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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

Dale E. Van Slambrook, Circuit Court Judge

Appellate Case No. 2026-001533

Paul Thomas Capo, Jr. as Next Friend of Ryan McDermott, Respondent,

v.

Active Day, Inc., Appellant.

APPELLANT'S RETURN IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS APPEAL

Appellant Active Day, Inc. ("Active Day"), pursuant to Rule 240(e), SCACR, submits this Return in opposition to Respondent's Motion to Dismiss Appeal.

INTRODUCTION

Respondent asks this Court to dismiss an appeal, before any briefing, on a question of statutory construction that, by Respondent's own admission, no South Carolina appellate court has ever decided. The Motion should be denied for three independent reasons, any one of which is sufficient.

First, the Motion is silent as to the Federal Arbitration Act (hereinafter "FAA"). Active Day moved to compel under the FAA and the South Carolina Uniform Arbitration Act (hereinafter "the Act" or "Uniform Arbitration Act"). The parties expressly stipulated that the underlying transaction involves interstate commerce, that the FAA governs, that the FAA preempts inconsistent state law, and that the FAA shall not be reverse preempted. Where the FAA applies, a categorical state rule barring arbitration of a particular class of claim is displaced. *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530 (2012). S.C. Code Ann. § 15-48-10(b)(4) is precisely such a rule. Respondent's argument concedes that the FAA is the governing statute.

Second, the Motion is circular. S.C. Code Ann. § 15-48-200(a)(1) authorizes an appeal from an order denying an application to compel arbitration "made under Section 15-48-20." Active Day's application was made under S.C. Code Ann. § 15-48-20. Whether the Uniform Arbitration Act ultimately reaches Respondent's claims is the merits question this appeal presents. Respondent's construction would require this Court to decide the appeal in order to determine whether it may hear the appeal.

Third, S.C. Code Ann. § 15-48-200 is not the exclusive source of appellate jurisdiction in arbitration matters, and S.C. Code Ann. § 14-3-330(1) independently authorizes this appeal from an intermediate order that finally determined a defense Active Day pleaded and litigated.

PROCEDURAL POSTURE

Active Day moved to stay the action and compel arbitration on May 15, 2026, expressly invoking both the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 et seq. The circuit court denied the motion by order filed May 26, 2026, and denied Active Day's motion for reconsideration by order filed July 7, 2026. Active Day served and filed its Notice of Appeal on July 10, 2026.

Respondent concedes that the Notice of Appeal is timely under Rule 203(b)(1), SCACR. Respondent's sole ground for dismissal is that this Court lacks jurisdiction because S.C. Code Ann.

§ 15-48-10(b)(4) excludes personal-injury claims from the operation of the Uniform Arbitration Act.

ARGUMENTS

I. RESPONDENT'S SOLE GROUND IGNORES THE FEDERAL ARBITRATION ACT, UNDER WHICH THE PERSONAL-INJURY EXCLUSION IS PREEMPTED.

Respondent's Motion rests entirely on S.C. Code Ann. § 15-48-10(b)(4). It does not mention the Federal Arbitration Act. That omission is fatal to the Motion, because Active Day's application was made under the FAA as well as the Uniform Arbitration Act, and controlling authority holds that where the FAA governs, a categorical state bar on arbitrating a particular type of claim is displaced. At a minimum, Respondent has not carried his burden of establishing the absence of appellate jurisdiction. Active Day does not ask the Court to decide that question now. It asks only that the Court decline to dismiss an appeal on a ground that controlling law contradicts and that Respondent has not addressed.

A. The application was made under the FAA, and the parties stipulated to it.

Active Day's May 15th memorandum moved to compel arbitration "pursuant to the Federal Arbitration Act ('FAA'), 9 U.S.C. § 1, et seq. and South Carolina Uniform Arbitration Act, S.C. Code § 15-48-10, et seq." Ex. 1 at 1. The Arbitration Agreement itself, at Paragraph (c), is captioned "Federal Arbitration Act" and provides that the signatories expressly agree the underlying agreement and any stays at the “Center involve interstate commerce based upon, among other things, the Company operating Centers in multiple states and engaging in various interstate commercial activities to facilitate said operations. The Signatories also stipulate that the Federal Arbitration Act (“FAA”) in effect as of September 1, 2012 shall apply, and that the FAA shall preempt any inconsistent state law and shall not be reverse preempted.” Ex. 2, ¶ (c).

Active Day does not contend that parties may grant appellate jurisdiction by contract. Paragraph (c) is relevant for two narrower reasons. First, it provides an establishing fact, the relationship of the transaction to interstate commerce which brings the FAA into operation. Second, its express stipulation that the FAA "shall not be reverse preempted" waives any argument that S.C. Code Ann. § 15-48-10(b)(4) reverse preempts the FAA under the McCarran-Ferguson Act. *Cox v. Woodmen of the World Ins. Co.*, 347 S.C. 460, 556 S.E.2d 397 (Ct. App. 2001) (addressing the insurance clause of S.C. Code Ann. § 15-48-10(b), enacted to regulate the business of insurance). No such reverse preemption argument is available here, both because the parties waived it and because the personal-injury clause on which Respondent relies serves no insurance-regulatory purpose.

B. The FAA governs because the agreement involves interstate commerce.

The FAA applies to any written arbitration provision in "a contract evidencing a transaction involving commerce." 9 U.S.C. § 2. Our Supreme Court reads "involving commerce" to the full reach of the Commerce Clause. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360 (2001); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 273-74 (1995). To determine whether an agreement involves interstate commerce, the court examines the agreement, the complaint, and the surrounding facts, focusing on what the terms of the contract specifically require for performance. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 380, 759 S.E.2d 727, 732 (2014).

Dean is directly on point. There, the Supreme Court held that a nursing-home residency agreement involved interstate commerce and was therefore governed by the FAA because such contracts entail providing residents with meals and medical supplies that are inevitably shipped across state lines from out-of-state vendors. *Id. at* 408 S.C. at 381, 759 S.E.2d at 732. In so holding, the Court overruled *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993), "in its entirety" as a relic of a narrower view of interstate commerce that *Allied-Bruce* displaced. *Id.*

The contrast with *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012), is decisive. There, the agreement's essential character was a single completed residential dwelling, "an inherently intrastate transaction," *id.* at 456, 730 S.E.2d at 317, not a multi-state services operation. In this respect, this case is *Dean* not *Bradley*. Active Day is a national provider of adult day and home-care services operating more than one hundred centers in ten states and serving more than 8,000 members. It provides those members with meals, activities, and physical and mental care, the same performance obligations that in *Dean* supplied the interstate-commerce nexus. Respondent's claims arise directly from those services.

C. Where the FAA governs, S.C. Code Ann. § 15-48-10(b)(4) is preempted.

The Supreme Court of South Carolina has already applied the preemption principle to the Uniform Arbitration Act itself. In *Bradley*, the arbitration provision did not satisfy the Act's technical requirements, and application of state law "would have rendered the arbitration agreement completely unenforceable." 398 S.C. at 453, 730 S.E.2d at 315. The Court held that consideration of the FAA was nonetheless "required" because "the FAA would preempt application of . . . state law to the extent it invalidated the arbitration agreement." *Id.* The same analysis governs here, if S.C. Code Ann. § 15-48-10(b)(4) would invalidate an otherwise-enforceable agreement, the FAA displaces it to that extent.

The Supreme Court of the United States has applied that displacement to a rule identical in kind to S.C. Code Ann. § 15-48-10(b)(4). In *Marmet Health Care Center, Inc. v. Brown*, 565 U.S. 530 (2012), the Court held that West Virginia's categorical prohibition on predispute agreements to arbitrate personal-injury and wrongful-death claims against nursing homes was preempted, reiterating that "when state law prohibits outright the arbitration of a particular type of claim, the . . . conflicting rule is displaced by the FAA." *Id.* at 533 (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011)). Here, S.C. Code Ann. § 15-48-10(b)(4) is, a categorical bar on arbitrating personal-injury claims. Read together, *Bradley* and *Marmet* establish that the exclusion Respondent invokes cannot defeat an FAA governed agreement. *See also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001) (FAA preempts state law that completely invalidates an agreement to arbitrate).

D. Respondent's logic concedes that the FAA supplies the governing law.

There is a further problem with the Motion. Respondent insists the Uniform Arbitration Act "shall not apply" to this personal-injury action. If that is so, the only statute under which the circuit court could have entertained Active Day's motion was the FAA, which Active Day invoked on the first page of its memorandum. Respondent cannot maintain both that the state Act does not govern this dispute and that the state Act's appeal provision is the exclusive measure of this Court's jurisdiction.

