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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas J. Rode, Circuit Court Judge

Appellate Case No. 2026-000910
Case No. 2024-CP-10-02642

Christopher Sawyer and Terese Sawyer, ... Appellants,

v.

Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner, and Jeffrey Pumilia .... Respondents,

APPELLANTS' RETURN TO RESPONDENTS' MOTION TO STRIKE MATERIALS IN APPELLANTS' DESIGNATION OF MATTER AND IN INITIAL BRIEF AND MEMORANDUM IN SUPPORT

Appellants respectfully submit this Return in opposition to Respondents' Motion to Strike. The Motion should be denied because it rests on an unduly narrow reading of Rule 210(c), does not identify where the challenged materials were—and were not—presented in the consolidated trial-court proceedings, and cites no decision applying Rules 209 or 210 to comparable circumstances. The Motion also overlooks that several challenged materials were expressly referenced in pleadings and motion practice below; others are properly included for the limited purpose of establishing this Court's appellate jurisdiction; and all are public records or other materials susceptible to judicial notice for appropriate purposes.

Respondents' request for wholesale striking would elevate form over substance. The Court can readily distinguish between using a document as proof of disputed historical facts and considering the document for its existence, public-record status, notice, recurrence, or jurisdictional significance. If Respondents believe any item should receive little or no weight, that is a merits argument. It is not a basis to excise materials the circuit court was asked to consider, materials incorporated into the pleadings and briefs, or materials bearing directly on whether the challenged arbitration scheme is capable of repetition.

I. BACKGROUND

A. The Underlying Dispute and the Challenged Materials

This appeal arises from Appellants' challenge to a vacation-club agreement that they allege was procured through a high-pressure sales process and contains a fundamentally unfair one-sided dispute-resolution scheme. The Verified Complaint alleges that Respondents discouraged outside research, rushed Appellants through execution of a noncancellable agreement, and imposed an arbitration provision granting Vacation Inspirations unilateral authority to select the arbitrator while exposing consumers to severe procedural disadvantages. The circuit court nevertheless compelled arbitration and stayed the action.

The materials Respondents now seek to strike are not collateral to that dispute. They concern Respondents' sales practices, governmental enforcement history, consumer complaints filed with the South Carolina Department of Consumer Affairs, use of the same form agreement and arbitration provision in other transactions, and efforts to enforce that provision in parallel litigation. They thus bear directly on issues raised below and on this Court's threshold determination whether the challenged arbitration scheme is recurring and capable of repetition. Moreover, the materials were, in various respects, pleaded, cited, incorporated by reference, presented through motion practice, or derived from public records susceptible to judicial notice for proper purposes.

B. Appellants Attempted to Narrow the Dispute; Respondents Refused

This Motion was avoidable. On June 3, 2026, Respondents first contacted Appellants to discuss the Designation of Matter in a related appeal regarding materially the same issues, with the same counsel on each side, and the same Respondents. *See Frank Perrelli, Jr. v. Vacation Inspirations*, Case No. 2026-000043. Appellants sought to explain the basis for including each contested item in the record and, despite those grounds, were willing and adamant about resolving the dispute out of court through compromise. Those efforts were not successful.

During the parties' conference on June 5, 2026, Appellants proposed discussing each of the disputed items individually in an effort to narrow or eliminate the disagreement. Respondents declined to engage in an item-by-item discussion and offered no alternative proposal for resolving or narrowing the dispute. Having rejected Appellants' effort to identify possible areas of agreement, Respondents filed a Motion seeking wholesale exclusion of every challenged item. The resulting motion practice is therefore not the product of an irreconcilable legal dispute, but of Respondents' refusal to engage with the specific materials they now ask this Court to strike.

C. Respondents' Barebones Motion

Respondents' Motion confirms why the extraordinary remedy of striking materials from the appellate record is unwarranted. The Motion is barely more than a page and, despite Rule 240(c)(2), SCACR's requirement that every motion contain a "memorandum with citation of authorities in support of the motion," it cites no case law at all. Instead, Respondents invoke Rules 209, 210, and 240, SCACR, in conclusory fashion and assert that six materials "were not presented to or ruled on by the lower court and so they are not appropriate for appellate review." (Mot. 2.)

That unsupported assertion does not carry their moving party burden. The Motion does not analyze the pleadings, the motion-to-compel briefing, the reconsideration briefing, the consolidated proceedings, or the limited purposes for which the challenged materials are offered.

Nor does it distinguish between materials offered as proof of disputed facts and materials offered to show existence, notice, public-record status, recurrence, judicially noticeable facts, or appellate jurisdiction. Respondents' unsupported, all-or-nothing request should be denied for that reason alone.

II. ARGUMENT

A. Respondents Have Not Carried Their Burden

Respondents cite no decisional authority interpreting Rules 209 or 210, SCACR and no authority supporting the extraordinary remedy of striking portions of an initial brief. To be sure, "[a] motion to strike places a sizable burden on the movant, and would typically require a showing that denial of the motion would prejudice the movant." *Levolor, Inc. v. Rowley Co., LLC*, No. CV 6:22-3599-DCC, 2023 WL 11963040, at *5 (D.S.C. May 16, 2023). "Striking . . . is a 'drastic remedy' rarely to be granted." *Bell v. Forrest Paschal Mach. Co. & Eng'g Assocs.*, 277 S.C. 19, 20, 282 S.E.2d 232, 233 (1981) (citation omitted).

The Motion likewise supplies no affidavit or other supporting material identifying the filings they reviewed or establishing the factual premise that the challenged materials were never presented. *See* Rule 240(c)(3), SCACR (requiring affidavits and supporting documents for motion practice before the Record on Appeal or Appendix has been filed).

B. Materials were Presented to the Lower Court

Rule 210(c), SCACR, excludes materials that were "not presented to the lower court." This does not require that materials be admitted into evidence, received as an exhibit, or relied upon in an order. The word "presented" encompasses material placed before the lower court through pleadings, briefs, attachments, incorporated documents, and requests for judicial notice. *See* Rule 210, SCACR (indicating matters contained in the record on appeal can include "index, orders, judgments, decrees, decisions, pleadings, transcript, charges, and exhibits and other materials or documents"). Reading "presented" to mean only "admitted" would erase the Rule's chosen language and exclude ordinary components of appellate records, including arguments, authorities, proffers, and materials a trial court declined to credit.

1. The Prior State Enforcements Actions Against Respondents Were Presented to the Circuit Court on Multiple Occasions

Respondents seek to strike the "Assurance of Voluntary Compliance in *Sours v. The Vacation Station, LLC*, No. 2012-CV211716, filed Feb 20, 2012" and the press release titled "AG Paxton Reaches $74K Agreement with San Antonio-Based Business, Texas v. Vacation Inspirations, LLC", No. 2017CI11368, dated June 22, 2017." But the Georgia and Texas enforcement matters were placed before the circuit court repeatedly.

First, the Verified Complaint specifically pleaded both enforcement actions.[1] Paragraphs allege that Respondents Shirley and Gardner were individually named in a Georgia enforcement action, No. 2012-CV211716, and a Texas enforcement action, No. 2017CI11368. (*See* Exhibit A Compl. ¶¶ 81–83, 94.) The Complaint further alleges that some of the Respondents, including Shirley and Gardner, were named in the Georgia Assurance of Voluntary Compliance. (*Id.* ¶ 81.)

Second, Respondents' Answer confirms both that the matters were presented below and that Respondents had an opportunity to address them. In response to the referenced paragraphs of the Verified Complaint, Respondents stated that "the document mentioned speaks for itself," in each. (*See* Exhibit B Answer to Sawyer Compl. ¶¶ 81–83.) Respondents' failure to deny them is

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[1] The allegations in paragraphs 81 through 83 of the Verified Complaint establish that the materials Respondents seek to strike were presented to the circuit court. *See Carolina First Corp. v. Whittle*, 343 S.C. 176, 190, 539 S.E.2d 402, 410 (Ct. App. 2000) ("Generally, a court may consider documents outside of the complaint if the complaint incorporates the documents by reference."). Moreover, although not necessary for the "presented" issue, Appellants have consistently maintained—both below and on appeal—that the allegations in the Verified Complaint must be treated as evidence. *See Dawkins v. Fields*, 354 S.C. 58, 67, 580 S.E.2d 433, 438 (2003) (recognizing that "a verified complaint is the equivalent of an affidavit" under South Carolina law). The evidentiary status of those allegations further bolsters that the challenged materials were properly presented to the lower court.

nevertheless telling because allegations not denied are "deemed admitted." *Motors Insurance Corp. v. State ex rel. Department of Highways & Public Transportation*, 313 S.C. 279, 281, 437 S.E.2d 555, 557 (Ct. App. 1993) (citing Rule 8(d), SCRCP).

Third, Appellants again presented the Georgia and Texas enforcement matters in their memorandum in opposition to the motion to compel arbitration and in their motion for reconsideration of the order compelling arbitration. (*See* Exhibit C Opp. to Mot. Comp. Arb. at 4; *see also* Exhibit D Recon. Mot. at 6.)

Accordingly, the challenged materials concern enforcement proceedings to which Respondents themselves were parties, were specifically pleaded in the Verified Complaint, were addressed in Respondents' Answer, and were again presented in the briefing. Because these matters were repeatedly placed before the circuit court and Respondents had ample opportunity to address them, they are properly included in the appellate record.

C. The Records All Relate to Appellate Jurisdiction—Capable of Repetition—That was not Before the Lower Court

An independent basis for denying the Motion is that the challenged materials bear directly on one of Appellants' asserted grounds for appellate jurisdiction: whether the challenged arbitration scheme is recurring and therefore capable of repetition. Appellate jurisdiction is necessarily a question for this Court, not the circuit court. Materials relevant to that threshold inquiry therefore need not have been presented below in the same manner as materials offered to establish the merits. *United States v. Fowler*, 58 F.4th 142, 152 (4th Cir. 2023) ("[W]e may take judicial notice of facts outside the record where the fact may not be reasonably disputed and is relevant and ***critical to the matter on appeal***." (internal quotation and citation omitted)) (emphasis added).

South Carolina appellate courts have reviewed otherwise nonappealable arbitration orders where the issues were "capable of repetition and need[ed] to be addressed." *Toler's Cove Homeowners Ass'n, Inc. v. Trident Construction Co.*, 355 S.C. 605, 611, 586 S.E.2d 581, 585 (2003); see also *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 365, 887 S.E.2d 534, 539 (Ct. App. 2023), *rev'd on other grounds*, 444 S.C. 592, 910 S.E.2d 474 (2024). Cases in which Respondents used the same arbitration provision in other consumer contracts and invoked that provision in other litigation bears directly on whether the challenged conduct and legal issues are likely to recur.

Indeed, some of the relevant materials could not have been presented to the circuit court because they postdate the orders under review or concern subsequent appellate developments. This Court nevertheless must assess its own jurisdiction in light of current, objectively verifiable circumstances. Consistent with that obligation, South Carolina appellate courts may "take judicial notice of [their] own docket and note that this very issue is currently on appeal in" another action. *Sloan v. Greenville County*, 380 S.C. 528, 537, 670 S.E.2d 663, 668 (Ct. App. 2009) (taking judicial notice of the appellate docket and a separate pending appeal in evaluating appellate jurisdiction).

Rule 210(c), SCACR, should not be transformed from a rule governing the record on the merits into a barrier preventing this Court from considering the objectively verifiable information necessary to determine its own jurisdiction. At minimum, the challenged materials are properly before the Court for the purpose of evaluating whether the issues presented are capable of repetition and warrant appellate review.

The circuit court had no occasion to decide appellate jurisdiction. This Court does. Materials relevant to appellate jurisdiction—especially public filings and public records subject to judicial notice—may properly be considered for that threshold purpose. *See Just. 360 v. Stirling*, 42 F.4th 450, 455 (4th Cir. 2022) (courts "may properly take judicial notice of matters of public record"). Critically, Respondents cannot contest recurrence while simultaneously seeking to strike the materials showing recurrence.

D. In the Alternative, the Materials Easily Come in Through Judicial Notice

Even assuming *arguendo*, if the Court were to conclude that certain contested records were not "presented" to the lower court—which Appellants dispute—many of the challenged materials are independently proper subjects of judicial notice. *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) ("[A]n appellate court can take judicial notice of something that was not before the trial court if it is indisputable."). Appellants do not ask the Court to notice disputed adjudicative facts or to accept every factual assertion in the challenged materials as true.

