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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

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2026-000058

Frank Perrelli, Jr., ... Appellant,

v.

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

AND

Peter Skoler and Patricia Skoler, ... Appellants,

v.

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

RECORD ON APPEAL - Volume I

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PETER SKOLER AND PATRICIA SKOLER, Plaintiffs, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, AND JEFFREY PUMILIA, Defendants.	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-2646 **ORDER GRANTING MOTION COMPELLING ARBITRATION AND STAY OF PROCEEDINGS**

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Abigail Saunders, Esq. David Wolf, Esq.
Defendant's Attorney:	John Massalon, Esq.
Date of Hearing:	March 27, 2025
Court Reporter:	Hayley Burnett

THIS MATTER is before the Court on March 27, 2025, on Defendants' Motion to Compel Arbitration and Stay Proceedings until Completion of Arbitration, filed November 12, 2024. Defendants filed a Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings on March 25, 2025. Defendants' filed an Amended Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings on March 26, 2025. Plaintiffs filed a Memorandum in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings on March 13, 2025. On March 26, 2025, Plaintiff filed a Surreply Memorandum in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings. Appearing for the Plaintiffs are

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Abigail Saunders, Esq. and David Wolf, Esq. Representing the Defendants is John Massalon, Esq. After consideration of the parties' memoranda and argument of counsel, the Court hereby GRANTS Defendants' Motion and orders that all proceedings are stayed pending the outcome of arbitration. The Court makes the following findings of fact and conclusions of law pursuant to Rule 52 of the South Carolina Rules of Civil Procedure.

FINDINGS OF FACT

Plaintiffs purchased a Vacation Inspirations ("VI") Membership ("the Membership") distributed by Destination Travel, LLC on March 21, 2022, in Charleston, South Carolina by Purchase Agreement, which is the subject of this action (the "Purchase Agreement"). The Purchase Agreement includes the following arbitration provision:

> 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 Vacation Inspirations. 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 Vacation Inspirations.

On May 21, 2024, Plaintiffs filed a lawsuit against Defendants in the Charleston County Court of Common Pleas, and it was properly served on Defendants on June 5, 2024. The Complaint alleges among other things, that the Purchase Agreement (including the arbitration provision) was unconscionable and seeking injunctive and equitable relief. Defendants filed their answer on July 3, 2024, denying these allegations, and later filed a motion to compel arbitration on November 12, 2024 pursuant to the arbitration provision in the Purchase Agreement.

CONCLUSIONS OF LAW

This Court finds the arbitration paragraph has the required nexus to interstate commerce to

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invoke the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "FAA"), to govern the issues herein. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 115 S. Ct. 834 (1995); *see also Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531,538, 542 S.E.2d 360, 363 (2001). This is further supported by the Affidavit of Randy Gardner filed in support of Defendants' motion, which shows that the subject transaction involved and affected interstate commerce as contemplated by the FAA. Gardner is a member and managing member of Destination Travel, LLC, as well as an operator of Vacation Inspirations. Counsel for Plaintiffs acknowledged during the hearing that the FAA governs the issues before the Court.[1]

Pursuant to the FAA and the Commercial Arbitration Rules 7(a) and (b), the arbitrator and not the Court determines all issues of arbitrability and the enforceability of the Purchase Agreement. *See e.g. Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 139 S. Ct. 524, 529 (2019) ("When the parties' contract delegates the arbitrability question to the arbitrator, the courts must respect the parties' decision as embodied in the contract…"). The parties specifically incorporated the Commercial Arbitration Rules into the Purchase Agreement. Rule R-7(a) and (b) of the Commercial Rules provide as follows:

> The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
>
> The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause. *See* AAA Commercial Arbitration Rules R-7(a) and (b)(2022).

[1] The parties concede that the Defendant's argument in support of arbitration is premised on the applicability of the FAA. Likewise, the parties concede that the arbitration provision at issue does not comply with the requirements of the South Carolina Arbitration Act. S.C. Code Ann. §15-48-10 (1978).