II. RESPONDENT'S CONSTRUCTION OF S.C. Code Ann. § 15-48-200(a)(1) IS CIRCULAR.

S.C. Code Ann. § 15-48-200(a)(1) provides that an appeal may be taken from "[a]n order denying an application to compel arbitration made under S.C. Code Ann. § 15-48-20." The phrase "made under S.C. Code Ann. § 15-48-20" describes the application that was presented to the circuit court. It does not condition the right of appeal on whether the application was meritorious or whether the circuit court correctly resolved it.

Active Day invoked the statutory procedure established by S.C. Code Ann. § 15-48-20 and requested the precise relief that provision authorizes, an order compelling arbitration based on a written arbitration agreement and Respondent's refusal to arbitrate. The application was styled, briefed, and heard as one brought under S.C. Code Ann. § 15-48-20. The arbitration agreement itself expressly adopts the South Carolina Uniform Arbitration Act in the underlined capital letters prescribed by S.C. Code Ann. § 15-48-10(a), stating that the agreement becomes binding pursuant to the South Carolina Uniform Arbitration Act. Ex. 2 at 1. Respondent cannot now recast the application as something other than what it was.

Respondent argues that the application "was not, and could not have been," one made under the Act because S.C. Code Ann. § 15-48-10(b)(4) excludes personal-injury claims. But whether that exclusion applies to these claims is the very issue presented for appellate review. Respondent thus collapses the phrase "made under Section 15-48-20" into "meritorious under S.C. Code Ann. § 15-48-20" and makes appellate jurisdiction depend on the correctness of the order being appealed.

That construction is circular. Under Respondent's theory, this Court must first decide whether the circuit court correctly held that the Act does not apply before it can determine whether it has jurisdiction to review that ruling. Appellate jurisdiction does not ordinarily depend on the appellate court first resolving the merits of the challenged order. Respondent's construction would require this Court to decide the appeal in order to determine whether it may hear the appeal at all.

The exclusion in S.C. Code Ann. § 15-48-10(b)(4), if applicable, concerns whether the Act authorizes enforcement of the agreement as to these claims. It does not retrospectively alter the statutory character of Active Day's application or transform the circuit court's denial into something other than an order denying an application made under S.C. Code Ann. § 15-48-20.

III. S.C. Code Ann. § 14-3-330 INDEPENDENTLY AUTHORIZES THIS APPEAL.

Even if this Court were to accept Respondent's contention that S.C. Code Ann. § 15-48-200(a)(1) does not reach the May 26 order, S.C. Code Ann. § 14-3-330 independently authorizes the appeal. S.C. Code Ann. § 15-48-200 is not the exclusive source of appellate jurisdiction over orders entered into arbitration matters. In *Widener v. Fort Mill Ford*, the respondent argued that an order dismissing an action in favor of arbitration was not appealable because that type of order was not enumerated in S.C. Code Ann. § 15-48-200. The Court of Appeals rejected that argument, holding that S.C. Code Ann. § 15-48-200 "does not preclude the order in this case from being immediately appealable," and that because the dismissal "finally determined the rights of the parties," jurisdiction existed under S.C. Code Ann. § 14-3-330. 381 S.C. 522, 524, 674 S.E.2d 172, 173–74 (Ct. App. 2009).

Although *Widener* involved a final order of dismissal, its treatment of S.C. Code Ann. § 15-48-200 is not confined to that posture. The decision holds that S.C. Code Ann. § 15-48-200 does not displace an independent basis for appellate jurisdiction under S.C. Code Ann. § 14-3-330. The question here is therefore whether the May 26 order independently qualifies as an appealable intermediate order under S.C. Code Ann. § 14-3-330(1).

The May 26 order satisfies that standard. Active Day pleaded arbitration as a defense in its Answer and promptly moved to enforce it. The circuit court's order did not postpone consideration of arbitration, regulate the procedure by which the defense would be decided, or leave any part of the arbitration question open. It finally determined that Active Day could not compel arbitration of Respondent's claims, and nothing remaining before the circuit court will revisit or alter that determination.

Immediate review is consistent with the nature of the matter finally determined. Active Day asserts a contractual right to resolve this dispute in arbitration rather than in the circuit court. Requiring it to litigate through judgment before obtaining review would not restore that right even if Active Day later prevailed on appeal. This does not independently confer jurisdiction, but it confirms that the May 26 order finally determined a substantial defense within the meaning of S.C. Code Ann. § 14-3-330(1).

CONCLUSION

For the foregoing reasons, Active Day respectfully requests that the Court deny Respondent's Motion to Dismiss Appeal and grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Dated this 20th day of July, 2026.

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Paul Thomas Capo, Jr. as Next Friend of Ryan McDermott, Plaintiff, v. Active Day, Inc., Defendant.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2025-CP-10-06032 **DEFENDANT ACTIVE DAY, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO STAY ACTION AND COMPEL ARBITRATION**

Defendant Active Day, Inc. (hereinafter "Active Day" or "Defendant") by and through its undersigned counsel, submits this Memorandum in Support of its Motion to Compel Arbitration and Stay Proceedings pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq. and South Carolina Uniform Arbitration Act, S.C. Code § 15-48-10, et seq. For the reasons set forth herein, the motion should be GRANTED.

FACTUAL BACKGROUND

Active Day, (hereinafter referred to as "Defendant") is a national provider of adult day and home care services for seniors and adults with disabilities. Defendant's headquarters are located in Trevose, Pennsylvania, and there are over 100 centers in ten states that provide adult day care services to more than 8,000 members. Defendant provides its members with socialization, activities, meals, and physical and mental care. Plaintiff, Ryan McDermott, is a twenty-eight-year-old adult with cognitive disabilities who was previously enrolled at an Active Day facility in North Charleston, South Carolina, for the purpose of receiving adult day care services. Candace M. Capo is Plaintiff's mother and primary caretaker.

On February 28, 2025, Ms. Capo executed a binding arbitration agreement (the "Agreement") between Plaintiff and Defendant, which is attached hereto and incorporated by reference as **Exhibit A**. The Agreement bears the signature of Ms. Capo, the signature of Defendant's director, and the printed name of the Plaintiff. Additionally, Ms. Capo affixed her initials to each page of the Agreement.

As part of the Agreement, Plaintiff and Defendant mutually agreed to submit all disputes between them to binding arbitration. The arbitration agreement contains Paragraph (a), which governs the scope of disputes subject to arbitration. Paragraph (a) is included in its entirety below:

> **(a)** **Scope of Disputes Subject to Arbitration.** Any and all claims, disputes or controversies between the Signatories arising out of, connected with or **in any way** relating to (1) the Request for Admission and Enrollment Agreement and all Attachments referenced therein (collectively, the "Underlying Agreement"), (2) any other agreement the Signatories enter into in the future, (3) any stay(s) at the Center (as defined in the Underlying Agreement), (4) any alleged negligence, inadequate care/service, personal injury and property damage, (5) any services provided by the Company, and/or (6) any other cause or reason; including, but not limited to, those regarding the making, execution, validity, enforceability, severability, scope, arbitrability or interpretation of this Arbitration Agreement, or waiver, duress, preemption or any other defense to the enforceability of this Arbitration Agreement, whether arising out of State or Federal law, whether existing now or arising in the future, whether for statutory, compensatory, punitive or any other type of damages, and whether sounding in breach of contract, tort or breach of statutory or common law duties (including, without limitation, any claim, dispute or controversy based on unpaid charges), irrespective of the basis for the duty or of the legal theories upon which the claim, dispute or controversy is asserted, shall be submitted to binding arbitration.

Ex. A, ¶ 5

Plaintiff has now filed this lawsuit alleging that Defendant mistreated Plaintiff during participation in Defendant's adult day services. Defendant unequivocally denies these allegations. The Agreement also expressly addresses the precise circumstance Plaintiff now raises in opposition to arbitration. Provision (q), titled "Third Party Beneficiary," provides:

> **(q)** **Third Party Beneficiary.** The parties stipulate that to the extent the Member does not sign this Arbitration Agreement (i.e., an adult family member, friend or representative signs on the Member's behalf), or the Member does sign him/herself, but the legality of the Member's signature is challenged, then the Signatories stipulate that the Member is an intended third party beneficiary of the Arbitration Agreement and the Underlying Agreement because the purpose of both is to directly benefit the Member.

Ex. A, ¶ (q).

Ryan McDermott was the Member for whose direct benefit the adult day services were requested, arranged, and provided. Accordingly, the Agreement expressly contemplates the very type of signature/authority challenge advanced by Plaintiff and confirms that Ryan was not a stranger to the Agreement, but its intended beneficiary. Pursuant to the Agreement, these disputes should be submitted to binding arbitration between Plaintiff and Defendant.