At a minimum, the Court may consider the materials for limited and proper purposes: that related lawsuits were filed; that public court filings and agreements exist; that government enforcement materials and press releases were issued; that the South Carolina Department of Consumer Affairs maintained a number of complaint materials concerning Vacation Inspirations; that the WCSC article was published on a particular date; and that these public materials bear on notice, recurrence, unconscionability, and appellate jurisdiction.

Rule 201, SCRE, authorizes judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" and permits notice "at any stage of the proceeding," including appeals. Rule 201(b), (f), SCRE. The challenged court filings, filed government settlement, agency publication, South Carolina agency complaint database, and court dockets are public records whose existence and contents can be verified from official sources. *See also* Rule 803(8), SCRE (public records and reports).

The Supreme Court of South Carolina has explained that it routinely looks to the federal interpretation of the Rules of Evidence to guide us in our interpretation of our own Rules of

Evidence." *State v. Broadnax*, 414 S.C. 468, 477 n.7, 779 S.E.2d 789, 793 n.7 (2015). Therefore, the Court can look to federal cases involving the Federal Rule of Evidence, including Rule 201 governing judicial notice.

Judicial notice does not require the Court to accept disputed allegations within those records as true. The Court may notice that an action was filed, that a contract containing specified language was attached, that state agencies issued identified public documents, that complaints were received or categorized, and that a news report was published and included Respondents' participation. This limited approach preserves both the integrity of the record and Respondents' ability to dispute the merits.

1. The Assurance of Voluntary Compliance and the Attorney General Press Release Are Official Government Records Subject to Judicial Notice

The Assurance of Voluntary Compliance entered in *Sours v. The Vacation Station, LLC*, No. 2012-CV211716, is an official law-enforcement document executed by a state attorney general's office, and in which a number of Respondents are party to. Just the same, the Texas Attorney General press release regarding the 2017 settlement with Vacation Inspirations, LLC is an official publication of a state government agency. Official government documents and public regulatory materials are the type of sources whose existence, issuance, and legal effect are capable of accurate and ready determination. *Scurmont LLC v. Firehouse Rest. Grp., Inc.*, No. 4:09-CV-00618-RBH, 2011 WL 2670575, at *15 n.11 (D.S.C. July 8, 2011) (taking judicial notice of "[r]ecords from government websites" because they "are generally considered admissible and self-authenticating").

2. The Department of Consumer Affairs Records Are Official State Agency Records Subject to Judicial Notice

The South Carolina Department of Consumer Affairs complaint data regarding Vacation Inspirations constitutes an official record maintained by a state agency. Courts "'may properly take notice of matters of public record,' including 'publicly available statistics on a government website.'" *Tina T. v. Kijakazi*, No. CV 1:22-3192-DCC-SVH, 2023 WL 9955804, at *2 (D.S.C. Apr. 6, 2023), *report and recommendation adopted sub nom. Torongeau v. Kijakazi*, No. 1:22-CV-03192-DCC, 2024 WL 618730 (D.S.C. Feb. 14, 2024) (quoting *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)).

Further, this is also a record the circuit court was directly and expressly asked to notice. These records are offered to establish the existence and volume of consumer complaints on file with the State's designated consumer protection agency—not to establish the truth of every consumer allegation. Respondents had every opportunity to respond to Appellants' judicial-notice request below and cannot now claim the record should be cleared of materials the court was expressly asked to notice.

3. *Perelli & Skoler* Action Materials

As an initial matter, it belies common sense that the same Respondents represented by the same counsel seek to dispute the authenticity of a Purchase Agreement that they themselves are trying to defend in a related action. *See Perrelli v. Vacation Inspirations*, No. 2026-000043.

In any event, "[a] court may take judicial notice of closely related proceedings, particularly where the same parties are involved and the allegations from those proceedings have been proved, or where the cases are essentially the same." 29 Am. Jur. 2d Evidence § 148. In fact, the "most frequent use of judicial notice of ascertainable facts is in noticing the content of court records." *Fowler*, 58 F.4th at 152 (internal citation and quotation omitted).

The Verified Complaints and Purchase Agreements in *Perrelli v. Vacation Inspirations*, No. 2024-CP-1004606 (S.C.Com.Pl.), *on appeal* 2026-000043 and *Skoler v. Vacation Inspirations*, No. 2024-CP-1002646 (S.C.Com.Pl.), *on appeal* 2026-0000058 concern the same form membership agreement and identical dispute-resolution provision at issue here. That is not in dispute. All of these documents are public records filed in the Charleston County Court of Common Pleas—the same court from which this appeal arises. All three cases involve the same Respondents, represented by the same counsel.

The *Perelli* and *Skoler* complaints, like the complaint here, are verified. Appellants do not offer each, however, to establish the truth of every allegation made in that action. Rather, each demonstrates the existence and substance of a parallel challenge involving the same Respondents, the same alleged high-pressure sales practices, and the same arbitration language. The accompanying Purchase Agreements—which the same Respondents by the same counsel attached to their Motion to Compel Arbitration[2]—further confirms that recurrence is not inferred merely from similar allegations: Respondents employed the same operative dispute-resolution provision in a separate transaction with different consumers.

4. The News Article Is Subject to Judicial Notice for the Fact of Its Publication.

The WCSC-TV article dated November 4, 2022, concerning Respondents' prior settlements and consumer complaints is offered for limited purposes: its existence, title, publication date, subject matter, and the fact of public reporting concerning the same regulatory and consumer-complaint history. Appellants do not ask the Court to notice the truth of every statement in the article. That limited use is sufficient to defeat Respondents' request to strike the article wholesale. Courts regularly distinguish between noticing the truth of a news report, which is generally improper, and noticing the fact that a particular article was published or that information was publicly reported. *See Bradacs v. Haley*, 58 F. Supp. 3d 499, 511 (D.S.C. 2014) ("[A] news article . . . can be judicially noticed for facts such that a fact was printed."); *Bryant v.*

[2] *See* Exhibit E *Perrelli v. Vacation Inspirations*, No. 2024-CP-10-004606, Exhibit to Motion to Compel Arbitration, filed November 12, 2024; Exhibit F *Skoler v. Vacation Inspirations*, No. 2024-CP-10-02646, Exhibit to Motion to Compel Arbitration, filed November 12, 2024.

Woodall, 1 F.4th 280, 288–89 & n.2 (4th Cir. 2021) (taking judicial notice of the publication of an opinion piece in the Washington Post).

A published article's existence and publication date are capable of accurate and ready determination from publicly available sources whose accuracy cannot reasonably be questioned. Rule 201(b), SCRE. Respondents were the subject of the article and participated in the coverage at the time it was published, further negating any claim of surprise. Accordingly, Respondents' objections, if any, go to the weight and permissible use of the article—not to its inclusion in the record.

E. Respondents Did Not and Cannot Show Prejudice

Striking is particularly unwarranted because Respondents cannot plausibly claim surprise. *Provident Life & Acc. Ins. Co. v. Cohen*, 137 F. Supp. 2d 631, 632 (D. Md. 2001) (motions to strike "should not be granted absent a showing of undue prejudice.") The purpose of procedural rules governing the record on appeal is to ensure fairness: to prevent a party from being surprised by materials it never had an opportunity to address. That concern is entirely absent here.

The contested records are not new, unfamiliar, or unfairly surprising. They concern Respondents' own membership purchase agreements—the contracts Respondents drafted and relied upon in moving to compel arbitration. The related litigation in *Sawyer v. Vacation Inspirations* involves Respondents as the named defendants. The settlements with the Texas and Georgia Attorney Generals involve enforcement actions against Vacation Inspirations or its predecessor and affiliated entities—proceedings to which Respondents or their predecessors and principals were parties. The South Carolina Department of Consumer Affairs complaints were filed against Vacation Inspirations, are maintained by a state agency in the ordinary course of its functions, and reflect matters to which Vacation Inspirations engages with through the Department's complaint process. And the WCSC-TV article reported on Vacation Inspirations specifically and in which Vacation Inspirations' agents participated; Respondents were its subject and had a full opportunity to participate in or respond to the coverage at the time it was published.

Respondents were therefore aware of, involved in, or directly connected to each category of material they now seek to strike. The only prejudice they can plausibly claim is that the materials are adverse to their position. That is not cognizable prejudice. It is not a basis to sanitize the appellate record of materials relevant to recurrence, notice, and appellate jurisdiction. Respondents' motion seeks not to prevent unfair surprise, but to remove materials that undermine their substantive position. That purpose is not a legitimate basis for striking the record.

The materials also do not expand the causes of action or inject a new merits theory. They relate to issues already litigated: the recurring use of the same arbitration clause, the context surrounding formation, the need for discovery, Respondents' notice, and appellate jurisdiction. Respondents can respond to those points in their brief. Ordinary appellate review supplies all tools necessary to decide what is relevant, what use is permissible, and what weight—if any—each item deserves.

F. Any Doubt Should be Resolved by Limiting Use, Not Striking Wholesale

Even if the Court was skeptical that a particular item was "presented" to the lower court, the appropriate remedy is not wholesale excision. Even if Respondents disagree with Appellants' characterization or use of particular materials, that disagreement belongs in merits briefing. Striking would create collateral litigation over record composition and risk preventing review of the very questions presented by the appeal. Respondents can—and should—argue that an item deserves no weight. But they have not shown that the Court is incapable of drawing the familiar distinction between admissibility for the truth, judicial notice of existence, and consideration for jurisdictional purposes.

III. CONCLUSION

For these reasons, Appellants respectfully request that the Court deny Respondents' Motion to Strike. In the alternative, Appellants request that the Court permit the challenged materials to remain in the Designation and Initial Brief subject to such limitations on purpose or weight as the Court deems appropriate, and grant any other relief necessary to preserve a merits determination of the consolidated appeals.

Respectfully submitted,

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Exhibit A

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

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

COME NOW Plaintiffs Christopher Sawyer and Terese Sawyer (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 Pennsylvania;

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. Plaintiffs visited the County and City of Charleston, South Carolina from May 25, 2021 to May 27, 2021;

11. On or about May 26, 2021, the Plaintiffs entered Defendants VI and DT's storefront located at 229 Meeting Street, Charleston, South Carolina 29401and were called up to the counter and offered free tickets to a couple of sightseeing events if Plaintiffs attended a sales presentation the following morning;

12. The counter clerk required a Twenty Dollar ($20.00) reservation fee, which was to be refunded upon appearance at the presentation at 30 Vendue Range, Charleston, South Carolina 29401;

13. Plaintiffs arrived at 30 Vendue Range the following morning at 10:00 am and were refunded the Twenty Dollar ($20.00) fee;

14. When Plaintiffs arrived to the sales presentation, they were directed to another room with five tables, a TV presentation screen and two other couples;

15. After a short wait, the participants were introduced to Greg (Last name unknown) ("Greg"), who instructed them that no one should be using their cell phone and to turn off their cell phones because his boss instructed him that if a phone rang during the presentation he would have to start the presentation over;

16. The sales presentation was 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;

17. Greg specifically instructed Plaintiff Terese Sawyer at this point, who was holding her cell phone in her hand, if she touched her cell phone the Plaintiffs would not be permitted to sign up;

18. All three couples turned off their cell phones;

19. The public scolding regarding the use of cell phones served to prevent either of the Plaintiffs and other couples from vetting the sales persons' representations about the VI services and Membership;

20. A Google search would have notified Plaintiffs of a substantial number of negative reviews online;

21. Greg 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;

22. Greg 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;

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

24. Greg 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;

25. Greg 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 significant mark up;

26. Greg 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;

27. Greg 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;

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

29. At the conclusion of his presentation, Greg offered a One Thousand and 00/100 Dollar ($1,000.00) discount to the first couple that signed up, reducing the Membership from Seven Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($7,995.00) to Six Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($6,995.00);

30. A couple immediately raised their hand and represented they would purchase a membership, but Plaintiffs are uncertain whether they were legitimate buyers or plants of VI to give the impression of a desired opportunity missed;

31. Plaintiffs were next approached by Lindsay (last name unknown) ("Lindsay"), while other representatives met with the two other couples;

32. Lindsay introduced herself and explained that she had been an employee of DT for seven (7) or eight (8) years;

33. Lindsay represented to the Plaintiffs that the employees of DT and VI were family and that each was a family-owned company;

34. The conversation between Plaintiffs and Lindsay steered towards Plaintiff Christopher Sawyer's military service and Lindsay advised that her boyfriend was with the police;

35. Lindsay stated that she understood the burdens of first responders and that Defendants would not provide a membership product that could not be useful to such individuals and their families;

36. Lindsay represented to the Plaintiffs that because of Plaintiff Christopher Sawyer's military service and Lindsay's long tenure with DT, she offered to match the discounted Membership price of Six Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($6,995.00);

37. The Plaintiffs remained hesitant to purchase a Membership, so Lindsay explained that she did not need to get permission because of her tenure and that the second presentation for

the day had been cancelled, so she offered an additional discount to Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars ($5,995.00);

38. Given all of the representations made through Greg's presentation and Lindsay's discounts, Plaintiffs appreciated that they were being offered a further discount and agreed to purchase a Membership;

39. Lindsay produced a Purchase Agreement (the "Agreement") and filled in its blanks with the date, Plaintiff Christopher Sawyer'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).