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Here, the parties clearly and unmistakenly delegated the question of arbitrability to the arbitrator by invoking the Commercial Arbitration Rules of the American Arbitration Association. Plaintiffs argue that they should not be required to arbitrate because they challenge the Purchase Agreement as unconscionable and claim that the Court must decide the issues of unconscionability before the case can be referred to arbitration. However, the Purchase Agreement also designated that the arbitrator decide questions regarding the existence or validity of a contract of which the arbitration provision forms a part. Under the Federal Arbitration Act, the Court may not decide whether an arbitration agreement applies to the instant dispute or issues about the enforceability of the contract of which the arbitration agreement forms a part if the parties clearly and unmistakably delegated those questions to an arbitrator. See also Masters v. KOL, Inc., 431 S.C. 28, 846 S.E.2d 893, 894 (Ct. App. 2020). In Masters, the purchaser of a car challenged the Dealer's claim for arbitration on grounds that execution of subsequent agreements rendered the original agreement "moot and unenforceable". The Court held that questions about whether the agreement was moot or unenforceable were for the arbitrator, not the Court. Specifically, the Court stated "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." This Court concludes as a matter of law that the parties agreed to delegate issues regarding the enforceability of the Purchase Agreement to the arbitrator. Therefore, consonant with the parties' agreement the Court must refer this matter to arbitration for the arbitrator to decide all such issues.

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Alternatively, regardless of the decision maker, the ultimate question of arbitrability "is a matter of contract interpretation." Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013). See Am. Recovery Corp. v. Computerized Thermal Imaging, 96 F.3d 88, 92 (4th Cir. 1996) (internal citations omitted). The record is clear, however, that Plaintiffs signed the Purchase Agreement and are therefore presumed to have read and understood the document they signed. Plaintiffs presented no evidence to the contrary and as a result this Court finds that any claim that Plaintiffs did not read or understand the Purchase Agreement before signing it is without merit. See generally, Gibson v. Epting, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019); see also Region Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003).

Additionally, this Court finds as a matter of law that the Purchase Agreement was not an adhesion contract. The agreement itself shows that Plaintiffs not only had the opportunity and meaningful choice to alter or amend the Purchase Agreement, including the arbitration provision, but Plaintiffs in fact requested changes to the standard Purchase Agreement which were included in the Addendum/Exception to Contract as part of the Purchase Agreement. While there were alterations made in handwriting in the Addendum/Exceptions portion of the Purchase Agreement, none of those alterations involved the arbitration provision. In addition, the very front page of the Purchase Agreement leaves blanks for the parties to fill in regarding the final negotiated purchase price and other matters. Accordingly, there is no factual support that the Purchase Agreement was a "take or leave it" situation thereby failing to establish the requisite elements of an adhesion contract. Based on the foregoing,

IT IS ORDERED, ADJUDGED AND DECREED Defendants' Motion to Compel

Arbitration and Stay Proceedings Until the Completion of Arbitration, filed November 12, 2024, is heard and Granted and the Proceedings are stayed pending arbitration.

AND IT IS SO ORDERED.

_____

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

This 23th day of July, 2025
Charleston, S.C.

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Charleston Common Pleas

Case Caption: Patricia Skoler , plaintiff, et al VS Vacation Inspirations , defendant, et al

Case Number: 2024CP1002646

Type: Order/Compel

IT IS SO ORDERED.

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

ELECTRONICALLY FILED - 2025 Jul 23 9:22 AM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004606

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2024-CP-10-04606
	)	
FRANK PERRELLI, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**ORDER GRANTING MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**
VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, AND JEFFREY PUMILIA,	)	
	)	
Defendants.	)	
	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Abigail Saunders, Esq. David Wolf, Esq.
Defendants' Attorney:	John Massalon, Esq.
Date of Hearing:	March 27, 2025
Court Reporter:	Hayley Burnett

THIS MATTER is before the Court on March 27, 2025, on Defendants' Motion to Compel Arbitration and Stay Proceedings Until the Completion of Arbitration, filed November 12, 2024. Defendants' filed a Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings on March 25, 2025. Defendants' filed an Amended Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings on March 26, 2025. Plaintiff filed a Memorandum in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings on March 13, 2025. On March 26, 2025, Plaintiff filed a Surreply Memo in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings. Appearing for the Plaintiff is Abigail Saunders, Esq. and David Wolf, Esq. Representing the Defendants is John Massalon, Esq. After consideration of the parties' memoranda and argument of counsel, the Court hereby GRANTS Defendants' Motion and orders that all proceedings are stayed pending the outcome of arbitration. The Court makes the following findings of fact and conclusions of law pursuant to

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Rule 52 of the South Carolina Rules of Civil Procedure.