LEGAL STANDARD

When analyzing arbitrability, the "court must first determine whether the parties' agreement is governed by the FAA." *Bernstein v. Pulte Home Co., C/A No. 0:19-cv-02805-JFA, 2019 WL 8014404, at *6 (D.S.C. Dec. 23, 2019) (citing Hill v. PeopleSoft USA, Inc., 412 F.3d 540, 543 (4th Cir. 2005))*. "A party can compel arbitration under the FAA by establishing (1) a dispute between the parties; (2) a written agreement that includes an arbitration provision purporting to cover that dispute; (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce; and (4) the failure, neglect or refusal of the opposing party to arbitrate the dispute." *Id*.

After determining that the FAA applies, "courts must apply state law to decide issues of contract formation" when a party challenges the enforceability of the arbitration agreement. *LaPoint v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, C/A No. 0:08-3553-CMC, 2009 U.S. Dist. LEXIS 146577, at *10, 2009 WL 10684895 (D.S.C. Dec. 1, 2009) (citing

United States v. Bankers Ins. Co., 245 F.3d 315, 319 (4th Cir. 2001); *Whiteside v. Teltech Corp.*, 940 F.2d 99, 102 (4th Cir. 1991)).. "The FAA recognizes arbitration agreements 'may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability.'" *Sanders v. Savannah Highway Auto. Co*., 440 S.C. 377, 383, 892 S.E.2d 112, 115 (2023) (quoting *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68 (2010)). However, the FAA "preempt[s] any state law that completely invalidates the parties' agreement to arbitrate." *Zabinski v. Bright Acres Assocs*., 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001).

The FAA provides that legal proceedings must be stayed when any such issues in the suit are "referrable to arbitration under an agreement in writing." 9 U.S.C. § 3. It requires the court "to stay a proceeding, pending arbitration, if the court determines that a valid arbitration agreement exists, and that the claims alleged fall within the scope of the arbitration agreement." *LaPoint v. John Wieland Homes & Neighborhoods of the Carolinas, Inc*., C/A No. 0:08-3553-CMC, 2009 U.S. Dist. LEXIS 146577, at *4, 2009 WL 10684895 (D.S.C. Dec. 1, 2009) (citing *United States v. Bankers Ins. Co*., 245 F.3d 315, 319 (4th Cir. 2001); *Whiteside v. Teltech Corp*., 940 F.2d 99, 102 (4th Cir. 1991)). "Once these criteria are met, the district court has 'no choice but to grant a motion to compel arbitration.'" Id. (quoting *Adkins v. Labor Ready, Inc*., 303 F.3d 496, 500 (4th Cir. 2002)).

Because of the well-established federal policy favoring arbitration of disputes, courts must assess the validity and scope of an arbitration agreement with a "heavy presumption of arbitrability." *Landers v. FDIC*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013). Accordingly, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Id. (quoting *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc*., 96 F.3d 88, 92 (4th Cir.

1996); *Bernstein v. Pulte Home Co*., C/A No. 0:19-cv-02805-JFA, 2019 WL 8014404, at *6 (D.S.C. Dec. 23, 2019) (citing *Hill v. PeopleSoft USA, Inc*., 412 F.3d 540, 543 (4th Cir. 2005)).

Further, "in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." *Id*. at 596, 553 S.E.2d at 118. A court may consider challenges to the arbitration clause itself, but any challenge to the contract as a whole should be resolved by an arbitrator. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445−46 (2006) ("[U]nless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance.").

ARGUMENT

I. THE ARBITRATION AGREEMENT IS ENFORCEABLE UNDER ORDINARY AGENCY, THIRD-PARTY-BENEFICIARY, ESTOPPEL, AND CAPACITY PRINCIPLES.

Defendant respectfully submits that the arbitration agreement is enforceable under principles of apparent authority recognized in South Carolina contract law. South Carolina has never held that a power of attorney or guardianship is the exclusive means by which a representative may bind another to arbitration. To the contrary, arbitration agreements are subject to ordinary agency principles, including apparent authority. The FAA requires those ordinary doctrines to be applied neutrally and not in a manner hostile to arbitration.

Apparent authority is a fact-intensive inquiry that turns on objective manifestations and reasonable reliance. To establish apparent authority, Defendant must show that the purported principal consciously or impliedly represented another to be his agent, that Defendant relied on the representation, and that Defendant changed its position to its detriment. See *Thompson v. Pruitt Corp.*, 416 S.C. 43, 52, 784 S.E.2d 679, 683 (Ct. App. 2016) (quoting *Froneberger v. Smith*, 406

S.C. 37, 47, 748 S.E.2d 625, 630 (Ct. App. 2013)); *Graves v. Serbin Farms, Inc.*, 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991).

Apparent authority arises where the conduct of a principal, viewed objectively, cloaks another with the appearance of authority and a third party reasonably relies on that appearance in good faith. *Frasier v. Palmetto Homes of Florence, Inc.*, 473 S.E.2d 865 (S.C. Ct. App. 1996). Here, Defendant reasonably relied on Candace Capo's apparent authority to enroll Ryan McDermott and execute intake documentation, including the arbitration agreement. South Carolina courts recognize apparent authority where the principal's conduct causes a third party to reasonably believe another has authority to act for the principal. The Court of Appeals held that apparent authority may arise from circumstances showing the agent "occupied such a position as would cause a reasonably prudent person to believe the agent has authority." *Id.*

Ms. Capo presented herself as the responsible adult for Ryan, completed all enrollment paperwork, facilitated his admission to the program, and permitted him to attend and receive services without objection. From Defendant's perspective, there was no indication that Ms. Capo lacked authority to act in this capacity. Defendant was entitled to rely on these manifestations, particularly in a noncustodial adult day services setting where family members routinely manage enrollment and participation for cognitively impaired adults. Arbitration agreements are subject to ordinary agency principles, and nothing in South Carolina law renders apparent authority categorically inapplicable merely because an arbitration clause is involved. At a minimum, whether apparent authority existed is a fact-intensive inquiry that cannot be resolved by conclusory assertions of no written power of attorney.

Defendant does not rely solely on Ms. Capo's unilateral representation of authority. Rather, the surrounding circumstances, including Ryan's enrollment through Ms. Capo, his acceptance of services arranged through that enrollment, his continued attendance without objection to Ms. Capo's role, and Plaintiff's own allegations that Ms. Capo was Ryan's mother and primary caretaker, objectively supported Defendant's belief that Ms. Capo was acting with authority to complete the documents necessary to secure Ryan's participation in Active Day's program. Defendant then changed its position in reliance on those manifestations by enrolling Ryan, staffing and supervising his participation, and providing the adult day services from which Plaintiff's claims now arise.

Plaintiff's reliance on *Arredondo v. SNH SE Ashley River Tenant, LLC* is misplaced and overextended. *Arredondo* arose in the context of nursing home admission, a highly regulated, custodial healthcare environment involving significant medical decision-making and end-of-life considerations. The South Carolina Supreme Court's analysis in that case was tethered to the specific scope of written powers of attorney in that context. This case, by contrast, involves adult day services, a fundamentally different setting marked by voluntary participation, limited medical oversight, and routine enrollment by family members. *Arredondo* does not stand for the proposition that apparent authority can never exist absent a written power of attorney, nor does it prohibit courts from examining the totality of circumstances to determine whether a service provider reasonably relied on a representative's authority.

Plaintiff's nursing-home and assisted-living authorities should not be read as creating a categorical rule that apparent authority can never support enforcement absent a formal guardianship or power of attorney. Those cases generally analyzed whether a surrogate, power-of-attorney holder, or statutory healthcare decisionmaker had authority to execute a separate, optional arbitration agreement in a custodial healthcare admission. See, e.g., *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014); *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 856 S.E.2d 550 (2021). This case involves adult day services, the enrollment relationship actually created by the parties' conduct, Ryan's direct receipt of the services arranged through that enrollment, and an Agreement that expressly contemplates execution by an adult family member, friend, or representative when the Member does not personally sign.

Further, Plaintiff asserts that the Agreement should have been signed by Ryan McDermott. Plaintiff's own allegations regarding Ryan McDermott's cognitive functioning undermine the position that no enforceable agreement exists without his signature. Plaintiff asserts that Ryan functions at the level of an eight-year-old child, while simultaneously insisting that he is a legally autonomous adult whose personal signature or express authorization is required to form a contract. These positions are incompatible. If Ryan possessed sufficient capacity to reject arbitration, then his participation in services following enrollment supports enforcement of the agreement governing those services. If, however, Ryan lacked contractual capacity, Plaintiff cannot selectively invalidate arbitration while maintaining claims premised on Defendant's duties as a service provider.