40. Lindsay had Plaintiffs sign the Agreement and instructed Plaintiff Christopher Sawyer 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 Plaintiffs sign it;

41. Upon Plaintiff Christopher Sawyer's question about the term "right of rescission," Lindsay stated that it dealt with real estate and since the Plaintiffs were not buying a timeshare it did not relate or pertain to the Membership;

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

43. After running Plaintiff Christopher Sawyer's credit card, Lindsay compiled the signed paperwork, including the Agreement and the Acknowledgment, and provided to the Plaintiffs;

44. Lindsay then recommended that the Plaintiffs call and use the services at their earliest opportunity and described how VI was a reputable organization and that the real estate owners of the very prestigious Vendue Range shopping district would not allow them to operate at that locale if they were not;

45. Lindsay also stated to Plaintiffs, "Don't be alarmed if we are not here later in the day, it doesn't mean we ran off with your money," before providing a Fifty and 00/100 Dollars ($50.00) gift check and one gift certificate each to Patriots Point and Magnolia Plantation and one of Defendant Jeff Pumilia's business cards;

46. As Plaintiffs were escorted to the door to leave, Greg stated to Plaintiffs, "Welcome to the family;"

47. As Plaintiffs drove past Defendants' storefront approximately five minutes later, they noticed Greg and Lindsay locking up for the day;

48. Shortly thereafter, Plaintiffs began to reconsider the decision to purchase the Membership and attempted to contact DT and/or VI in order to cancel the purchase and were unsuccessful;

49. Plaintiffs discovered substantially all of the online reviews regarding the Membership sold by the Defendants were negative and complained about the deceptive tactics employed by the Defendants and the poor quality of the services offered by VI for owners of a Membership;

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

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

a. A ban on cellphone usage which prevented Plaintiff's 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 Plaintiffs 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. Representing to attendees with a military background that their significant other is in law enforcement and that they understand the burdens of first responders and that they would not provide a membership product that could not be useful to such individuals and their families;

h. Representing that DT and VI were family-owned businesses that employed family members in order to imply it was trustworthy and reliable when it was not;

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

j. Creating the appearance of scarcity of discounted Memberships in order to incentivize purchases;

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

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

52. 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;

53. The Agreement provided that:

a. Plaintiffs were entitled "to request up to two week(s) of condominium accommodations per year provided by VI" after originally being advised that they would receive four weeks in the Platinum Membership.

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."

54. Plaintiffs never cashed the gift check, never utilized the gift certificates Defendants provided; and never activated the membership;

55. As a result of Plaintiffs' inability to reach the Defendants, they called their credit card company and explained the situation to an agent;

56. Given the options of waiting for the charge to proceed and challenging it in the grievance process and cancelling the credit card, Plaintiffs authorized the cancellation of the credit card;

57. Despite the cancellation of the credit card, Defendants' charge was processed on Plaintiffs' new card;

58. Plaintiffs contacted Defendants at their memberservices@vacationinspirations.com explaining the cancellation of the prior card and requesting a follow up;

59. Plaintiffs conversed with Jeff Pumilia on several occasions, but Pumilia denied he had authority to authorize a full refund and offered a further discount, but declined when requested to provide the offer in writing;

60. VI and DT refused to release the Plaintiffs from the Purchase Agreement.

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

61. The Plaintiffs reaffirm and reiterate all of the allegations in Paragraphs 1 through 60 as if fully repeated and incorporated herein verbatim;

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

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

64. 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;

65. 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;

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

67. 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;

68. 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;

69. 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;

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

71. 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;

72. 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;

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

74. 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;

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

76. 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;

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

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

78. Plaintiffs incorporate the allegations of Paragraphs 1 through 60 as if restated verbatim herein;

79. 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;

80. 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;

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

82. 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;

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

84. 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;

85. 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;

86. 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;

87. As evidenced, in the first instance, by the 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;

88. 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;

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

90. 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;

91. 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;

92. Plaintiffs have 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;

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

94. 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;

95. 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 AGAINST ALL DEFENDANTS
(Injunctive Relief Pursuant to §39-5-38(D)(1))

96. Plaintiffs incorporate the allegations of Paragraphs 1 through 60 as if restated verbatim herein;

97. 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;

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

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

100. 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;

101. 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 AGAINST ALL DEFENDANTS
(Equitable Relief – Rescission)

102. Plaintiffs incorporate the allegations of Paragraphs 1 through 60 as if restated verbatim herein;

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

104. 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;

105. 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;

106. That Defendants fraudulently misrepresented to Plaintiffs, 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;

107. 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 ($5,595.00);

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

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

110. 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;

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

112. 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, 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:

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

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

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

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

116. Plaintiffs incorporate the allegations of Paragraphs 1 through 60 as if restated verbatim herein;

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

118. 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;

119. That Defendants fraudulently misrepresented to Plaintiffs, 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;

120. 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 Nine Hundred Ninety-Five and 00/100 Dollars ($5,595.00);

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

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

123. 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;

124. Over the period since the Agreement was executed, the Plaintiffs have 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;

FOR A SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Negligent Misrepresentation)

125. Plaintiffs reaffirm and reiterate all of the allegations in Paragraph 1 through 60 as if fully repeated and incorporated herein verbatim;

126. That Defendants made false representations to the Plaintiffs 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;

127. 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;

128. 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;

129. 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, receipt of industry awards, and their ability to provide services that meet participants' expectations;

130. That Plaintiffs, 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 Plaintiffs, justifiably relied on the false information communicated by the Defendants prior to executing the Agreement;

131. 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 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 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 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 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 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 Plaintiffs;

(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 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 Plaintiff

May 21 , 2024
Charleston, South Carolina

VERIFICATION OF COMPLAINT

I, Christopher Sawyer, 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.

Christopher Sawyer
Christopher Sawyer

Sworn to before me this 17 th day of May, 2024.

Notary Public for the State of Pennsylvania
My Commission Expires: 09/13/2025

Commonwealth of Pennsylvania – Notary Seal
TARAK PATEL, NOTARY PUBLIC
CUMBERLAND COUNTY
MY COMMISSION EXPIRES SEPTEMBER 13, 2025
COMMISSION NUMBER 1407039

VERIFICATION OF COMPLAINT

I, Terese Sawyer, 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.

Terese Sawyer

Sworn to before me this 17 th day of May, 2024.

Notary Public for the State of Pennsylvania
My Commission Expires: 09 | 13 | 2025

Commonwealth of Pennsylvania – Notary Seal
TARAK PATEL, NOTARY PUBLIC
CUMBERLAND COUNTY
MY COMMISSION EXPIRES SEPTEMBER 13, 2025
COMMISSION NUMBER 1407839

Exhibit B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-02642
CHRISTOPHER SAWYER and TERESE SAWYER Plaintiffs, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH, SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA Defendants.	**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

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. Admitted.

12. Admitted.

13. To the best of Defendants' knowledge, information and belief, the allegations are admitted.

14. To the best of Defendants' knowledge, information and belief, the allegations are admitted.

15. Defendants admit that participants were told not to use their cellphones during the presentation and that upon the use of a cellphone, the presentation would have to be started over.

16. It is admitted. that the presentation was for a Vacation Inspirations travel club membership. The remaining allegations as written are denied.

17. Denied.

18. While not specifically recalling the allegations, Defendants assume that all participants turned off their respective cellphones.

19. With regard to the allegations in this paragraph, Defendants deny the allegation of

"public scolding" and deny the remaining allegations.

20. 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.

21. Subject to the definition of "wholesaler," the allegations are admitted.

22. The allegations as to rooms being filled are admitted. The remaining allegations are denied.

23. Subject to the definition of "wholesaler," the allegations are admitted.

24. The allegations as to buying in bulk are denied. The allegation as to selling a hotel for less than if booked directly through the hotel is admitted. The remaining allegations are denied.

25. The allegations relating to Costco and Netflix are admitted. The remaining allegations are denied.

26. Admitted.

27. Defendants do not have sufficient information to admit or deny the allegations and to any extent required; the allegations are denied.

28. Admitted.

29. To the best of Defendants' knowledge, information and belief, the allegations are admitted.

30. Defendants show that whoever raised their hand and indicated they would purchase membership, was a legitimate purchaser and not a plant.

31. To the best of Defendants' knowledge, information and belief, the allegations are admitted.

32. To the best of Defendants' knowledge, information and belief, the allegations are

admitted.

33. To the best of Defendants' knowledge, information and belief, the allegations are admitted.

34. To the best of Defendants' knowledge, information and belief, the allegations are admitted.

35. To the best of Defendants' knowledge, information and belief, the allegations are admitted.

36. To the best of Defendants' knowledge, information and belief, the allegations are admitted. In addition, Defendants show that military discounts are offered.

37. To the best of Defendants' knowledge, information and belief, the allegations are admitted.

38. Defendants admit that Plaintiffs purchased a Membership and do not have sufficient information to respond to the remaining allegations.

39. Admitted.

40. With regard to the allegations in this paragraph, Defendants agree that Plaintiff Christopher Sawyer was advised (not instructed) on suggested responses and to any extent necessary remaining allegations are denied.

41. Denied as alleged.

42. Denied.

43. Admitted.

44. Defendants do not have sufficient knowledge, information, or belief to respond to the allegations as to owners of Vendue Range, etc., but know that it is standard practice to advise new Members to call and use the services of their Membership at their earliest opportunity.

45. With regards to the allegations in this paragraph, Defendants do not have sufficient information to admit or deny the allegations as to "Don't be alarmed," etc. and admit that a gift check and gift certificate were provided as well as Defendant Pumilia's business card.

46. Defendants are without sufficient information needed to admit or deny the allegations; however, it is standard practice to welcome to Members to the family.

47. Defendants are without sufficient information needed to admit or deny the allegations.

48. Defendants are without sufficient information needed to admit or deny the allegations.

49. As to the allegation regarding online reviews, the term "substantial" is too vague to permit Defendants to respond. Defendants acknowledge that there are anonymous negative reviews and at least an equal number of positive reviews.

50. Denied.

51. Denied. Additionally, Defendants show that at all relevant times herein, there was a sign posted in the window in accordance with City of Charleston requirements. The sign notes as follows: "Vacation Inspirations, Vacation Membership Seller, 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".

52. Admitted.

53. With regard to the allegations in this paragraph, the language quoted speaks for itself.

54. With regard to the allegations in this paragraph, Defendants admit that the gift check was never cashed. Defendants do not know if the gift certificates were utilized. Defendants show that the Membership was activated upon completion of the purchase.

55. Defendants are without sufficient information to respond to the allegations in this paragraph.

56. Defendants are without sufficient information to respond to the allegations in this paragraph.

57. With regard to the allegations in this paragraph, Defendants admit that Defendants' credit card charge was processed.