FINDINGS OF FACT

Plaintiff purchased a Vacation Inspirations ("VI") Membership ("the Membership") distributed by Destination Travel, LLC on October 8, 2022, in Charleston, South Carolina by Purchase Agreement (the "Purchase Agreement"). The Purchase Agreement includes the following arbitration provision:

> 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 Vacation Inspirations. 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 Vacation Inspirations.

On September 13, 2023, Plaintiff filed a lawsuit against Defendants in the Charleston County Court of Common Pleas. The Summons and Complaint was properly served on Defendants on September 23, 2024. The Complaint alleges among other things, that the Purchase Agreement (including the arbitration provision) was unconscionable and seeking injunctive and equitable relief. Defendants filed an Answer on November 11, 2024, denying these allegations, and later filed a motion to compel arbitration on November 12, 2024, pursuant to the arbitration provision in the Purchase Agreement.

CONCLUSIONS OF LAW

This Court finds the arbitration paragraph has the required nexus to interstate commerce to invoke the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "FAA"), to govern the issues herein. See Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 115 S. Ct. 834 (1995); see also Munoz v. Green Tree Fin. Corp., 343 S.C. 531,538, 542 S.E.2d 360, 363 (2001). This is further supported by the Affidavit of Randy Gardner, filed in support of Defendants' motion, which demonstrates that the subject transaction involved and affected interstate commerce as contemplated by the FAA. Gardner is a member and managing member of Destination Travel, LLC, as well as an operator of Vacation Inspirations. Counsel for Plaintiff does not contest that the FAA governs the issues before the Court.[1]

[1]The parties concede that the Defendant's argument in support of arbitration is premised on the applicability of the

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Pursuant to the FAA and the Commercial Arbitration Rules 7(a) and (b), the arbitrator and not the Court determines all issues of arbitrability and the enforceability of the Purchase Agreement. See e.g. Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63, 68 139 S. Ct. 524, 529 (2019) ("When the parties' contract delegates the arbitrability question to the arbitrator, the courts must respect the parties' decision as embodied in the contract…"). The parties specifically incorporated the Commercial Arbitration Rules into the Purchase Agreement. Rule R-7(a) and (b) (2022) of the Commercial Rules provide as follows:

> The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
>
> The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause. See AAA Commercial Arbitration Rules R-7(a) and (b) (2022).

Here, the parties clearly and unmistakenly delegated the question of arbitrability to the arbitrator by invoking the Commercial Arbitration Rules of the American Arbitration Association. Plaintiff argues that he should not be required to arbitrate because he challenges the Purchase Agreement as unconscionable and claims that the Court must decide the issues of unconscionability before the case can be referred to arbitration. However, the Purchase Agreement also designated that the arbitrator decide questions regarding the existence or validity of a contract of which the arbitration provision forms a part. Under the Federal Arbitration Act, the Court may not decide whether an arbitration agreement applies to the instant dispute or issues about the enforceability of the contract of which the arbitration agreement forms a part if the parties clearly and unmistakably delegated those questions to an arbitrator. See also Masters v. KOL, Inc., 431 S.C. 28, 846 S.E.2d 893, 894 (Ct. App. 2020). In Masters, the purchaser of a car challenged the Dealer's claim for arbitration on grounds that execution of subsequent agreements rendered the original agreement "moot and unenforceable." The Court held that questions about whether the agreement was moot or unenforceable were for the arbitrator, not the Court. Specifically, the

FAA. Likewise, the parties concede that the arbitration provision at issue does not comply with the requirements of the South Carolina Arbitration Act. S.C. Code Ann. §15-48-10 (1978).