The Court should not permit incapacity to be wielded as both a sword and a shield. Plaintiff cannot have it both ways. On the one hand, Plaintiff seeks to invalidate the Arbitration Agreement because Ryan allegedly lacked capacity and did not personally sign it. On the other hand, Plaintiff proceeds with this lawsuit through a next friend who purports to act on Ryan's behalf concerning claims arising from the same service relationship created by the enrollment documents. In other words, Plaintiff asks the Court to recognize representative action when it benefits Ryan's ability to pursue litigation, but to reject representative action when it requires Ryan to honor the dispute resolution provision governing those same claims. That inconsistent position would allow Plaintiff to accept the benefits of the Active Day relationship, invoke duties allegedly arising from that relationship, and simultaneously avoid the arbitration obligation contained in the documents that made the relationship possible. South Carolina law does not permit such selective reliance.

Moreover, Plaintiff should not be permitted to use Ryan's alleged incapacity as a basis to avoid arbitration while still pursuing claims arising from the services arranged and provided for Ryan's benefit. The adult day services at issue were not incidental to the dispute; they are the very services from which Plaintiff's claims arise. Plaintiff therefore cannot accept the benefit of that service relationship while selectively rejecting the dispute resolution provision governing claims arising from it. Defendant provided supervision and care in good faith reliance on enrollment documentation. Plaintiff cannot retain the benefits of that relationship while repudiating the agreed upon dispute resolution mechanism. Equity demands consistency, particularly where Defendant has already performed under the agreement.

Independent of authority and capacity, Plaintiff is equitably estopped from avoiding arbitration because Plaintiff accepted the direct benefits of the agreement. Ryan attended the facility and received services pursuant to the enrollment process governed by the agreement containing the arbitration provision. Although Plaintiff characterizes the claims as sounding in tort, they arise from and are intertwined with the service relationship created by the agreement. Defendant's alleged duties of supervision and care exist because of that contractual relationship. South Carolina courts recognize that a party may not seek recovery based on a contractual relationship while disavowing the arbitration clause contained in the same agreement.

B. ALTERNATIVELY, RYAN MCDERMOTT IS BOUND AS AN INTENDED THIRD-PARTY BENEFICIARY AND/OR UNDER PRINCIPLES OF DIRECT-BENEFITS ESTOPPEL.

Even if Plaintiff disputes Ms. Capo's formal authority, Ryan McDermott remains bound because he was the intended third-party beneficiary of the Arbitration Agreement and the Underlying Agreement. Paragraph (q) expressly provides that where the Member does not sign, where an adult family member, friend, or representative signs on the Member's behalf, or where the legality of the Member's signature is challenged, the Member is an intended third-party beneficiary of both agreements because the purpose of both is to directly benefit the Member. Ex. A, ¶ (q).

That is precisely the circumstance presented here. Ryan was the Member who received Active Day's adult day services. The enrollment documents were completed so that Ryan could attend Active Day, participate in its program, and receive services from Defendant. Plaintiff's claims arise from those services and from Defendant's alleged duties while Ryan was participating in the program. Plaintiff therefore cannot accept the benefits of the service relationship created through the enrollment documents while disclaiming the dispute-resolution provision governing disputes arising from that same relationship.

Plaintiff attempts to characterize the claims as independent tort claims, but the alleged duties of care, supervision, programming, and service exist because Ryan was enrolled in and attending Active Day's program. Paragraph (q) confirms that Ryan was not a stranger to the Agreement; he was its intended beneficiary. Accordingly, even if the Court concludes that additional factual development is necessary regarding Ms. Capo's authority, the Agreement's third-party-beneficiary language independently supports enforcement or, at minimum, limited discovery or an evidentiary hearing concerning enrollment, acceptance of services, and the benefits Ryan received.

Plaintiff's reliance on the absence of a formal power of attorney or guardianship also ignores the Agreement's express contractual language. Unlike cases in which the agreement was silent as to a resident, patient, or member who did not personally sign, Paragraph (q) specifically contemplates the circumstance presented here: an adult family member, friend, or representative signing on the Member's behalf, or a later challenge to the legality of the Member's signature. Ex. A, ¶ (q). Thus, even assuming Plaintiff disputes Ms. Capo's formal authority, Ryan was not a stranger to the Agreement. He was the identified Member, the intended recipient of Active Day's services, and the express intended third-party beneficiary of both the Arbitration Agreement and the Underlying Agreement. For that reason, *Arredondo* does not mandate denial of arbitration here.

Defendant further submits that Plaintiff's arguments risk imposing arbitration-specific hurdles in contravention of the Federal Arbitration Act. The FAA preempts state-law rules that disfavor arbitration or place agreements on unequal footing with other contractual provisions. Requiring formal guardianship or express arbitration authorization in care-related contexts when no such formalities are required to accept services or assert claims arising from those services effectively singles out arbitration clauses for special hostility. The FAA mandates neutral application of general contract principles, not heightened scrutiny reserved for arbitration alone.

Finally, to the extent the Court believes additional facts are necessary regarding Ms. Capo's authority, Ryan's acceptance of services, or the application of Paragraph (q), the appropriate remedy is not denial of arbitration, but limited discovery or an evidentiary hearing on those discrete issues.

II. THE ARBITRATION AGREEMENT IS NEITHER PROCEDURALLY NOR SUBSTANTIVELY UNCONSCIONABLE.

Plaintiff contends that the arbitration agreement is unenforceable on grounds of unconscionability. This argument fails as a matter of law. Under South Carolina law, unconscionability is an extraordinary doctrine reserved for contracts that are fundamentally unfair in both formation and substance. *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 606 S.E.2d 752 (2004). (quoting *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996)). The party opposing enforcement bears the burden of proving both procedural unconscionability, an absence of meaningful choice in the formation of the agreement; and substantive unconscionability, terms so oppressive or one-sided that no reasonable person would agree to them. Plaintiff cannot satisfy either requirement, and accordingly, the arbitration agreement must be enforced.

First, the Agreement is not procedurally unconscionable. The undisputed facts show that the Arbitration Agreement was presented in writing, clearly identified as binding arbitration, and executed with multiple indicia of assent, including a signature and initials on each page. Plaintiff does not allege that Defendant engaged in deception, misrepresentation, coercion, or undue pressure, nor does he allege that the arbitration provision was concealed, mischaracterized, or presented after services were rendered. There is likewise no allegation that Defendant refused to provide services unless arbitration was accepted or that Plaintiff or his representative was prevented from reviewing the agreement or asking questions. South Carolina courts have repeatedly held that the use of standardized or so-called adhesion contracts does not establish procedural unconscionability, and disparity in bargaining power, standing alone, is insufficient to invalidate an arbitration agreement. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26–27, 644 S.E.2d 663, 669 (2007).

Plaintiff instead relies primarily on Ryan's cognitive limitations and general assertions of vulnerability. However, cognitive disability does not, by itself, render a contract procedurally unconscionable, especially where the allegedly incapacitated person is the intended third-party beneficiary of the agreement. Unconscionability focuses on the fairness of the contracting process, not on retrospective assessments of the parties' circumstances. Accepting Plaintiff's position would effectively create a rule invalidating arbitration agreements in broad categories of service relationships.

Second, the arbitration agreement is not substantively unconscionable. Its terms are mutual, bilateral, and even-handed. Both parties are equally required to arbitrate disputes, and the agreement does not limit Plaintiff's substantive claims, eliminate statutory remedies, or confer unilateral advantages on Defendant. Arbitration is a lawful and recognized forum for dispute resolution, not an inherently oppressive substitute for litigation. Plaintiff's subjective preference for a judicial forum or belief that litigation might be more advantageous does not render the agreement unconscionable.

The location or forum selection provision does not render the agreement substantively unconscionable. Forum-selection clauses are presumptively valid under both South Carolina law and federal arbitration jurisprudence. Mere inconvenience or distance is insufficient to invalidate an arbitration agreement. Plaintiff has not shown that arbitration would be prohibitively expensive, inaccessible, or would deprive him of a meaningful opportunity to present his claims. In the absence of such a showing, speculation regarding inconvenience cannot support a finding of unconscionability.

Plaintiff's forum-based unconscionability argument is also contrary to the plain language of the Agreement. Plaintiff contends that Ryan would be forced to travel more than seven hundred miles to Pennsylvania to arbitrate this dispute. However, Paragraph (f) expressly provides that "[t]he arbitration shall be in Columbia, SC." Ex. A, ¶ (f). Plaintiff's Pennsylvania argument appears to rely on Paragraph (r), but that provision applies only if the arbitration agreement is determined to be void, invalid, or unenforceable and the parties proceed by bench trial. It does not govern the location of arbitration. Accordingly, Plaintiff's argument that arbitration would require Ryan to arbitrate in Pennsylvania is unsupported by the Agreement and cannot establish substantive unconscionability.