58. Admitted.

59.With regard to the allegations in this paragraph, Defendants admit that Plaintiffs spoke with Mr. Pumilia and admit that an offer was made for a partial refund. Defendants deny the remaining allegations and show that Plaintiffs ultimately agreed on a two thousand ($2,000.00) dollar refund to be sent to Plaintiffs upon execution of a settlement agreement in satisfaction of all pending claims. When Plaintiffs received the settlement agreement, they rewrote the agreement and totally and completely negated the necessary release and other paragraphs. Although an agreement had been reached with Plaintiffs, they refused to execute the agreement unless their rewritten language was acceptable. Because the rewritten portions were unreasonable and negated the purpose of settlement, the rewritten agreement was not acceptable.

60. Defendants show that Plaintiffs ultimately agreed on a two thousand ($2,000.00) refund to be sent to Plaintiffs upon execution of a settlement agreement in satisfactions of all pending claims. When Plaintiffs received the settlement agreement, they rewrote the agreement and totally and completely negated the necessary release and other paragraphs. Although an agreement had been reached with Plaintiffs, they refused to execute the agreement unless their rewritten language was acceptable. Because the rewritten portions were unreasonable and negated the purpose of settlement, the rewritten agreement was not acceptable.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Declaratory Judgment)

61. Defendants adopt and incorporate all responses above as if fully set forth verbatim herein.

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

63. Defendants deny that the arbitration clause is "buried" as alleged and further show that "Dispute Resolution" is not inconspicuously titled.

64. The document speaks for itself. However, Plaintiffs are sophisticated and well educated adults who certainly know what the term "Dispute Resolution" means. Defendants are certainly capable of reading what they signed.

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

66. The terms of the arbitration clause speak for themselves.

67. The terms of the arbitration clause speak for themselves. To the extent necessary, Defendants deny all other allegations in this paragraph.

68. Denied as alleged.

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

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

71. Denied.

72. With regard to the allegations in this paragraph, Defendants show that Plaintiffs were perfectly capable of reading the subject language and deciding not to purchase the Membership. Plaintiffs chose to execute the relevant documents and conclude the purchase.

73. Denied as alleged.

74. Denied.

75. Denied. As allegedly "honest person", Plaintiffs, and both of them did in fact accept the terms and executed all necessary documents to complete the purchase.

76. Denied.

77. The allegations in this paragraph are a legal conclusion and to the extent necessary, Defendants deny the allegations.

SECOND CAUSE OF ACTION
(Unfair Trade Practices)

78. Defendants adopt and incorporate all responses above as if fully set forth verbatim herein.

79. Denied.

80. Denied.

81. The document mentioned speaks for itself.

82. The document mentioned speaks for itself.

83. The document mentioned speaks for itself.

84. Denied.

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

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

<u>THIRD CAUSE OF ACTION</u>
(Injunctive Relief)

96. Defendants adopt and incorporate all responses above as if fully set forth verbatim herein.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

<u>FOURTH CAUSE OF ACTION</u>
(Equitable Relief - Recission)

102. Defendants adopt and incorporate all responses above as if fully set forth verbatim herein.

103. Denied.

104. Denied.

105. Denied. There were no false representations.

106. Denied.

107. Denied.

108. Denied.

109. Denied. There were no false representations.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

116. Defendants adopt and incorporate all responses above as if fully set forth verbatim herein.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied. Defendants deny that any representations were false.

122. To the extent necessary, Defendants deny the allegations.

123. To the extent necessary, Defendants deny the allegations.

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

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

125. Defendants adopt and incorporate all responses above as if fully set forth verbatim herein.

126. Denied.

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

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

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

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

131. Denied.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

133. 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 AFFIRMATVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHT AFFIRMATIVE DEFENSE

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

COUNTERCLAIM

140. By filing the within Complaint, Defendants have submitted to the jurisdiction and venue of this Honorable Court.

141. Plaintiffs have engaged in concerted, intentional, and unlawful acts with the purpose and design of harming and destroying the business of Defendants Vacation Inspirations and Destination Travel, LLC.

142. Those actions include but are not limited to providing false and misleading information to various people and institutions for the purpose of harming and destroying such businesses.

143. Those actions include but are not limited to recruiting Members to file negative reviews on Facebook and complaints to the City of Charleston and to other institutions.

144. Those actions include but are not limited to filing false and misleading claims with the City of Charleston.

145. Defendants Vacation Inspirations and Destination Travel, LLC have been damaged and harmed by the actions above set forth and are entitled to actual and punitive damages against Plaintiffs in an amount to be determined at arbitration as required by the Agreement, or in the alternative, at trial.

146. Defendants Vacation Inspirations and Destination Travel, LLC are entitled to recover actual and punitive damages, costs of litigation and reasonable attorney's fees as the result of the above-mentioned actions of Plaintiffs.

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

i. Order the parties to arbitration as provided in the Agreement as to all claims and counterclaims in this litigation;
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;
v. That Defendants recover judgment for actual damages, punitive damages, costs of litigation and attorney's fees on their counterclaim; and
vi. Provide such other and further relief in this action as may be just and proper.
vii. 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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Attorneys for Defendants

July 3, 2024
Charleston, South Carolina

Exhibit C

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

Plaintiffs Christopher Sawyer and Terese Sawyer (hereinafter the "Plaintiffs") by and through their undersigned counsel hereby submit this Memorandum in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings in this case.

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SUMMARY OF ARGUMENTS

Plaintiffs respectfully submit that the Defendants' Motion to Compel Arbitration and Stay Proceedings should be denied because the Dispute Resolution provision is unconscionable and, therefore, unenforceable.

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 sets out detailed, sworn facts showing material challenges to contract formation, assent, and raise the defense of unconscionability to the Dispute Resolution provision and the contract as a whole. 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 is insufficient to compel arbitration.

Defendants' arguments assume a valid contract without resolving threshold formation challenges and both misapply and misrepresent *Henry Schein*, which requires a court to decide formation disputes before delegating issues to an arbitrator. Defendants' arguments also summarily conclude 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 compelling arbitration legal improper.

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 September 11, 2025, the parties were informed that Defendants' motion was scheduled for oral arguments to take place on October 7, 2025. Defendants filed a Memorandum in Support of their Motion on September 26, 2025.

FACTUAL SUMMARY

On May 21, 2024, Plaintiffs filed this action, by and through the undersigned counsel, against Vacation Inspirations (hereinafter "VI"); Destination Travel; LLC (hereinafter "DT"); Joseph Shirley (hereinafter "Shirley"); Randy Gardner (hereinafter "Gardner"); and Jeffrey Pumilia (hereinafter "Pumilia") (hereinafter collectively referred to as the "Defendants"). This case involves the Defendants' sale of Vacation Inspirations Travel Memberships to Plaintiffs, by and through a Purchase Agreement (the "Agreement") entered into by Defendants and Plaintiffs under certain circumstances which allegedly: (1) violated South Carolina's Unfair Trade Practices Act ("SCUTPA"); and/or (2) was the result of either negligent or fraudulent misrepresentations by the Defendants, while seeking: 1) declaratory judgment that the arbitration clause is unenforceable because its terms are so oppressive that no reasonable person would make them and no fair and honest person would accept them; 2) injunctive relief pursuant to S.C. Code Ann. § 39-5-38(D)(1) ("A court of this State may issue a temporary or permanent injunction for a violation or attempted violation of this chapter where the court believes an injunction would best serve the public interest"); and 3) recission of the contract.

On July 3, 2024, Defendants filed their Answer to the Complaint, which included a Counterclaim against Plaintiffs. On August 1, 2024, Plaintiffs filed their Reply to Defendants' Counterclaim. On October 23, 2024, Plaintiffs served their First Interrogatories and First Requests for Production to each Defendant. On November 12, 2024, Defendants filed their “Notice of Motion and Defendants’ Motion to Compel Arbitration and Stay Proceedings in this Case Until Completion of Arbitration.” Defendants, nor Defendants’ Counsel, made any attempt to consult with Plaintiffs and their Attorneys prior to filing their Motion as required by Rule 11.

Opposing Defendants’ Motion, Plaintiffs assert there was no legally binding agreement between the parties to arbitrate a dispute under the Agreement. This is because the arbitration provision was entered into using high pressure sales tactics exploiting the parties’ relative negotiating imbalance (procedural unconscionability) and because its text is one-sided and fundamentally unfair (substantive unconscionability). Plaintiffs have also alleged fraud, which can also invalidate a contract. Thus, Plaintiffs respectfully request that this Court deny the Defendants’ Motion to Compel.

While visiting Charleston, Plaintiffs—out-of-state consumers—entered Defendants’ inconspicuous sales facility and were called up to the counter and offered free tickets to a couple of sightseeing events if Plaintiffs attended a sales presentation the following morning. Plaintiffs were instructed by the presenter to turn off their cell phones, which prevented them from discovering the extensive negative reviews or prior enforcement actions against Defendants’ principals, once identified, 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 purporting to allow 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, none of which have been addressed in the Orders subject to Motions to Reconsider which Defendants included as Exhibits to their Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings—leaving these very issues unresolved and appropriate for this Court's consideration.

ARGUMENT

A. THE COURT MUST 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"). 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)). Because the Defendants attached a copy of the Agreement to their Motion to Compel Arbitration and Stay Proceedings and have since included Exhibits to the Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings, this additional evidence mandates that a summary judgment standard apply.

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. ¶¶ 62 – 75).

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.

2. South Carolina Summary Judgment Standard

Although it is unclear exactly what standard the Court applied in Exhibit C to Defendants' Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings, it is not sufficiently close to the summary judgment standard and should neither receive deference from this Court, nor have this matter transferred as requested by the Defendants. "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 in Exhibit C improperly weighs Defendants' denials in their Answer (which is not treated as evidence) and in their other Exhibits over Plaintiffs' evidence in the Verified Complaints in the other matters and should not be followed.

3. <u>The Verified Complaint Establishes Factual Issues to be Resolved</u>

When the Court takes all reasonable inferences in the Verified Complaint in favor of the non-moving party it will recognize the disputed material facts preclude 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).

b) Defendants' Minimal and Immaterial Evidence is not Determinative

Defendants submitted insufficient evidence to refute the weight of the evidence in the Verified Complaint. The documents that Defendants have submitted as exhibits must be weighed against the allegations in the Verified Complaint, which attack the formation and validity of the Agreement or the unconscionable terms of the Dispute Resolution provision, and do not nullify

Plaintiffs' allegations. 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, Memorandum in Support of its Motion, and Exhibits to any of them, as evidence, it should still not result in a grant of the motion to compel arbitration because that evidence is not sufficiently determinative. The allegations contained in the Verified Complaint (which is evidence under Rule 56(e), at an absolute minimum, creates a dispute as to the material facts.[1]

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 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 (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 the exhibits filed by Defendants amount to competing evidence, the Court would not be able to grant a motion to compel arbitration on those grounds as it is well-

[1] For the avoidance of doubt, Plaintiffs are not suggesting that the Court should treat Defendants' pleadings and briefs as evidence, but recognize the Defendants have filed exhibits which could present competing facts that would require the Court to weigh that evidence in comparison to the evidence presented in the Verified Company to determine the operative facts needed to grant Defendants' motion. Of course, at this stage, such a weighing would violate South Carolina precedent.

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)).

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. While Defendants have asserted Plaintiffs could have filed a Motion to Compel of their own to require the production of the requested discovery, but this does not change the factual circumstances before the Court or the standard upon which it must rule on the motion under consideration, except to limit the available information upon which to decide whether the Dispute Resolution provision was properly formed, validly existing and enforceable. 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)). Defendants' refusal to respond to the discovery requests were not accompanied by any written objection or motion for a protective order filed in this or any of the cases. Defendants' email refusing to produce discovery does not nullify the requests made by the Plaintiffs and those requests should be complied with in accordance with the rules. Whether or not a motion to compel discovery had been filed, the Court's fact-finding duties do not change, nor does the legal standard for the finding necessary to compel arbitration. Defendants' attempt to use that refusal as both a shield and a sword illustrates their willingness to advance duplicitous arguments in an effort to gain an advantage, just as they have when asserting that no high-pressure sales tactics were applied, the contract is not one of adhesion, denial of procedural or substantive unconscionability elements, that the contract terms (such as delegation of the arbitrability issue to the arbitrator) were agreed upon between the parties, and that the Consumer Arbitration Rules apply to the present case. Each of these issues requires consideration by the Court and a weighing of the evidence which is not permitted when the legal standard for this type of motion is applied.