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Court stated "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." This Court concludes as a matter of law that the parties agreed to delegate issues regarding the enforceability of the Purchase Agreement to the arbitrator. Therefore, consonant with the parties' agreement the Court must refer this matter to arbitration for the arbitrator to decide all such issues.

Alternatively, regardless of the decision maker, the ultimate question of arbitrability "is a matter of contract interpretation." Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013). See Am. Recovery Corp. v. Computerized Thermal Imaging, 96 F.3d 88, 92 (4th Cir. 1996) (internal citations omitted). The record is clear, however, that Plaintiff signed the Purchase Agreement and is therefore presumed to have read and understood the document he signed. Plaintiff presented no evidence to the contrary so this Court finds that any claim that Plaintiff did not read or understand the Purchase Agreement before signing it is without merit. See generally, Gibson v. Epting, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019); see also Region Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003).

Additionally, this Court finds that the Purchase Agreement was not an adhesion contract. The agreement itself shows that Plaintiff not only had the opportunity and meaningful choice to alter or amend the Purchase Agreement, including the arbitration provision, but Plaintiff in fact requested changes to the standard Purchase Agreement which were included in the Addendum/Exception to Contract as part of the Purchase Agreement. While there were alterations made in handwriting in the Addendum/Exceptions portion of the Purchase Agreement, none of those alterations involved the arbitration provision. In addition, the front page of the Purchase Agreement leaves blanks for the parties to fill in regarding the final negotiated purchase price and other matters. Accordingly, there is no factual support that the Purchase Agreement was a "take or leave it" situation thereby failing to establish the requisite element of an adhesion contract. Based on the foregoing,

IT IS ORDERED, ADJUDGED AND DECREED Defendants' Motion to Compel Arbitration and Stay Proceedings Until the Completion of Arbitration, filed November 12, 2024 is heard and Granted and the Proceedings are stayed pending arbitration.

AND IT IS SO ORDERED.

_____

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

This 18th day of July, 2025
Charleston, S.C.

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Charleston Common Pleas

Case Caption: Frank Perrelli Jr VS Vacation Inspirations , defendant, et al

Case Number: 2024CP1004606

Type: Order/Compel

IT IS SO ORDERED.

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

ELECTRONICALLY FILED - 2025 Dec 12 4:51 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1002646

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	Case No.: 2024-CP-10-02646
Peter Skoler and Patricia Skoler, Plaintiffs,	)	
	)	**ORDER ON PLAINTIFFS' MOTION TO RECONSIDER**
v.	)	
	)	
Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner, and Jeffery Pumilia,	)	
	)	
Defendants.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiffs' Attorney(s):	David W. Wolf, Esq. Abigail E. Saunders, Esq.
Defendants' Attorney(s):	John A. Massalon, Esq. Barry Krell Esq.
Date of Hearing:	N/A
Court Reporter:	N/A

This matter comes before the Court on Plaintiffs' Motion to Reconsider the Court's Order Compelling Arbitration and Staying Proceedings Under Rules 52(b) and 59(e) filed on August 2, 2025. The Court received Plaintiffs' Motion to Reconsider on August 4, 2025. Plaintiffs' Motion is in the nature of a Memorandum. Defendants filed a responsive memorandum on August 15, 2025, and filed an Amended Memorandum on September 4, 2025. Plaintiffs submitted a Reply Memorandum on September 10, 2025. Plaintiffs are represented by David W. Wolf, Esq., and Abigail E. Saunders, Esq. Defendants are represented by John A. Massalon, Esq., and Barry Krell Esq. This matter previously came before the Court on March 27, 2025, for a hearing on Defendants' Motion to Compel Arbitration and Stay Proceedings in this Case until completion of Arbitration filed on November 12, 2024. The Court issued its Order granting Defendants' Motion

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on July 25, 2025. After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiffs' Motion to Reconsider is heard and Denied.[1]

CONCLUSIONS OF LAW

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

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

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

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

Plaintiffs' Motion is timely under Rule 59(e), SCRCP, as it was filed eight (8) days after receiving notice of the entry of the Order, which is within the requisite time period. Plaintiffs' Motion is timely under Rule 59(g) SCRCP, since the Court received a copy of the motion two (2) days after Plaintiffs filed the motion, which is within the applicable ten (10) day period.