Finally, Plaintiff's unconscionability argument impermissibly targets arbitration itself rather than applying a generally applicable contract defense. If the same enrollment agreement were challenged in a non-arbitration context, it would not be deemed unconscionable. The Federal Arbitration Act precludes state-law doctrines from being applied in a manner that disfavors arbitration or imposes heightened scrutiny on arbitration clauses not applied to contracts generally. Plaintiff's argument would do precisely that and therefore cannot be sustained.

Accordingly, Plaintiff has failed to carry his burden of proving either procedural or substantive unconscionability. The arbitration agreement is enforceable, and the Court should compel arbitration and stay these proceedings.

III. DEFENDANT DID NOT WAIVE ARBITRATION.

Plaintiff's waiver argument is legally unsound. Defendant asserted arbitration at the outset and moved to compel arbitration promptly. No discovery occurred[1], no merits rulings were made, and no conduct inconsistent with arbitration occurred. The minimal passage of time cited by Plaintiff does not constitute waiver under South Carolina or federal law. Plaintiff's reliance on *Morgan v. Sundance* is misplaced. That case eliminated a prejudice requirement but did not redefine waiver. Waiver still requires intentional relinquishment of a known right, which is absent here. As Plaintiff stated, a "reservation for arbitration" was asserted in the Answer and, two days later, Defendant filed a motion to stay and compel arbitration. Defendant was served with the Summons and Complaint October 29, 2025. Counsel for Defendant was retained on December 4, 2025. Due to the passage of time from the filing of the Complaint to retention of counsel, an Answer with general denials and a reservation for Arbitration was filed on behalf of Defendant on December 9, 2025. Once additional documents and information was provided to counsel, and counsel had the opportunity to review several agreements between Plaintiff and Defendant, this motion was timely filed. This timeline confirms Defendant did not intentionally relinquish its right to arbitrate.

CONCLUSION

Plaintiff seeks to avoid arbitration by narrowing the Court's analysis to the absence of a formal power of attorney or guardianship while ignoring the Agreement's express language, Ryan's status as the intended beneficiary of the service relationship, and the equitable principles applicable to non-signatories who accept direct benefits under an agreement. The Court must apply neutral contract principles as required by South Carolina law and the Federal Arbitration Act. The

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[1] The only discovery responded to are Requests to Admit. Plaintiff has filed a Motion to Compel due to Defendant not participating in discovery and not waiving their right to arbitration.

arbitration agreement is enforceable under principles of apparent authority, third-party beneficiary status, direct-benefits estoppel, and federal preemption. Therefore, the Court should grant the motion to stay the action and compel arbitration. In the alternative, the Agreement's express third-party-beneficiary provision and the facts surrounding Ryan's enrollment and acceptance of services warrant limited discovery or an evidentiary hearing before arbitration is denied.

For these reasons, Defendant respectfully requests that the Court grant its Motion to Stay Proceedings and Compel Arbitration.

ROSS & CRISTALDI, LLC

s/Tyler A. Adams
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Attorneys for Active Day, Inc.

Mt. Pleasant, South Carolina
May 15, 2026

BINDING ARBITRATION AGREEMENT

THIS BINDING ARBITRATION AGREEMENT (the "Arbitration Agreement") GOVERNS IMPORTANT LEGAL RIGHTS. SIGNING THIS ARBITRATION AGREEMENT MEANS THAT THE MEMBER, THE MEMBER'S LEGAL REPRESENTATIVE AND THE RESPONSIBLE PARTY (individually each, a "Party" and collectively the "Parties") HAVE CHOSEN BINDING ARBITRATION AS THE EXCLUSIVE MEANS TO RESOLVE ALL DISPUTES (as defined in Paragraph (a) below) AND THIS ARBITRATION AGREEMENT WILL BECOME BINDING, PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT (SC Code Sec. 15-48-10 *et seq.*).

By agreeing to this Arbitration Agreement, the Parties are giving up and waiving their right to have any claim decided in a court of law before a judge and/or jury. **The Parties expressly agree that any dispute covered by this Arbitration Agreement, will be resolved *outside* of the court system except for the limited rights of review provided under the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.***

Arbitration is a cost effective and time-saving method of resolving disputes without involving the courts. In arbitration proceedings, the disputes are heard and decided by a private individual called an arbitrator. Neither the Parties nor the company whose signature appears at the end of this Arbitration Agreement (the "Company") is waiving their right to assert an available claim or seek available legal remedies by agreeing to arbitrate disputes within the scope of this Arbitration Agreement. However, the dispute will not be heard by a judge or jury and the decision of the arbitrator shall be final and binding on the Parties and Company (individually each, the "Signatory" and collectively, the "Signatories") in accordance with the terms of this Arbitration Agreement.

The Parties acknowledge that they are being requested to execute this Arbitration Agreement in order to, among other things, allow the Company to control its expenses and maintain an appropriate level of care for all of its members and that the execution of this Arbitration Agreement is a material inducement for the Company to provide services to the Member.

(a) **Scope of Disputes Subject to Arbitration.** Any and all claims, disputes or controversies between the Signatories arising out of, connected with or **in any way** relating to: (1) the Request for Admission and Enrollment Agreement and all Attachments referenced therein (collectively, the "Underlying Agreement"), (2) any other agreement the Signatories enter into in the future, (3) any stay(s) at the Center (as defined in the Underlying Agreement), (4) any alleged negligence, inadequate care/service, personal injury and property damage, (5) any services provided by the Company, and/or (6) any other cause or reason; including, but not limited to, those regarding the making, execution, validity, enforceability, severability, scope, arbitrability or interpretation of

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this Arbitration Agreement, or waiver, duress, preemption or any other defense to the enforceability of this Arbitration Agreement, whether arising out of State or Federal law, whether existing now or arising in the future, whether for statutory, compensatory, punitive or any other type of damages, and whether sounding in breach of contract, tort or breach of statutory or common law duties (including, without limitation, any claim, dispute or controversy based on unpaid charges), irrespective of the basis for the duty or of the legal theories upon which the claim, dispute or controversy is asserted, shall be submitted to binding arbitration.

(b) **<u>Binding on Parties and Others</u>.** It is the intention of the Signatories that this Arbitration Agreement shall inure to the direct benefit of and bind the Company, its parents, affiliates, subsidiaries, management companies, directors, administrators, trustees, owners, officers, partners, principals, shareholders, members, representatives, medical directors, nurses, physicians, employees, servants, managers, consultants, successors, assigns, agents, attorneys and insurers and any entity or person that provided any services, supplies, or equipment related to any stay at the Center, this Arbitration Agreement, the Underlying Agreement and/or any other agreement the Signatories enter into in the future, and shall inure to the direct benefit of and bind the Parties, his/her successors, spouses, children, next of kin, guardians, administrators, legal representatives, responsible parties, assigns, agents, attorneys, health care proxies, health care surrogates, attorneys-in-fact, designees, third party beneficiaries, insurers, heirs, trustees and representatives, including, but not limited to, the personal representatives of the executor of his/her estate, any person whose claim is derived through or on behalf of any of the Parties, any person who assumed responsibility for providing the Member with necessary services such as food, shelter, clothing, or medicine, etc., and any person who executed the Underlying Agreement or any other agreement between any of the Signatories. The Parties acknowledge that they have been given copies of this Arbitration Agreement and the Underlying Agreement.

(c) **<u>Federal Arbitration Act</u>.** The Signatories hereby expressly agree that the Underlying Agreement and any stay(s) at the Center involve interstate commerce based upon, among other things, the Company operating Centers in multiple states and engaging in various interstate commercial activities to facilitate said operations. The Signatories also stipulate that the Federal Arbitration Act ("FAA") in effect as of September 1, 2012 shall apply, and that the FAA shall preempt any inconsistent state law and shall <u>not</u> be reverse preempted.

(d) **<u>Demand for Arbitration</u>.** Demand for arbitration shall be made by any of the Signatories (the "Claimant") in writing and served upon the other party (the "Respondent") at the address listed in this Arbitration Agreement via certified mail, return receipt requested. Service shall be deemed to be made upon receipt. If service is refused, service shall be deemed to be made on the date it was refused.

(e) **<u>Time Limitation for Arbitration</u>.** To the fullest extent permitted by law, any demand for arbitration must be served prior to the earliest of (i) the expiration of two (2) years from the date on which the event giving rise to the claim, dispute or controversy

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first occurred (and for any alleged continuous event or harm, the date on which the initial event or harm giving rise to the claim, dispute or controversy occurred) or (ii) expiration of the applicable statute of limitations of the State in which the Center is located from the date on which the event giving rise to the claim, dispute or controversy first occurred (and for any alleged continuous event or harm, the date on which the initial event or harm giving rise to the claim, dispute or controversy occurred). The failure to serve a demand for arbitration within the designated time period set forth in the preceding sentence shall operate as a bar to any subsequent demand for arbitration, or for any claim for relief or a remedy or to any action or legal proceeding of any kind or nature, and the Signatories shall be forever barred from arbitrating or litigating any such claim, dispute or controversy. As noted in this Arbitration Agreement, the Signatories acknowledge that the Arbitration Agreement is the sole mechanism for resolution of disputes between them.