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 refused to participate in the process. Given the length of time between filing and a hearing for Defendants' motion, Plaintiffs would still be awaiting a hearing on any Motion to Compel Discovery, so no resolution of this issue could be reasonably expected prior to the hearing on the present motion. 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.[2]

Plaintiffs request that the Court should deny the Defendants' Motion to Compel Arbitration and Stay Proceedings. Plaintiffs respectfully further request that the Court instruct Defendants to respond to Plaintiffs' discovery requests—**served on Defendants over eleven months ago**—or otherwise allow Plaintiffs to move to compel discovery. *See Richardson*, 430 S.C. at 598 ("If no

[2] In lieu of discovery, an evidentiary hearing was never conducted nor were the parties ever provided an opportunity to present any evidence. As discussed above, Defendants' argument that a Motion to Compel was never filed by the Plaintiffs to require discovery is unavailing because that motion would still be pending given the timing of the present motion.

answer, objection, or motion is received, the discovering party may—but is not required to—move for a court order compelling discovery.")[3]

b) Factual Record was not Sufficiently Developed

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.[4] *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.").

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[3] 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).

[4] 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.

Additionally, allowing for discovery prior to ruling on the motion to compel arbitration would permit this Court to comply with the summary judgment standard. "Plaintiffs have demonstrated a likelihood that 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. *Id*. 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.[5] *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

[5] 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.").

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).

B. THE ARBITRATION PROVISION IS NOT ENFORCEABLE

The Federal Arbitration Act, 9 U.S.C. § 1 et. seq., provides in Section 2 that:

> "[a] written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction or refusal, shall be valid, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

Whether a party has agreed to submit a dispute to arbitration is an issue for judicial determination. *Granite Rock Co. v. Int'l Bhd. Of Teamsters et al.*, 561 U.S. 287 (2010) (quoting *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002) ("It is well settled in both commercial and labor cases that whether parties have agreed to 'submi[t] a particular dispute to arbitration' is typically an 'issue for judicial determination.'"). "It is similarly well settled that where the dispute at issue concerns contract formation, the dispute is generally for the courts to decide." *Id.* (*citing First Options of Chicago v. Kaplan*, 514 U.S. 938, 944 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter . . . courts generally . . . should apply ordinary . . . principles that govern the formation of contracts"). In its interpretation and application of such federal jurisprudence, our state Supreme Court has stated, "[t]he rationale of these decisions is obvious – arbitration is a matter of consent, and courts can only order arbitration when they are satisfied the parties agreed to arbitrate a dispute." *Sanders v. Savannah Highway Automotive Co.*, 440 S.C. 377, 388 (2023) (*citing Granite Rock Co*. at 299). However, in accordance with the United States Supreme Court's decision in *Prima Paint Corp. v. Flood v. Conklin Mfg. Co.*, 388 U.S. 395 (1967), a court's analysis of the existence of an agreement to arbitrate should be limited to the express terms of the arbitration provision and not the contract as a whole. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42 (2016).

To determine whether a valid arbitration agreement exists, "trial courts consider 'general contract defenses' to ensure a meeting of the minds to arbitrate existed, and that such an agreement was not the result of fraud, duress, [or] **unconscionability**." *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). "At its core, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with the terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611 (2022) (*citing Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc*., 322 S.C. 399, 403 (1996); 17A AM. JUR. 2d Contracts § 272 (2016) (characterizing the two prongs as procedural and substantive unconscionability, respectively); and *Id.* § 271 ("Generally, the doctrine of unconscionability protects against unfair bargains and unfair bargaining practices . . ."")). A determination of whether a contract is unconscionable depends upon all of the facts and circumstances of the case. *Id.* at 611, 755 (*citing S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 614 (2012)). Our courts have "emphasized the importance of a case-by-case analysis in order to address the unique circumstances inherent in the various types of consumer transactions." *Id.* While considering guidance from the United States Court of Appeals for the Fourth Circuit, the *Damico* Court reiterated that "[i]n analyzing claims of unconscionability in the context of arbitration agreements," the focus should be on "whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker." *Id.* at 612, 755 (*quoting Simpson v. MSA of Myrtle Beach, Inc*., 373 S.C. 14, 24–25 (2007) (*citing Hooters of Am., Inc. v. Phillips*, 173 F. 3d 933, 938–40 (4th Cir. 1999)).

1. Plaintiffs Dispute the Contract on Formation Grounds not Enforceability

As a threshold matter, Plaintiffs dispute the *formation* and *validity* of the Agreement and are not simply asserting the Agreement, and more specifically the Dispute Resolution provision, are invalid and because an agreement was never formed due to unconscionability and/or fraud. "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)).

The law of our State recognizes challenges to "the arbitration provision on grounds of unconscionability, 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. The Defendants' Reliance on *Henry Schein* is Misapplied and Inaccurate

"[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)). While the Defendants' memorandum correctly quotes the Dispute Resolution provision, it incorrectly asserts this "issue has been decided by the United States Supreme Court in the case of *Henry Schien, Inc. vs. Archer & White Sales, Inc.*, 586 U.S. 63, 139 S. Ct. 524 (2019). In the second paragraph of Justice Kavanaugh's opinion it explains the question presented in the case and provides:

"Even when a contract delegates the arbitrability question to an arbitrator, some federal courts nonetheless will short-circuit the process and decide the arbitrability question themselves if the argument that the arbitration agreement applies to the particular dispute is "wholly groundless." The question presented in this case is whether the "wholly groundless" exception is consistent with the Federal Arbitration Act. We conclude it is not." *Schein* at 65, 527.

In *Schein*, neither party challenged the existence of an arbitration agreement. *Id.* at 66, 528. Instead, the parties disagreed about the application of the arbitration agreement's exception for actions seeking injunctive relief. *Id.* Because the plaintiff business sought, in part, injunctive relief through an antitrust cause of action against the defendant business, it argued arbitration was barred by the terms of the contract. *Id.* Reiterating that U.S. Supreme 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. *Id.* at 69, 529. The opinion goes on to specify:

"To be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists. See 9 U.S.C. § 2. 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." *Id.*

In the present case, there are disputes about whether a valid agreement exists, as well as, whether arbitrability was clearly and unmistakably delegated to the arbitrator, necessitating the Court to determine "whether a valid arbitration agreement exists" and whether arbitrability questions are delegated to the arbitrator by "clear and unmistakable evidence." *Id.*

Defendants' memorandum contains two quotes from *Schein* upon which they anchor their argument that *Schein* is controlling, but omit any reference to the required evidence of 'whether a valid arbitration agreement exists' and/or the 'clear and unmistakable' delegation of 'the arbitrability question to the arbitrator.' *Id.* The reality is that the Supreme Court's ruling in *Schein* simply constitutes a rejection of the "wholly groundless" exception, which is not at issue here. *Id.* at 71, 531. In any event, these quotes do not fully capture the rule the Supreme Court set forth in that case. Instead, the Supreme Court provided the analytical framework referenced above requiring this Court consider whether "a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." *Id.* at 69, 529 (internal citation omitted). In fact, the Court in *Schein* specifically stated "We express no view about whether the contract at issue in this case in fact delegated the arbitrability question to an arbitrator." Id. at 71, 531. Defendants' statement that "The United States Supreme Court held the requirement the arbitration be conducted in accordance with the Arbitration Rules of the American Arbitration Association meant that only the arbitrator and not the trial Court could decide the arbitrability questions" is an inaccurate characterization of the *Schein* decision.

3. <u>The Court of Appeals for the Fourth Circuit, in Analyzing *Henry Schein* Under Similar Facts, Confirms Plaintiffs' Position</u>

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).

4. <u>Defendants' Position Fails to Address Formation, Validity and Delegation</u>

As an initial matter, Plaintiffs maintain that they never entered into *any* contract, including the entire agreement, the arbitration agreement, or any 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.

Defendants' memorandum attempts to obfuscate the issues of formation and delegation, just as with the existence of an agreement initially, by shifting its attention to the "black letter law that anyone who can read is presumed to have read any agreement that person signs." While this premise holds true, it still is subject to the same defenses available under the Federal Arbitration Act and South Carolina law. 9 U.S.C. § 2 and *Damico v. Lennar Carolinas, LLC* and its progeny. 437 S.C. 596 (2022)("Thus, generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening [the FAA]."). In *Damico*, the Court considered arbitration agreements between a construction business and 'a number of homeowners' with regard to alleged construction defects. Instead of ruling that the arbitration contracts were enforceable because the home purchasers signed them and were presumed to have read, understood and assented to its terms, the *Damico* Court began with the threshold issue of validity of the arbitration clause. *Damico* at 609. After determining Section 16 of the purchase and sale agreement contained the operative arbitration clause, the Supreme Court found "it necessary to continue the analysis to determine whether any terms within Section 16 of the purchase and sale agreement were unconscionable in and of themselves." *Id.* at 607. That is because, if the elements of the defense are found, the agreement would be invalidated and would no longer constitute an agreement, so the black letter law would no longer apply. As referenced above, the Plaintiffs assert the existence of fraud and unconscionability and the Verified Complaint offers evidence to support those defenses. As a result, there exists evidence, which may either be confirmed or nullified with discovery, that the alleged arbitration clause is invalid, but when considered in the light most favorable to the Plaintiffs currently these defenses cannot be ruled out and the principles set forth in *Gibson* and even *Munoz* would be ineffectual. In fact, the *Munoz* Court specifically considered whether the arbitration clause was unconscionable and found it was not. However, if it stood for the principle presented by Defendants an unconscionability analysis would have been unnecessary because there was no dispute the Munozes signed the installment contract and security agreement. *Munoz* at 536 & 541.[6]

Given the clear dispute between the parties as to whether the delegation clause was intended by each to require the arbitration of arbitrability, there is no factual basis for finding the parties "clearly and unmistakably" agreed to the purported delegation provision. The alleged arbitration clause'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 2.) is unsupported by the facts and falls short of the standard for showing a valid delegation.

[6] In *Hood v. Life & Cas. Ins. Co. of Tennessee*, 173 S.C. 139, 146 (1934), the plaintiff accused an insurance carrier and its agent of fraud when the policy for which she paid to cover her brother's life did not provide coverage for "any and every kind of accident." After a review of the facts presented at trial, the Court ruled that "even if the agent in the case at bar made the statement concerning the policy which the plaintiff claims he made, there was no actionable fraud, for the reason she failed to take advantage of the means afforded her of learning the truth as to what the policy contained." However, the present case is distinguishable, not just because discovery was completed in *Hood*, but because there is insufficient evidence to conclude that Plaintiffs' defenses to the contract, either fraud or unconscionability, would not invalidate the arbitration clause. As a result, *Hood's* applicability is no stronger than *Gibson* or *Munoz*.

“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.[7] However, the Defendants and their counsel most certainly would be aware of such 'traditional and technical legal distinctions' in order to draft a more favorable contract to benefit themselves. See Damico at 621. 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.[8]

5. Contract of Adhesion

The Agreement is a preprinted form with empty blanks for: 1) the date; 2) the name, address, email address and phone number of the "Client"; 3) the Membership Purchase Price and

[7] 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.

[8] 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).

total after adding the required 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 ($199.00); 4) Federal Truth-in-Lending Act Disclosures, if applicable; and 5) signatures blanks for the Client/Purchasers, a Sales Representative and Manager. The recitals of the Agreement define Vacation Inspirations as "VI," Destination Travel as "DT," and the purchasers as "Client," for convenient reference thereafter. Of the six 'carbon-copy' style, multiple copy, forms that compose the Agreement, five of them require the Clients to sign their name. The only page that does not have this requirement is the only page that contains the relevant arbitration language: the Membership Terms and Conditions page ("Terms and Conditions"). Likewise, all of the pre-printed pages are one-sided, except for the Purchase Agreement and Terms and Conditions which are each printed on the same page with the Terms and Conditions being on the rear side of the same piece of paper as the Purchase Agreement. The first sentence of the Terms and Conditions provides "[t]hese Terms and Conditions are part of the Membership Agreement". Paragraph VIII, at the bottom of the page, is entitled "Dispute Resolution" and provides that:

> "[a]ny 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 in Charleston, S.C. at the Charleston County Courthouse or other location determined by VI."

