever

(6) Friend/family plans w/no dues & 5% back on cruises

Primary members 10% back on cruises

Client Date 5/27/2021 Sales Representative Date 5/27/2021

Client Date 5/27/2021 Manager Date 5/27/2021

Vacation Inspirations Membership Acknowledgment

This Acknowledgement is part of the Membership Agreement

I have purchased a Membership from Destination Travel, LLC who is a distributor of the Vacation Inspirations Membership. # [redacted] Please answer **YES** or **NO** to the following:

1. Do you understand this is a purchase of a travel membership and travel related services, and that this agreement does not convey any interest in real estate or timeshare? — 1) YES

2. Do you understand Vacation Inspirations may add new benefits at any time, and may replace current suppliers, or benefits as needed? — 2) YES

3. Do you understand the membership you are purchasing may be sold or transferred by the member with prior written consent of Vacation Inspirations? Such consent will not be unreasonably withheld. If a transfer is made, the new member must pay annual membership fees. — 3) YES

4. Do you understand the membership fee is $199.00 per year? I/We understand this membership is a one year membership that may be renewed each year for the lifetime of the membership on the draft date. — 4) YES

5. Do you understand when requesting condo reservations you must allow a minimum 90 day notice for prime season and a 180 day notice for holiday/special event weeks? All reservations are made on a wholesale, space available, first come basis and Vacation Inspirations makes no guarantees as to space availability in any particular resort or area. — 5) YES

6. Do you understand this agreement will be in full force and in effect from the date of its execution and this agreement is not subject to any "**right of rescission**" under the laws of South Carolina? — 6) YES

7. Do you understand all bookings made by Vacation Inspirations are booked at the lowest available rate and there are no discounts and/or rewards on individual airfare? — 7) YES

8. Do you understand Vacation Inspirations website is a search engine only? As a member you must call, email or fax to receive your special member rates? — 8) YES

9. Do you understand your savings on Cruises, All-Inclusives, Land/Air Packages, Tours, and Hotel stays come from direct discounts and/or rewards? — 9) YES

10. Was your decision to make this purchase based on any type of high pressure sales tactics? — 10) NO

11. Do you feel a monthly payment of $ Ø will cause any financial hardship for you as the purchaser for the duration of the financing? — 11) N/A

12. Do you understand all representations, either oral or written, that are not contained in the original written contract documents will not be upheld by Vacation Inspirations? *(see addendum, if applicable)* — 12) YES

13. Do you understand only members are eligible for rewards, and do not apply to family, friends or guests of Vacation Inspirations members? All members have unlimited access to Hot Weeks (condo vacations booked 60 days or less), but do not receive rewards *(see addendum, if applicable)* — 13) YES

Signed in South Carolina this 27 day of May 2021

Purchaser	Sales Representative
Purchaser	Manager

VACATION INSPIRATIONS

AUTHORIZATION TO DRAFT DUES

THIS AUTHORIZATION IS PART OF THE MEMBERSHIP AGREEMENT

Date of Purchase

MEMBER NUMBER
[redacted]

METHOD OF PAYMENT

- [ ] VISA
- [ ] MASTERCARD
- [ ] AMERICAN EXPRESS
- [ ] DISCOVER

CARD NUMBER:

EXPIRATION DATE:

SECURITY CODE:

BILLING ADDRESS

NAME AS IT APPEARS ON CARD: __________

BILLING ADDRESS: __________

____

CITY: __________ STATE ______ ZIP CODE: __________

Member phone # [redacted]

By signing below, I authorize Vacation Inspirations or its assigns, to collect payment of annual dues by means of a preauthorized debit in the amount of $199 per year. The first payment will be drafted on or about the 1st of July, 2022 and will continue annually on or about the same date.

CHRISTOPHER SAWYER Date 5/27/2021 x [signature] Date 5/27/2021

Name as it appears on Card (Printed) Signature

FROM OUR BOARD OF DIRECTORS

HELP US KEEP OUR PROMISE TO HELP YOU

Thank you and congratulations on your purchase of a Vacation Inspirations Membership. We are very excited to be able to provide you and your family with all your future vacation and travel needs.

We are here to help you maximize the benefits of your Membership. We want you to be happy with the decision you made to become part of our vacation and travel family. That is our goal and promise to you.

Please be assured that we have the experience, resources, and the team to provide you with the benefits of Membership that you have purchased. If you ever have any concerns or questions about your Membership, call us at the number below and give us the opportunity to work with you to answer your questions and resolve any issues that you might have. We promise to do our very best to make you happy. We need your help in order to keep our promise to you.

In return, you agree to contact us at the telephone number listed below prior to asserting any dispute with your credit card company or consumer agency in order to give us the opportunity to keep our promise. We truly appreciate the opportunity to serve you.

Thank you.

Telephone Number to call: (843) 708-8416
Or email to: membersliaison@vacationinspirations.com

[redacted] Member Number

x __________ Member

__________ Member