(f) **Location of the Arbitration.** The arbitration shall be in Columbia, SC.

(g) **Selection and Powers of Arbitrator.** If the Signatories cannot reach an agreement on the selection of the Arbitrator (as hereinafter defined) within twenty (20) calendar days after the demand for arbitration, then on the 25th calendar day after the receipt of the demand, each affected Signatory shall select one arbitrator. Within ten (10) calendar days after each affected Signatory selects his/her arbitrator, those selected arbitrators shall choose the ultimate arbitrator who will then serve as the sole arbitrator for the dispute (the "Arbitrator"). All arbitrators shall not have any involvement or interest in the claims, disputes or controversies submitted to arbitration or any potential decision rendered by the Arbitrator. All arbitrators shall have at least five (5) years experience in alternative dispute resolution. The Arbitrator is empowered to, and shall resolve **all** claims, disputes and controversies including, but not limited to, any regarding the making, execution, validity, enforceability, severability, scope, arbitrability or interpretation of this Arbitration Agreement, and waiver, duress, preemption or any other defense to the enforceability of this Arbitration Agreement, as well as resolve the Signatories' underlying claims, disputes and controversies as it is their intent to completely avoid involving the court system. The Arbitrator shall have full power to make such awards, determinations, directions, orders and other decisions as he/she deems appropriate in accordance with the provisions of this Arbitration Agreement.

(h) **Procedural Rules and Substantive Law.** Except as otherwise stated in this Arbitration Agreement, the arbitration shall be held in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") which are in effect at the time the demand for arbitration is served. A copy of the Rules may be obtained online at http://www.aaa.org. To the extent of any conflicts between the terms of this Arbitration Agreement and the Rules, the terms of this Arbitration Agreement shall govern. In order to minimize the expense of arbitration, the arbitration shall not be administered by the American Arbitration Association and the arbitrators need not be approved by the American Arbitration Association. Rather, the arbitration

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shall be administered by the Arbitrator. Also, the Arbitrator shall apply, and the arbitration award shall be consistent with, the State substantive law for the State in which the Center is located, except as may otherwise be stated in this Arbitration Agreement, or where preempted by the FAA. Any award by the Arbitrator shall be final subject only to vacation, modification, correction and appeal pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 10, 11, 12 and 16 and may be confirmed pursuant to the Federal Arbitration Act, 9 U.S.C. § 9.

(i) **Allocation of Fees, Costs and Expenses for Arbitration.** The Arbitrator's fees, costs and expenses associated with the arbitration shall be divided equally among the parties to the arbitration and they shall bear their own attorneys' fees, costs and expenses in relation to participation in the arbitration, preparation for and attendance at the arbitration hearing and post-arbitration hearing activity, unless the Arbitrator concludes that the law provides otherwise. Notwithstanding the foregoing and to the fullest extent permitted by law, any Signatory who opposes arbitrating any claims, disputes or controversies and/or opposes enforcement of the terms of this Arbitration Agreement and unsuccessfully challenges its enforcement shall be required to pay the prevailing Signatories' attorneys' fees, costs and expenses incurred to enforce this Arbitration Agreement (for example, and not by way of limitation, a Motion to Compel Arbitration or for any other means reasonably undertaken to enforce this Arbitration Agreement).

(j) **Refusal to Arbitrate.** To the fullest extent permitted by law, any Signatory who refuses to proceed with arbitration hereby acknowledges that the Arbitrator will proceed with the arbitration hearing and render a binding decision without the participation of the Signatory opposing arbitration or despite their absence at the arbitration hearing.

(k) **Right to Change Your Mind.** Each Party has the right to have an attorney review the Underlying Agreement and this Arbitration Agreement within fifteen (15) calendar days of his/her date of execution. The Underlying Agreement and this Arbitration Agreement may be cancelled by any Signatory by written notice sent certified mail, return receipt requested, to the Center within fifteen (15) calendar days of the affected Signatory's date of execution. Any Signatory's timely cancellation of the Arbitration Agreement (i.e., cancellation within fifteen (15) calendar days of the affected Signatory's date of execution), constitutes contemporaneous cancellation of the Underlying Agreement as to all Signatories. Under no circumstances may any Signatory cancel the Arbitration Agreement but not cancel the Underlying Agreement within the fifteen (15) calendar day cancellation period. If alleged acts or omissions underlying the claim, dispute or controversy are committed prior to the cancellation date, the Underlying Agreement and this Arbitration Agreement shall be binding with respect to said alleged acts and omissions. If not timely cancelled (i.e., if not cancelled within fifteen (15) calendar days of the affected Signatory's date of execution), the Underlying Agreement and this Arbitration Agreement shall be binding on said Signatory and all of the Member's stays at the Center without any need for further renewal.

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(l) **Confidentiality.** The arbitration proceeding shall remain confidential in all respects, including all arbitration filings, deposition transcripts, correspondence, documents produced or obtained in discovery and other materials provided by or exchanged between the Signatories and/or the Arbitrator and the Arbitrator's findings of fact, conclusions of law, and award, except as otherwise necessary to seek to vacate, modify, correct, appeal, confirm and/or enforce the award in accordance with this Arbitration Agreement. In addition, following receipt of the Arbitrator's award, each Signatory agrees to return to the producing party within thirty (30) calendar days the original and all copies of documents exchanged in discovery and at the arbitration hearing.

(m) **Severability.** Any term, phrase, provision or part thereof contained herein is severable, and in the event any of them shall be found to be void, invalid or unenforceable for any reason, said term, phrase, provision or part shall be re-written in such a way as to be enforceable to the fullest extent permitted by law and the remaining provisions of this Arbitration Agreement and the Underlying Agreement shall not be affected by such determination and shall remain in full force and effect. This Arbitration Agreement shall not fail because any term, phrase, provision or part hereof is found to be void, invalid or unenforceable.

(n) **Waiver, Binding Arbitration.** If a Signatory files a claim in a court of competent jurisdiction, the Signatories expressly agree that participation in cooperative general discovery while a motion to compel arbitration is pending shall not constitute evidence of a waiver of the right to arbitrate.

(o) **Survival and Integration.** The terms and conditions recited herein shall survive and remain in full force and effect notwithstanding the termination, cancellation or natural expiration of the Underlying Agreement or any other agreement between the Signatories. The terms and conditions recited herein shall also survive and remain in full force and effect notwithstanding the death of any of the Signatories or the discontinuation of operations at the Center. This Arbitration Agreement represents the Signatories' entire agreement regarding claims, disputes and controversies, and supersedes all prior negotiations, promises, representations, statements, communications and/or agreements, written or oral. The Parties acknowledge that they are not relying upon any negotiations, promises, representations, statements, communications and/or agreements, written or oral, made by the Company, its agents, representatives or employees, except as set forth in this Arbitration Agreement. The Parties also acknowledge that the Company's agents, representatives and employees do not have the authority to modify this Arbitration Agreement or to make any oral negotiation, promise, representation, statement, communication and/or agreement inconsistent with or contrary to the terms of this Arbitration Agreement. There are no terms to this Arbitration Agreement which are not set forth herein. This Arbitration Agreement may only be changed in a writing signed by the Signatories.

(p) **Health Care Decision.** The Parties agree and stipulate that the acceptance of this Arbitration Agreement constitutes part of the decision to obtain health care for the Member.

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(q) **Third Party Beneficiary.** The parties stipulate that to the extent the Member does not sign this Arbitration Agreement (i.e., an adult family member, friend or representative signs on the Member's behalf), or the Member does sign him/herself, but the legality of the Member's signature is challenged, then the Signatories stipulate that the Member is an intended third party beneficiary of the Arbitration Agreement and the Underlying Agreement because the purpose of both is to directly benefit the Member.

(r) **Bench Trial.** If it is determined that the Signatories' agreement to arbitrate is void, invalid or unenforceable, then the Signatories make clear their express desire to waive a jury trial and resolve their disputes against each other exclusively in: (i) the State Court located in the County where the Company's headquarters exist which is presently Bucks County, Pennsylvania, solely before a judge (i.e., Bench Trial) or (ii) the United States District Court with jurisdiction encompassing the County where the Company's headquarters exist which is presently Bucks County, Pennsylvania, solely before a judge (i.e., Bench Trial).

(s) **Right to Consult with Attorney.** The Parties acknowledge that they have been directed to, and have been given sufficient opportunity to, read this Arbitration Agreement very carefully and ask any questions about it before accepting this Arbitration Agreement. The Parties further acknowledge that they have the right to consult with an attorney of their choice before accepting this Arbitration Agreement.