This is the only reference to arbitration or dispute resolution in the Agreement. There is no severability clause contained within the arbitration provision, or the broader Agreement.

It is true, as the Defendants indicate, there were blanks to be completed and an Addendum/Exception was included, but so too were there blank spaced to be filled in under the agreement considered in *Damico*. "Here, we find it manifest that the purchase and sale agreement is a contract of adhesion given by Lennar to all of the homebuyers in the Abby, with only a few blank spaces to fill in, including the buyer's name, the relevant property address, and the purchase price. Other than those type of minor blank spaces, the terms of the purchase and sale agreement – particularly those of any consequence to Lennar – are non-negotiable, with some terms not even applying to specific homebuyers." *Damico* at 614. The handwritten items which Defendants assert establish Plaintiffs had a meaningful choice are virtually identical in each of the three pending cases. See Exhibit A. It strains credibility that each of the plaintiffs in the three pending cases came up with the same exceptions to the Agreement and presented them to Defendants, but instead that Defendants provided them as a matter of procedure in order to manufacture just such an argument to defeat an unconscionability defense. Either way, the Defendants' position merely necessitates an improper weighing of evidence. 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. 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. While the arbitration clause is not *per se* unconscionable simply because it is adhesive in nature, when inspected with the "considerable skepticism" referenced by the *Damico* and *Simpson* Courts its unconscionable nature is revealed. The unfair nature of the contract's formation, its status as a consumer transaction and the lack of mutuality all weigh in favor of unconscionability.

6. <u>Unconscionability</u>

a) Absence of Meaningful Choice & High-Pressure Tactics

In accordance with *Damico* and its forebears, Paragraph VIII of the Agreement reflects the entire arbitration clause to be considered by this Court for determining if a valid arbitration agreement exists in accordance with the *Prima Paint* doctrine. The arbitration clause is not 'geared towards achieving an unbiased decision by a neutral decision maker.' It can be initially noted that the terms of the Agreement of particular interest to the Defendants were non-negotiable, as they were preprinted, although some of the terms did not apply to all of the Clients upon whom they would be used, just like in *Damico*. The Agreement is a take-it-or-leave it form that Plaintiffs could only accept as written with conditions that VI selects the arbitrator and the location for the arbitration, if not held at the Charleston County Courthouse, and that the non-prevailing party is required to pay the arbitrator's fees and all costs of the arbitration. Plaintiffs were permitted no input into the terms of the arbitration clause, just as Defendants acknowledged in their memorandum "[n]one of the three (3) exceptions handwritten involve or address the arbitration provision." (Defs' Mem. Supp. At 8).

The relative disparity in the parties' bargaining power and sophistication in this context is stark. Plaintiffs are middle-aged individuals who traveled to South Carolina for the first time and have not been subject to similar high-pressure sales operations (e.g., sending multiple sales representatives to alternate efforts to sell the service – which is exactly what SCUTPA is designed to protect against). In contrast, the Defendants are involved in the sale of hundreds or thousands of these memberships on an annual basis (using the same or similar sales tactics) and are part of a substantial business concern which had sole control over the terms of the Agreement. As in *Damico*, just because the Plaintiffs could afford to purchase the membership, much like a home purchaser, their bargaining position was substantially inferior to the Defendants' business enterprise which works daily to sell such memberships to the innocent visitors of the County and City of Charleston, South Carolina. Plaintiffs did not travel with any legal counsel and did not have an opportunity, nor were advised by Defendants, to seek out counsel to review the Agreement, while the Agreement was drafted by sophisticated counsel in order to create a substantial advantage for the Defendants.

Furthermore, Plaintiffs lost more than Five Thousand Dollars ($5,000.00) as a result of Defendants' deceptive sales tactics, which included placing the arbitration provision at the bottom of the Terms and Conditions page, which required no signature so that it could easily be overlooked—and was—as the Defendants' representatives directed the Plaintiffs in the completion of their forms. It is also worth noting that Defendants' restriction on the use of cell phones served to prevent Plaintiffs from seeking assistance and maintained the isolation Defendants' high-pressure sales procedures cultivated. The procedural abuses (elucidated in the Complaint), including deceptive practices and refusal to bargain over the terms of the Agreement are reinforced by the no opt out provision in the Agreement. Each of the facts set forth above combine to illustrate the "significant disparity in the parties' bargaining power" *Id*. at 615, leaving but one conclusion that "there was no conceivable potential for bargaining power on the part of [the Plaintiffs] whom the provisions purport to bind." *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, 444 S.C. 521, 533 (Ct. App. 2024). As a result, Plaintiffs had no meaningful choice as to the terms of the arbitration provision.

b) Oppressive and One-Sided Terms:

The terms of the arbitration provision are so oppressive that it is patent that no reasonable person would make them and no fair and honest person would accept them. When confronted with a similar scenario of one-sided arbitration provisions, the Fourth Circuit Court of Appeals found them "so one sided the that their only purpose is to undermine the neutrality of the proceeding. *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999). *Phillips* involved an employee of Hooters restaurants who alleged she had been sexually harassed and pursued a Title VII complaint. When Phillips would not agree to arbitrate the matter pursuant to the terms of an "Agreement to arbitrate employment-related disputes," Hooters initiated a suit to compel arbitration. The federal district "court found there was no meeting of the minds on all of the material terms of the agreement and, even if there were, Hooters' promise to arbitrate was illusory." *Id*. at 936. Upon appeal, the Fourth Circuit Court of Appeals found rules requiring the employee to select one arbitrator from a list provided by Hooters was crafted by Hooters "to ensure a biased decisionmaker." *Id*. at 938. The Fourth Circuit found:

> "[t]his gives Hooters control over the entire panel and places no limits whatsoever on whom Hooters can put on the list. Under the rules, Hooters is free to devise lists of partial arbitrators who have existing relationship, financial or familial, with Hooters and its management. In fact, the rules do not even prohibit Hooters from placing its managers themselves on the list. Further, nothing in the rules restricts Hooters from punishing arbitrators who rule against the company by removing them from the list. Given the unrestricted control that one party (Hooters) has over the panel, the selection of an impartial decision maker would be a surprising result."

Id. at 939. Based upon these concerns, along with others related to Hooters' ability to change the arbitration rules at any time (and possibly during the arbitration), as well as the ability to cancel the agreement to arbitrate with thirty (30) days notice, the court found "the promulgation of so many biased rules – especially the scheme whereby one party to the proceeding so control the arbitral panel" . . . "constitutes a sham system unworthy even of the name of arbitration." *Id*. at 940. VI's control over the single arbitrator in the present case constitutes an even more substantial exercise of control than Hooters' ability to control the names on the panel, since the employee still has some amount of input to the selection of one of the three panelist in Hooters. The provision which grants VI the authority to select the one and only arbitrator, VI has created an even greater sham system unworthy of the name of arbitration.

In addition to the fundamentally unfair grant of authority that VI selects the arbitrator, VI's authority to select the location of the arbitration creates additional leverage for the Defendants when read along with the requirement that the non-prevailing party pays all of the costs of the arbitration, including the arbitrator's fees and the location of the arbitration. This is because a client noting that the arbitrator is selected by VI, may also see the selection of the location as an opportunity for the Defendants to expend substantially more resources than the likely out-of-state Client can reasonably afford, thus chilling the Client's will to pursue a dispute with the Defendants. Similarly, the arbitration provision's requirement that the arbitration be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, but not under the auspices of the American Arbitration Association suggests the transaction was of a commercial in nature, rather than involving a business and consumers. This incongruity further serves to discomfit the individual Clients (as defined in the Agreement), who were *consumers* in the transaction at issue, and discourages them from pursuing dispute resolution against Defendants, who are each involved in a commercial concern and deal with such proceedings more regularly than the clients. Just as the application of the Commercial Arbitration Rules of the American Arbitration Association do, when the same organization's Rules specifically state that and require the Consumer Rules apply in consumer transactions:

> "[t]he parties shall be deemed to have made the Consumer Arbitration Rules ("Rules") a part of their arbitration agreement when they have provided for arbitration by the American Arbitration Association ("AAA") and the arbitration agreement is within a consumer agreement. If no rules are specified, or there is a different set of AAA rules named in the arbitration agreement, these Rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the AAA."

American Arbitration Association, *Rules, Forms & Fees*, www.adr.org/industries/consumer/(last visited Oct. 2.2025). To the contrary, its website for the Commercial Practice Area states, "[t]he AAA offers tailored alternative dispute resolution (ADR) services designed to meet the unique needs of businesses. Our Commercial Arbitration Rules, supplemented by specialized rules and procedures, allow for the resolution of business-to-business (B2B) disputes efficiently and cost-effectively, enabling parties to focus on what matters most – getting back to business." *Id.*, www.adr.org/industries/commercial (last visited Oct. 2, 2025).

When considering the Plaintiffs lacked a meaningful choice whether to accept such a fundamentally unfair arbitration provision as in the present case: based upon 1) the Plaintiffs were individuals vacation in Charleston; 2) Defendants are involved in transactions of this nature hundreds or more times a year, while Plaintiffs have only ever purchased the instant Travel Membership; 3) the arbitration provision was contained in a preprinted portion of the Agreement in which the Plaintiffs had only the choice of whether to "take it or leave it at the time of the purchase; 4) the portion of the form contract containing the Terms and Conditions was the only reverse page in the set of documents, so Plaintiffs could not view the arbitration clause until after the Agreement was signed and Defendants did not request Plaintiffs to initial that page, as they did each of the other pages in the set of documents; 5) Plaintiffs were not represented by independent counsel and, as tourists, had limited access to legal representation; 6) the terms of the arbitration agreement are oppressive, lack mutuality and are so fundamentally unfair the AAA would not have cooperated in an arbitration under its terms, according the AAA's Consumer Due Process Protocol Statement of Principles, that Defendants expressly conditioned the arbitration would not be under the auspices of the AAA. Given all of the facts and circumstances surrounding the inclusion of the arbitration clause in the Agreement and the procedural and substantive unconscionability that accompanied its inclusion, the Court should find the arbitration provision at issue is unconscionable and unenforceable as written.

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.

For the foregoing reasons, Plaintiffs respectfully request that this Honorable Court deny the Defendants' Motion to Compel Arbitration and Stay Proceedings and order the Defendants to answer Plaintiffs' discovery requests within thirty (30) days so as to comply with the Rules of Civil Procedure.

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
CHRISTOPHER SAWYER and TERESE SAWYER, PLAINTIFFS,	Civil Action No. 2024-CP-10-2642
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 their Motion for Reconsideration of the Court's December 9, 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 did not apply the correct legal standard. It is well-settled that motions to compel arbitration under the Federal Arbitration Act ("FAA") are decided under the same standard as motions for summary judgment pursuant to Rule 56, SCRCP. Under that standard, Plaintiff's Verified Complaint, which is 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 requests gone unanswered by Defendants, the record was insufficient to compel arbitration.

Second, **the Court's Conclusions of Law must be remediated**. The Court assumed the existence of a valid contract without resolving Plaintiffs' threshold formation challenges and misapplied *Henry Schein* and *Masters*, both of which presuppose a valid agreement before any delegation of arbitrability. The Court further erred in finding a "clear and unmistakable" delegation arbitrability where elderly, unsophisticated consumers signed a rushed, non-negotiable contract containing buried terms, including a unilateral arbitrator-selection procedure, no right of cancellation, and other substantively one-sided provisions. The Court's failure to invalidate the unilateral arbitrator-selection mechanism, which independently undermines the enforceability of the arbitration agreement, compounded these errors. Taken together with coercive circumstances under which the purported agreement was signed, these defects necessitate reconsideration.

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) similarly allows a party to seek amendment or supplementation of the 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 with counterclaims on July 3, 2024. Plaintiffs answered the counterclaims on August 1, 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 September 11, 2025, the parties were informed that hearing on the Defendants' motion was scheduled for oral arguments to take place on October 7, 2025. Defendants filed their moving brief on September 26, 2025; Plaintiffs filed their Opposition Brief on October 3, 2025. The Court held oral arguments on October 7, 2025.