SIGNATURES:

Member: Ryan E. McDermott Date: 2/28/2025
Print Name: Ryan E. McDermott

Member's Legal Representative: ____________ Date ________
Print Name: ____________
Relationship to Member: ____________
Initial all that apply:

______ Attorney-in-Fact (provide written Power of Attorney)
______ Guardian (provide Court Order or other satisfactory evidence)
______ Other: Describe: ____________
(provide copies of all relevant documents)

Responsible Party: Candace M Capó Date: 2-28-2025
Print Name: Candace M. Capó

Company: [signature] Date: 2/28/2025
Print Name: Brandy Weeks
Print Title: Center Director

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BINDING ARBITRATION AGREEMENT

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By agreeing to this Arbitration Agreement, the Parties are giving up and waiving their right to have any claim decided in a court of law before a judge and/or jury. **The Parties expressly agree that any dispute covered by this Arbitration Agreement, will be resolved *outside* of the court system except for the limited rights of review provided under the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.***

Arbitration is a cost effective and time-saving method of resolving disputes without involving the courts. In arbitration proceedings, the disputes are heard and decided by a private individual called an arbitrator. Neither the Parties nor the company whose signature appears at the end of this Arbitration Agreement (the "Company") is waiving their right to assert an available claim or seek available legal remedies by agreeing to arbitrate disputes within the scope of this Arbitration Agreement. However, the dispute will not be heard by a judge or jury and the decision of the arbitrator shall be final and binding on the Parties and Company (individually each, the "Signatory" and collectively, the "Signatories") in accordance with the terms of this Arbitration Agreement.

The Parties acknowledge that they are being requested to execute this Arbitration Agreement in order to, among other things, allow the Company to control its expenses and maintain an appropriate level of care for all of its members and that the execution of this Arbitration Agreement is a material inducement for the Company to provide services to the Member.

(a) **Scope of Disputes Subject to Arbitration.** Any and all claims, disputes or controversies between the Signatories arising out of, connected with or **in any way** relating to: (1) the Request for Admission and Enrollment Agreement and all Attachments referenced therein (collectively, the "Underlying Agreement"), (2) any other agreement the Signatories enter into in the future, (3) any stay(s) at the Center (as defined in the Underlying Agreement), (4) any alleged negligence, inadequate care/service, personal injury and property damage, (5) any services provided by the Company, and/or (6) any other cause or reason; including, but not limited to, those regarding the making, execution, validity, enforceability, severability, scope, arbitrability or interpretation of

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this Arbitration Agreement, or waiver, duress, preemption or any other defense to the enforceability of this Arbitration Agreement, whether arising out of State or Federal law, whether existing now or arising in the future, whether for statutory, compensatory, punitive or any other type of damages, and whether sounding in breach of contract, tort or breach of statutory or common law duties (including, without limitation, any claim, dispute or controversy based on unpaid charges), irrespective of the basis for the duty or of the legal theories upon which the claim, dispute or controversy is asserted, shall be submitted to binding arbitration.

(b) <u>Binding on Parties and Others</u>. It is the intention of the Signatories that this Arbitration Agreement shall inure to the direct benefit of and bind the Company, its parents, affiliates, subsidiaries, management companies, directors, administrators, trustees, owners, officers, partners, principals, shareholders, members, representatives, medical directors, nurses, physicians, employees, servants, managers, consultants, successors, assigns, agents, attorneys and insurers and any entity or person that provided any services, supplies, or equipment related to any stay at the Center, this Arbitration Agreement, the Underlying Agreement and/or any other agreement the Signatories enter into in the future, and shall inure to the direct benefit of and bind the Parties, his/her successors, spouses, children, next of kin, guardians, administrators, legal representatives, responsible parties, assigns, agents, attorneys, health care proxies, health care surrogates, attorneys-in-fact, designees, third party beneficiaries, insurers, heirs, trustees and representatives, including, but not limited to, the personal representatives of the executor of his/her estate, any person whose claim is derived through or on behalf of any of the Parties, any person who assumed responsibility for providing the Member with necessary services such as food, shelter, clothing, or medicine, etc., and any person who executed the Underlying Agreement or any other agreement between any of the Signatories. The Parties acknowledge that they have been given copies of this Arbitration Agreement and the Underlying Agreement.

(c) <u>Federal Arbitration Act</u>. The Signatories hereby expressly agree that the Underlying Agreement and any stay(s) at the Center involve interstate commerce based upon, among other things, the Company operating Centers in multiple states and engaging in various interstate commercial activities to facilitate said operations. The Signatories also stipulate that the Federal Arbitration Act ("FAA") in effect as of September 1, 2012 shall apply, and that the FAA shall preempt any inconsistent state law and shall <u>not</u> be reverse preempted.

(d) <u>Demand for Arbitration</u>. Demand for arbitration shall be made by any of the Signatories (the "Claimant") in writing and served upon the other party (the "Respondent") at the address listed in this Arbitration Agreement via certified mail, return receipt requested. Service shall be deemed to be made upon receipt. If service is refused, service shall be deemed to be made on the date it was refused.

(e) <u>Time Limitation for Arbitration</u>. To the fullest extent permitted by law, any demand for arbitration must be served prior to the earliest of (i) the expiration of two (2) years from the date on which the event giving rise to the claim, dispute or controversy

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first occurred (and for any alleged continuous event or harm, the date on which the initial event or harm giving rise to the claim, dispute or controversy occurred) or (ii) expiration of the applicable statute of limitations of the State in which the Center is located from the date on which the event giving rise to the claim, dispute or controversy first occurred (and for any alleged continuous event or harm, the date on which the initial event or harm giving rise to the claim, dispute or controversy occurred). The failure to serve a demand for arbitration within the designated time period set forth in the preceding sentence shall operate as a bar to any subsequent demand for arbitration, or for any claim for relief or a remedy or to any action or legal proceeding of any kind or nature, and the Signatories shall be forever barred from arbitrating or litigating any such claim, dispute or controversy. As noted in this Arbitration Agreement, the Signatories acknowledge that the Arbitration Agreement is the sole mechanism for resolution of disputes between them.

(f) **<u>Location of the Arbitration</u>.** The arbitration shall be in Columbia, SC.

(g) **Selection and Powers of Arbitrator.** If the Signatories cannot reach an agreement on the selection of the Arbitrator (as hereinafter defined) within twenty (20) calendar days <u>after the demand for arbitration, then</u> on the 25th calendar day after the receipt of the demand, each affected Signatory shall select one arbitrator. Within ten (10) calendar days after each affected Signatory selects his/her arbitrator, those selected arbitrators shall choose the ultimate arbitrator who will then serve as the sole arbitrator for the dispute (the "Arbitrator"). All arbitrators shall not have any involvement or interest in the claims, disputes or controversies submitted to arbitration or any potential decision rendered by the Arbitrator. All arbitrators shall have at least five (5) years experience in alternative dispute resolution. The Arbitrator is empowered to, and shall resolve **all** claims, disputes and controversies including, but not limited to, any regarding the making, execution, validity, enforceability, severability, scope, arbitrability or interpretation of this Arbitration Agreement, and waiver, duress, preemption or any other defense to the enforceability of this Arbitration Agreement, as well as resolve the Signatories' underlying claims, disputes and controversies as it is their intent to completely avoid involving the court system. The Arbitrator shall have full power to make such awards, determinations, directions, orders and other decisions as he/she deems appropriate in accordance with the provisions of this Arbitration Agreement.

(h) **Procedural Rules and Substantive Law.** Except as otherwise stated in this Arbitration Agreement, the arbitration shall be held in accordance with the Commercial A<u>rbitration Rules of the American Arbitra</u>tion Association (the "Rules") which are in effect at the time the demand for arbitration is served. A copy of the Rules may be obtained online at http://www.aaa.org. To the extent of any conflicts between the terms of this Arbitration Agreement and the Rules, the terms of this Arbitration Agreement shall govern. <u>In order to minimiz</u>e the expense of arbitration, the arbitration shall not be administered by the American Arbitration Association and the arbitrators need not be approved by the American Arbitration Association. Rather, the arbitration

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shall be administered by the Arbitrator. Also, the Arbitrator shall apply, and the arbitration award shall be consistent with, the State substantive law for the State in which the Center is located, except as may otherwise be stated in this Arbitration Agreement, or where preempted by the FAA. Any award by the Arbitrator shall be final subject only to vacation, modification, correction and appeal pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 10, 11, 12 and 16 and may be confirmed pursuant to the Federal Arbitration Act, 9 U.S.C. § 9.