On October 20, 2025, the Court entered a Form 4 Order indicated that "the Court is inclined to GRANT Defendant's Motion to Compel Arbitration and Stay Proceedings, and directs the Defendant to submit a proposed order." On October 30, 2025, Defendants submitted a proposed order. Following receipt of Defendants' proposed order, Plaintiffs filed a letter, dated October 30, 2025, with the Court requesting "that prior to entering a more formal order, Plaintiffs are provided with fourteen days to submit objections on the record to Defendants' proposed order, as well as, to submit their own proposed order consistent with the Court's October 20, 2025 Form 4 Order." Therein, Plaintiffs raised that Defendants proposed order invokes the wrong legal standard for motions to compel arbitration, among other issues.

On November 12, 2025, the Court issued another Form 4 Order requesting that "Plaintiffs provide the following: 1. A list of Plaintiff's objections to the proposed order received from Defendants[;] 2. A proposed order compelling arbitration that Plaintiff's counsel asserts is (other than the result) not objectionable." On November 24, 2025, Plaintiffs provided the Court with the two items requested in the Court's November 12 Order. In the list of objections to the proposed order, Plaintiffs raised 10 different objections to the proposed order. Plaintiffs also explained that it is "impossible to come up with an order compelling arbitration that is '(other than the result) not objectionable'" and that it "does not serve as a waiver of any other objection[] or argument[] for a motion to reconsider, an appeal, or any other purpose." On December 1, 2025, Defendants indicated that they will not respond to Plaintiffs November 24 letter (containing the 10 objections) and the proposed order. On December 9, 2025, the Court entered an Order granting the Motion to stay and compel arbitration.

FACTUAL SUMMARY

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

While visiting Charleston, Plaintiffs—elderly, out-of-state consumers—were drawn into Defendants' inconspicuous sales facility. They were prohibited from using their phones, preventing them from discovering the extensive negative reviews and 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. These terms were never explained, and Plaintiffs did not understand that they were relinquishing their right to judicial forum, let alone a fundamentally unfair one.

These facts, combined with the Court's failure to employ the proper legal standard, make reconsideration of the December 9, 2025 Order necessary.

ARGUMENT

As a threshold matter, the Court wholly fails to engage with persuasive authority even when Defendants have put forth no authority—binding or otherwise—to refute them. This alone mandates reconsideration.

A. THE COURT CANNOT IGNORE PERSUASIVE AUTHORITY

South Carolina appellate courts have long-emphasized the importance of considering authority from other jurisdictions, especially when there are no binding decisions on point. Indeed, a court's "analysis would not be complete without reviewing cases from other jurisdictions." *State* *v. Jones*, 383 S.C. 535, 544 (2009); *see also Bass v. Isochem*, 365 S.C. 454, 478 (Ct. App. 2005) ("When there is no case on point in South Carolina, our courts may look to other states to determine if the issue has been decided and if the decision is persuasive authority."). In deciding whether to adopt such authority, the Court must determine whether it finds its "reasoning persuasive." *Brown v. Theos*, 345 S.C. 626, 632 (2001). What the Court may not do, however, is disregard persuasive authority wholesale without engaging its reasoning.

The Court should have considered and analyzed the federal authority advanced by Plaintiffs. *Allen v. Columbia Fin. Mgmt., Ltd.*, 297 S.C. 481, 486–87 (Ct. App. 1988) ("In the absence of South Carolina authority, we look to federal cases for guidance."). Beyond federal decisions, the Court should have "look[ed] to other states for persuasive authority." *Golini v. Bolton*, 326 S.C. 333, 343 (Ct. App. 1997). Yet the Order contains no discussion of this authority and offers no explanation for declining to follow it.

B. THE COURT'S DECISION EMPLOYS NO LEGAL STANDARD—LET ALONE THE CORRECT ONE—IN DECIDING THE MOTION TO COMPEL ARBITRATION UNDER THE FEDERAL ARBITRATION ACT

The Court's decision articulates no governing legal standard and is therefore premised on a fundamental legal error. While the motion-to-dismiss standard[1] could have been applied here, courts far more commonly apply the summary-judgment standard to motions to compel arbitration

[1] 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*. An application of the motion-to-dismiss standard would have certainly resulted in a denial of the motion to compel arbitration.

under the FAA.. The Court's decision neither discusses nor references the approximately five pages of Plaintiffs' Opposition Brief devoted to the threshold questions of the applicable legal standard. For purposes of this Motion, Plaintiffs refer the Court to pages 5–10 of their Opposition (as well as the entire opposition for the purposes of reconsideration) and briefly summarizes its contents. As explained therein, federal and state courts alike recognize that the summary-judgment standard governs motions to compel arbitration under the FAA. Plaintiffs cited South Carolina authority, federal appellate decisions, decisions from other state appellate courts, and cases within the Fourth Circuit uniformly applying that standard. The Order offers no explanation for declining to follow the overwhelming authority presented by Plaintiffs employing the summary judgment standard on a motion to compel arbitration. If the Court believes that supplemental briefing on the appropriate legal standard would be helpful, Plaintiffs would be happy to provide additional briefing.

Without application of the correct legal standard, the remainder of the analysis cannot stand. The governing standard dictates how the Court evaluates the record, treats evidence, and resolves factual disputes. Where that standard is not identified or applied, the resulting analysis is necessarily incomplete. In failing to apply the appropriate standard, the Court (1) did not consider Plaintiffs' verified complaint as evidence[2]; (2) did not account for Defendants' failure to submit any evidence refuting the Plaintiffs' verified-complaint evidence; (3) did not afford Plaintiffs the benefit of all reasonable inferences[3]; (4) improperly weighed evidence relating to disputed issues

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[2] 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).

[3] *See 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).

of material fact[4]; (5) did not address the disputed materials facts[5]; (6) did not consider whether the factual record was sufficiently developed[6] or whether targeted discovery would have aided the Court's decision[7]. If needed, the Court should hold an evidentiary hearing if there are disputed material issues relating to the motion to compel arbitration that can reasonably be resolved in such a forum.

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[4] *See 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."). *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)).

[5] 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 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).

[6] 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.[6] *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.").

[7] 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.").

C. The Court's Conclusions of Law Are Erroneous

Notwithstanding the standard of the review error, the Court's decision contains multiple other legal errors. Under South Carolina law, questions as to an arbitration provision's validity are always for courts to decide. "Arbitration is a matter of contract law and general contract principles of state law apply to a court's evaluation of the enforceability of an arbitration clause." *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6 (2016). "[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), *reh'g denied* (Nov. 13, 2024), *cert. granted* (June 25, 2025). The Court's Order plainly ignores this decision. Likewise, when a consumer plaintiff "has challenged the validity of the entire arbitration clause on grounds of unconscionability, there can be no 'clear and unmistakable' evidence that the parties actually agreed to arbitrate the gateway matter of the arbitration clause's validity." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24 (2007).

South Carolina courts apply heightened scrutiny to arbitration agreements involving unsophisticated consumers. In *Simpson*, the court acknowledged that the consumer "did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement, and that she did not have a lawyer present to provide any assistance in the matter." 373 S.C. at 27. The court approached such contracts "with considerable skepticism" and emphasized "the importance of a case-by-case analysis in order to address the unique circumstances inherent in the various types of consumer transactions." *Id.* at 36. Therefore, the discussions of *Henry Schein* and "clear and unmistakable" delegation need not be reached.

1. *Henry Schein*

The Court cites *Henry Schein, Inc. v. Archer & White Sales, Inc*. for the proposition that "all issues of arbitrability and enforceability are for the court to decide unless there is 'clear and unmistakable evidence' that the parties agreed to do so." Order at 3 (citing 586 U.S. 63, 72 (2019)). *Henry Schein* stated explicitly, however, that "before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." 586 U.S. at 69. The Court's Order omitted this analytical step by failing to engage in the analysis of whether a valid contract existed and whether it was unconscionable. By skipping over the threshold validity and unconscionability analysis, the Order misapplies Henry Schein.

2. Lack of Unconscionability Analysis

While it is true that parties are presumed to have read what they have signed, that does not eliminate the Court's duty to evaluate unconscionability. The Court's statement that it "need not consider Plaintiffs' unconscionability arguments because parties are presumed to have read the agreement they signed" overlooks settled South Carolina law recognizing that, even where a meeting of the minds is assumed (which Plaintiffs dispute here), "a contract may be invalid—and courts may properly refuse to enforce it—when it is unconscionable." *Doe v. TCSC, LLC*, 430 S.C. 602, 612 (Ct. App. 2020). Because unconscionability is a distinct and necessary inquiry, reconsideration is warranted to ensure that the Court's analysis addresses that doctrine.

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)). South Carolina law recognizes challenges to "the arbitration provision on grounds of unconscionability, bringing into question whether an arbitration agreement even existed in the first place." *Simpson*, 373 S.C. at 23. "[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). By declining to conduct this analysis, the Order commits a clear error of law.

3. *Masters* Does not Support the Proposition in the Order

The Court's Order invokes *Masters v. KOL, Inc.* to conclude—without analysis—that "as a matter of law that the parties agreed to delegate issues regarding the enforceability of the Purchase Agreement itself to the arbitrator." Order at 4. As an initial matter, *Masters* involves a ***post-formation*** breach of contract dispute. It is therefore clearly distinct from the present case, which specifically involves a dispute over contract formation, unconscionability, and related issues.

The Court's Order includes one quote from *Masters*: "while it is the default procedure for the court to decide the issues of whether a valid agreement to arbitrate exists and whether the specific dispute falls within the agreements scope, the parties may delegate this determination to the arbitrator if they clearly and unmistakably do so." 431 S.C. 28 at 40 (quoting *In re Little*, 610 B.R. 558, 565 (Bankr. D.S.C. 2020)). As *Masters* itself reflects, however, this language is quoted verbatim from *In re Little*, 610 B.R. 558, 565 (Bankr. D.S.C. 2020), making *Little* the operative analysis underlying the quoted principle. Accordingly, *Little* warrants close examination.

Properly understood, *Little* does not support the conclusion that the parties here clearly and unmistakably delegated arbitrability. To the contrary, *Little* emphasized that "[t]he ***clear and unmistakable standard is exacting***, and the presence of an expansive Arbitration Clause, without more, will not suffice." 610 B.R. at 565–66 (quoting *Peabody Holding Co. v. United Mine Workers of Am., Int'l Union*, 665 F.3d 96 (4th Cir. 2012)) (emphasis added). *Little* further explained that in the context of an unsophisticated consumer entering an adhesion contract, "[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 take a good joke too far." *Id*. at 568. (internal quotation marks and citations omitted). The court therefore rejected delegation, holding that "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." *Id*. at 569 (emphasis added). In short, *Little* found a lack of "clear and unmistakable" evidence that the unsophisticated party's intent to delegate arbitrability to an arbitrator. Applying *Little*'s reasoning, the Court should have determined there was a lack of "clear and unmistakable" evidence that parties delegated arbitrability to the arbitrator. This is especially true in light of the unilateral arbitration provision and the unconscionability infecting the entire contracting process.

Importantly here, there is no analysis of unconscionability—the core argument Plaintiffs raise. The detailed Verified Complaint, the reasonable inferences viewed in favor of the Plaintiffs, and the fact-intensive inquiry required for unconscionability determinations belies the Court's conclusions.

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). The Order's failure to grapple with Little and its reasoning underscores the need for reconsideration.

D. ONE-PARTY ARBITRATOR SELECTION & INDEPENDENT FORUM

"When it comes to arbitrator appointment, the ***rule is clearly*** that a ***party may not reserve unto itself the power to name the sole arbitrator***, a majority of a panel of arbitrators, or all of the panel members. Such an arbitration scheme is fundamentally unfair and ***void***." 97 Am. Jur. Trials 319 (Originally published in 2005) (emphasis added).

The Court declined to void the arbitration provision that granted Defendants the sole authority to select the arbitrator because "Plaintiff provides no binding authority to support this Court's ability, pre-arbitration, to alter the terms of the parties' agreement as it concerns the selection of an arbitrator." Order at 5.