(i) Allocation of Fees, Costs and Expenses for Arbitration. The Arbitrator's fees, costs and expenses associated with the arbitration shall be divided equally among the parties to the arbitration and they shall bear their own attorneys' fees, costs and expenses in relation to participation in the arbitration, preparation for and attendance at the arbitration hearing and post-arbitration hearing activity, unless the Arbitrator concludes that the law provides otherwise. Notwithstanding the foregoing and to the fullest extent permitted by law, any Signatory who opposes arbitrating any claims, disputes or controversies and/or opposes enforcement of the terms of this Arbitration Agreement and unsuccessfully challenges its enforcement shall be required to pay the prevailing Signatories' attorneys' fees, costs and expenses incurred to enforce this Arbitration Agreement (for example, and not by way of limitation, a Motion to Compel Arbitration or for any other means reasonably undertaken to enforce this Arbitration Agreement).

(j) Refusal to Arbitrate. To the fullest extent permitted by law, any Signatory who refuses to proceed with arbitration hereby acknowledges that the Arbitrator will proceed with the arbitration hearing and render a binding decision without the participation of the Signatory opposing arbitration or despite their absence at the arbitration hearing.

(k) Right to Change Your Mind. Each Party has the right to have an attorney review the Underlying Agreement and this Arbitration Agreement within fifteen (15) calendar days of his/her date of execution. The Underlying Agreement and this Arbitration Agreement may be cancelled by any Signatory by written notice sent certified mail, return receipt requested, to the Center within fifteen (15) calendar days of the affected Signatory's date of execution. Any Signatory's timely cancellation of the Arbitration Agreement (i.e., cancellation within fifteen (15) calendar days of the affected Signatory's date of execution), constitutes contemporaneous cancellation of the Underlying Agreement as to all Signatories. Under no circumstances may any Signatory cancel the Arbitration Agreement but not cancel the Underlying Agreement within the fifteen (15) calendar day cancellation period. If alleged acts or omissions underlying the claim, dispute or controversy are committed prior to the cancellation date, the Underlying Agreement and this Arbitration Agreement shall be binding with respect to said alleged acts and omissions. If not timely cancelled (i.e., if not cancelled within fifteen (15) calendar days of the affected Signatory's date of execution), the Underlying Agreement and this Arbitration Agreement shall be binding on said Signatory and all of the Member's stays at the Center without any need for further renewal.

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(l) **Confidentiality.** The arbitration proceeding shall remain confidential in all respects, including all arbitration filings, deposition transcripts, correspondence, documents produced or obtained in discovery and other materials provided by or exchanged between the Signatories and/or the Arbitrator and the Arbitrator's findings of fact, conclusions of law, and award, except as otherwise necessary to seek to vacate, modify, correct, appeal, confirm and/or enforce the award in accordance with this Arbitration Agreement. In addition, following receipt of the Arbitrator's award, each Signatory agrees to return to the producing party within thirty (30) calendar days the original and all copies of documents exchanged in discovery and at the arbitration hearing.

(m) **Severability.** Any term, phrase, provision or part thereof contained herein is severable, and in the event any of them shall be found to be void, invalid or unenforceable for any reason, said term, phrase, provision or part shall be re-written in such a way as to be enforceable to the fullest extent permitted by law and the remaining provisions of this Arbitration Agreement and the Underlying Agreement shall not be affected by such determination and shall remain in full force and effect. This Arbitration Agreement shall not fail because any term, phrase, provision or part hereof is found to be void, invalid or unenforceable.

(n) **Waiver, Binding Arbitration.** If a Signatory files a claim in a court of competent jurisdiction, the Signatories expressly agree that participation in cooperative general discovery while a motion to compel arbitration is pending shall not constitute evidence of a waiver of the right to arbitrate.

(o) **Survival and Integration.** The terms and conditions recited herein shall survive and remain in full force and effect notwithstanding the termination, cancellation or natural expiration of the Underlying Agreement or any other agreement between the Signatories. The terms and conditions recited herein shall also survive and remain in full force and effect notwithstanding the death of any of the Signatories or the discontinuation of operations at the Center. This Arbitration Agreement represents the Signatories' entire agreement regarding claims, disputes and controversies, and supersedes all prior negotiations, promises, representations, statements, communications and/or agreements, written or oral. The Parties acknowledge that they are not relying upon any negotiations, promises, representations, statements, communications and/or agreements, written or oral, made by the Company, its agents, representatives or employees, except as set forth in this Arbitration Agreement. The Parties also acknowledge that the Company's agents, representatives and employees do not have the authority to modify this Arbitration Agreement or to make any oral negotiation, promise, representation, statement, communication and/or agreement inconsistent with or contrary to the terms of this Arbitration Agreement. There are no terms to this Arbitration Agreement which are not set forth herein. This Arbitration Agreement may only be changed in a writing signed by the Signatories.

(p) **Health Care Decision.** The Parties agree and stipulate that the acceptance of this Arbitration Agreement constitutes part of the decision to obtain health care for the Member.

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(q) **Third Party Beneficiary.** The parties stipulate that to the extent the Member does not sign this Arbitration Agreement (i.e., an adult family member, friend or representative signs on the Member's behalf), or the Member does sign him/herself, but the legality of the Member's signature is challenged, then the Signatories stipulate that the Member is an intended third party beneficiary of the Arbitration Agreement and the Underlying Agreement because the purpose of both is to directly benefit the Member.

(r) **Bench Trial.** If it is determined that the Signatories' agreement to arbitrate is void, invalid or unenforceable, then the Signatories make clear their express desire to waive a jury trial and resolve their disputes against each other exclusively in: (i) the State Court located in the County where the Company's headquarters exist which is presently Bucks County, Pennsylvania, solely before a judge (i.e., Bench Trial) or (ii) the United States District Court with jurisdiction encompassing the County where the Company's headquarters exist which is presently Bucks County, Pennsylvania, solely before a judge (i.e., Bench Trial).

(s) **Right to Consult with Attorney.** The Parties acknowledge that they have been directed to, and have been given sufficient opportunity to, read this Arbitration Agreement very carefully and ask any questions about it before accepting this Arbitration Agreement. The Parties further acknowledge that they have the right to consult with an attorney of their choice before accepting this Arbitration Agreement.

SIGNATURES:

Member: Ryan E. McDermott Date: 2/28/2025
Print Name: Ryan E. McDermott

Member's Legal Representative: ______ Date ______
Print Name: ______
Relationship to Member: ______
Initial all that apply:

______ Attorney-in-Fact (provide written Power of Attorney)
______ Guardian (provide Court Order or other satisfactory evidence)
______ Other: Describe: ______
(provide copies of all relevant documents)

Responsible Party: Candace M Capó Date: 2-28-2025
Print Name: Candace M. Capó

Company: [signature] Date: 2/28/2025
Print Name: Brandy Weeks
Print Title: Center Director

RECEIVED
Jul 20 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Appellate Case No. 2026-001533

Paul Thomas Capo, Jr. as Next Friend of Ryan McDermott, ………………Respondent,

v.

Active Day, Inc., …………………………………………………………Appellant,

PROOF OF SERVICE

The undersigned does hereby certify that on July 20, 2026, a copy of Active Day, Inc.'s Motion of Return in Opposition to Respondent's Motion to Dismiss Appeal has been served in all counsel of record via electronic mail. addressed as follows:

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520 Folly Road, Ste. 25
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Attorneys for the Respondent Plaintiff

[SIGNATURE PAGE TO FOLLOW]

s/Tyler A. Adams
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Attorneys for Appellant Active Day, Inc.

Mount Pleasant, South Carolina
July 20, 2026

ROSS & CRISTALDI LLC
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July 20, 2026

RECEIVED
Jul 20 2026
SC Court of Appeals

VIA ELECTRONIC and USPS MAIL
Jenny Abbot Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
ctappfilings@sccourts.org

Re: Paul Thomas Capo, Jr., as Next Friend of Ryan McDermott v. Active Day, Inc.
Case No.: 2025-CP-10-06032
Appellate Case No.: 2026-001533

Dear Ms. Kitchings,

Pursuant to Section (b)(2) of the Supreme Court's Order Methods of Electronic Filing and Service under Rule 262 of the South Carolina Appellate Court Rules (as amended May 6, 2022), please find enclosed for filing, Active Day, Inc.'s Motion of Return in Opposition to Respondent's Motion to Dismiss Appeal with Exhibits 1-2 with regard to the above-referenced matter. By copy of this letter, I am serving all counsel of record by electronic mail only pursuant to Section (d)(1) of the same Supreme Court Order. A check for $50.00 has been placed in the mail for the filing fee.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you very much for your attention to the above.

Very truly yours,

s/Tyler A. Adams

TAA/nn
Enclosures (as stated above)
cc: All Counsel of Record ***(via email, with enclosures)***