The Court's Order basically says "give me binding case law or you lose." That is certainly not the guidance from the South Carolina appellate courts. Rather if "there is no South Carolina precedent, it is appropriate to look to other jurisdictions to determine if the issue has been presented and ruled upon." *Smalls v. S.C. Dep't of Educ.*, 339 S.C. 208, 221 (Ct. App. 2000). This is especially true where, as is here, the relevant law is federal law (the Federal Arbitration Act). *See Limehouse v. Hulsey*, 404 S.C. 93, 109 (2013) ("While we are bound only by the United States Supreme Court, if the lower federal courts are uniform on their interpretation of a federal statute, this court, in the interest of preserving unity, will give considerable weight to those courts' interpretations of federal law and find them to be highly persuasive.").

The Court not only failed to give the federal appellate court decisions "considerable weight" but erred by not considering or even mentioning the plethora of cases that Plaintiffs cited in their Opposition Brief, proposed order, and objections. Reconsideration is particularly warranted because there is no split among the federal courts, and Defendants have offered no authority that undermines or contradicts Plaintiffs' cited precedent. *See, e.g., Flores v. New York Football Giants, Inc*, 150 F.4th 172, 185 (2d Cir. 2025) ("[W]e additionally find persuasive some of the reasoning of the Fourth and Sixth Circuits, respectively, which refused to enforce arbitration provisions because of the unilateral selection of arbitrators. (citing *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 939–40 (4th Cir. 1999) & *McMullen v. Meijer, Inc.*, 355 F.3d 485, 493–94 (6th Cir. 2004))). "The *Hooters* court and the *Floss* court both recognized that procedural unfairness inherent in an arbitration agreement ***may be challenged before the arbitration***. When the process used to select the arbitrator is fundamentally unfair, as in this case, the arbitral forum is not an effective substitute for a judicial forum, and there is no need to present separate evidence of bias or corruption in the particular arbitrator selected." *McMullen*, 355 F.3d at 494 n.7 (first citing *Hooters*, 173 F.3d; then citing *Floss v. Ryan's Family Steak Houses, Inc.*, 211 F.3d 306, 311 (6th Cir. 2000)) (emphasis added). There is no reason—and Defendants have not provided one at any point—that the Court should not align itself with the overwhelming case law on this issue.[8]

[8] In considering whether to credit persuasive authorities, South Carolina courts frequently look to federal court decisions, especially federal appellate decisions from the Fourth Circuit. *Hooters*, a Fourth Circuit decision itself, has been cited by the South Carolina Supreme Court at least four times, the South Carolina Court of Appeals at least seven times, and enumerable times by South Carolia trial courts. In addition to South Carolina state courts, it has been cited in state courts of at least fourteen other states and over 400 times in federal courts.

As the South Carolina Supreme Court frequently does, this Court can also look to leading contract and arbitration treatises for support. A leading arbitration treatise explains that "[w]hen one party exercises exclusive control over the pool from which the arbitrator is selected, the selection process is fundamentally unfair and lacks neutrality, preventing arbitration from being an effective substitute for a judicial forum." § 10:37. Substantive unconscionability of arbitral clause—Arbitrator selection, 1 Commercial Arbitration § 10:37. Indeed, "[i]t is substantively unconscionable for a party to reserve the power to name the sole arbitrator or a majority or all of the panelists." § 54:5. Unilateral control over selection, 2 Commercial Arbitration § 54:5 ("The arbitrator appointment process must be fundamentally fair and a party cannot reserve the power to control the appointment of all or a majority of the arbitrators."). There is clear consensus on this issue that the Court should follow.

Importantly, binding South Carolina case law directly addresses validity of arbitrator selections. In *Lackey v. Green Tree Financial Corp*., the Court of Appeals held that a party's "veto" power over an arbitrator selection constituted "enough control over the selection process to assure the appointment of a neutral arbitrator." 330 S.C. 388, 400 (Ct. App. 1998). As the court explained, "[w]ithout their agreement, no arbitrator can be selected by [defendants]." *Id*. This juxtaposes the arbitration provision in this suit involving no such veto or consent requirement. Therefore, the Court must distinguish *Lackey*—as binding precedent—and invalidate the arbitrator selection clause.[9]

[9] Importantly, the arbitrator selection provision is not the only term in the arbitration provision that should be invalidated. The other terms that should be invalidated are the clause that (1) provides that the AAA Commercial rules as opposed to the AAA Consumer rules apply; (2) the arbitration is not under the auspices of AAA; (3) arbitrator compensation and cost of location are paid by the non-prevailing party; (4) arbitration shall take place in Charleston, S.C. at the Charleston County Courthouse or other location determined by VI. "In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker. It is under this general rubric that we determine whether a contract provision is unconscionable due to both an absence of

Finally, this is the appropriate and exclusive stage to remedy the arbitrator-selection issue. Proceeding otherwise results in enforcing a "sham system unworthy even of the name of arbitration," *Hooters*, 173 F.3d at 940. The law likewise recognizes that challenges to the method of arbitrator appointment must be raised at the outset: "[o]bjections to the method of appointment are waived if not timely raised, particularly when a protesting party waits until after the award issues," § 58:8. Objections, 2 Commercial Arbitration § 58:8. Courts are clear on this: "the general rule prohibiting pre-arbitration challenges to an allegedly biased arbitration panel does not extend to an allegation that the arbitrator-selection process itself is fundamentally unfair" *Walker v. Ryan's Fam. Steak Houses, Inc.*, 400 F.3d 370, 385 (6th Cir. 2005)

As a final point, in addition to the issues discussed above, the Court wholly fails to engage with Plaintiffs' status as unsophisticated consumers. The Supreme Court of South Carolina has repeatedly indicated that this is important context under which a purported unconscionable arbitration agreement is analyzed. *See generally Damico*, 437 S.C.; *see also Simpson*, 373 S.C.

CONCLUSION AND PRAYER FOR RELIEF

At a minimum, the Court must redecide the Motion under the proper standard and invalidate the arbitrator selection provision. To the extent the Court finds it helpful and to avoid a subsequent appeal, Plaintiffs would gladly provide additional briefing on any of the issues. Finally, Plaintiffs assert that limited targeted discovery as to issues relating to contract formation, validity, unconscionability would be beneficial to the Court.

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;

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meaningful choice and oppressive, one-sided terms." *Simpson*, 373 S.C. at 25 (citing *Hooters*, 173 F.3d at 938). Each of the aforementioned provisions are one-sided terms.

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,

s/David W. Wolf
David W. Wolf (S.C. Bar No. 17041)
DAVID W. WOLF, P.A.
748-D St. Andrews Boulevard
Charleston, South Carolina 29407
Tel. (843) 853-9000
Fax (843) 853-9002
Email: david@wolflaw.com

s/Abby Edwards Saunders
Abby Edwards Saunders (S.C. Bar No. 17234)
Law Office of Abigail Edwards Saunders, LLC
1021 Sea Mountain Highway, Suite B2
North Myrtle Beach, South Carolina 29582
Tel. (843) 491-9770
Fax (843) 491-9760
Email: abigail@abbysaunderslaw.com

Exhibit E

Vacation Inspirations Membership

PURCHASE AGREEMENT

MEMBER # [redacted]

Distributed by Destination Travel, LLC

This agreement, made and entered into this 8 day of OCT 2022, by and between Vacation Inspirations (hereinafter referred as VI), and Destination Travel, LLC (hereinafter referred as DT), and:

Name: Last Pellelli First Frank Jr. Spouse ____

E-Mail: [redacted]

Address: [redacted]

City: Guilford State: CT Zip Code 06437

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

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 [ONE] 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 $5995

1ST YR 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	$ —	$ ____ $ N/A

Your payment schedule will consist of, and Client agrees to pay VI a total of n/a payments, in the amount of $ n/a per month (P&I) with the first payment to be made on the 1st day of n/a, 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.

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.

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.

X ____ Client/Purchaser

Larry Stewart
Sales Representative

____ Client/Purchaser

____ 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

THIS ADDENDUM/EXCEPTION IS PART OF THE MEMBERSHIP AGREEMENT

MEMBER NUMBER
[redacted]

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

Annual dues frozen @ $199 for lifetime
4 Family + friends included; No dues.
5% Rewards on family + friends cruising
10% Rewards on Members cruising

X ________ Client Date 10/8/22

Larry Stewart
Sales Representative Date 10/8/22

________ Client Date ________

________ Manager Date 10/8/2

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 $ N/A 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 8 day of Oct 20 22

Purchaser

Purchaser

Larry Stewart
Sales Representative

Manager

VACATION INSPIRATIONS

AUTHORIZATION TO DRAFT DUES

THIS AUTHORIZATION IS PART OF THE MEMBERSHIP AGREEMENT

Date of Purchase 10/8/2022

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: ______________

[redacted]

X ______________________

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 ~~November~~ 2023 and will continue annually on or about the same date DECEMBER

______________________ Date
Name as it appears on Card (Printed)

______________________ Date
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

____________________ Member

____________________ Member

Vacation Inspirations Membership Exhibit F

PURCHASE AGREEMENT **MEMBER #** [redacted]

Distributed by Destination Travel, LLC

This agreement, made and entered into this 21 day of March 2022 by and between Vacation Inspirations (hereinafter referred as VI), and Destination Travel, LLC (hereinafter referred as DT), and:

Name: Last SKOLER First PATRICIA (Betty) Spouse PETER

E-Mail: [redacted]

Address: [redacted]

City: MILTON, State: MA Zip Code 02186

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 [TWO] 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 $ 4995, Documentation Fee is $399, first year dues is $199, for a total of $ 5593

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**. X THIS IS NOT A TIMESHARE, HEALTH CLUB, BUYERS CLUB, NOR DOOR TO DOOR SALES CONTRACT AGREEMENT. PRS PLEASE MAKE YOUR DECISION ACCORDINGLY.

Patricia R Skoler
Client/Purchaser

[illegible signature]
Client/Purchaser

Janet Stewart
Sales Representative

B. Pali
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

THIS ADDENDUM/EXCEPTION IS PART OF THE MEMBERSHIP AGREEMENT

MEMBER NUMBER [redacted]

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

Annual dues frozen $199 forever

4 Friend/family plans w/no dues & 5% back on cruises

Primary members 10% back on cruises

Members may choose to upgrade condo weeks @$1000- for each week.

Client	Date	Janet Stewart Sales Representative	Date 3-21-22
Client	Date 3/21/22	Manager	Date 3-21-22

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) Y
2. Do you understand Vacation Inspirations may add new benefits at any time, and may replace current suppliers, or benefits as needed? 2) Y
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) ____
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) Y
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) Y
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) Y
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) Y
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) Y
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) Y
10. Was your decision to make this purchase based on any type of high pressure sales tactics? 10) N
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) Y
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) Y

Signed in South Carolina this 21 day of MARCH 2022

Purchaser

Purchaser

Janet Stewart
Sales Representative

D. Pal
Manager

VACATION INSPIRATIONS

AUTHORIZATION TO DRAFT DUES

THIS AUTHORIZATION IS PART OF THE MEMBERSHIP AGREEMENT

Date of Purchase
3-21-2022

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: ____________

phone #

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 ~~May~~ JUN, 2023 and will continue annually on or about the same date

[redacted] - Peter

[redacted] - Patty *

Patricia R Skoler Date

Name as ~~it appears on Card~~ (Printed)

PATRICIA R SKOLER

x PETER M. SKOLER Date

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 Patricia R Stoler Member

x [signature] Member

RECEIVED
Jul 06 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas J. Rode, Circuit Court Judge

Appellate Case No. 2026-000910
Case No. 2024-CP-10-2642

Christopher Sawyer and Terese Sawyer, ... Appellants,

v.

Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner, and Jeffrey Pumilia, ... Respondents,

PROOF OF SERVICE

I certify that I have served the Appellants' Return to Respondents' Motion to Strike Materials In Appellants' Designation of Matter and in Initial Brief and Memorandum in Support on the above-named Respondents by email on July 3, 2026 addressed to counsel of record as follows:

Firm:	Attorney:	Email Address:
Wills Massalon & Allen LLC	John A. Massalon (SC Bar #10279)	jmassalon@wmalawfirm.net
	Carissa Steichen Land (SC Bar #103264)	cland@wmalawfirm.net
Uricchio Howe Krell Jacobson Toporek Theos & Keith	Jeffrey Wayne Buncher, Jr.	jeff@uricchio.com

Date: July 3, 2026

s/David W. Wolf
David W. Wolf (S.C. Bar No. 17041)
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