Plaintiffs ask this Court to reconsider, alter, or amend the Court's Order entered on July 25, 2025, which granted Defendants' Motion and stayed all proceedings pending the outcome of arbitration. Plaintiffs argue that the Order overlooked the impact of the lack of discovery responses from Defendants. Additionally, Plaintiffs argue that the Court applied the wrong standard of review in its Order.[2] Plaintiffs failed to raise the foregoing issues in prior filings and memoranda, and the law clearly bars Plaintiffs from using their motion to reconsider to present issues they could have raised prior to judgment but did not. See Anderson Memorial Hosp., Inc., 313 S.C. at 498, 443 S.E. 2d at 400.

Rule 52(b), SCRCP, states:

> Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial

[2] Plaintiffs' counsel conceded during the hearing on Defendants' Motion to Compel Arbitration and Stay Proceedings Until the Completion of Arbitration on March 27, 2025, that the applicable standard in determining the issue of arbitrability is the FAA. Therefore, the correct standard was applied.

> court an objection to such findings or has made a motion to amend them or a motion for judgment.

Plaintiffs' motion identifies no factual finding that is clearly erroneous, incomplete, or unsupported by the record, nor does it show any legal conclusion that requires alteration. Green v. Johnson, 446 S.C. 326, 919 S.E.2d 894 (2025).

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

AND IT IS SO ORDERED.

_____

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina
December 12, 2025

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Charleston Common Pleas

Case Caption: Patricia Skoler , plaintiff, et al VS Vacation Inspirations , defendant, et al

Case Number: 2024CP1002646

Type: Order/Other

IT IS SO ORDERED.

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

ELECTRONICALLY FILED - 2025 Dec 12 4:52 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004606

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	Case No.: 2024CP1004606
Frank Perrelli, Jr.,	)	
Plaintiff,	)	
	)	**ORDER ON PLAINTIFF'S**
v.	)	**MOTION TO RECONSIDER**
	)	
Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner, and Jeffery Pumilia,	)	
	)	
Defendants.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney(s):	David W. Wolf, Esq. Abigail E. Saunders, Esq.
Defendants' Attorney(s):	John A. Massalon, Esq. Barry Krell Esq.
Date of Hearing:	N/A
Court Reporter:	N/A

This matter comes before the Court on Plaintiff's Motion to Reconsider the Court's Order Compelling Arbitration and Staying Proceedings Under Rules 52(b) and 59(e) filed on August 2, 2025. The Court received Plaintiff's Motion to Reconsider on August 2, 2025. Plaintiff's Motion is in the nature of a Memorandum. Defendants filed a responsive memorandum on August 15, 2025, and filed an Amended Memorandum on September 4, 2025. Plaintiff submitted a Reply Memorandum on September 10, 2025. Plaintiff is represented by David W. Wolf, Esq., and Abigail E. Saunders, Esq. Defendants are represented by John A. Massalon, Esq., and Barry Krell Esq. This matter previously came before the Court on March 27, 2025, for a hearing on Defendants' Motion to Compel Arbitration and Stay Proceedings in this Case until Completion of Arbitration filed on November 12, 2024. The Court issued its Order granting Defendants' Motion

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on July 23, 2025. After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiff's Motion to Reconsider is heard and Denied.[1]

CONCLUSIONS OF LAW

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

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

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

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

Plaintiff's Motion is timely under Rule 59(e), SCRCP, because it was filed ten (10) days after receiving notice of the entry of the Order, which is within the required ten (10) day period. Plaintiff's Motion is timely under Rule 59(g) since the Court was provided with a copy of the motion the same day Defendants filed the motion, which is within the required ten (10) day period.

Plaintiff asks this Court to reconsider, alter, or amend the Court's Order entered on July 25, 2025, which granted Defendants' Motion and stayed all proceedings pending the outcome of arbitration. Plaintiff argues that the Order overlooked the impact of the lack of discovery responses from Defendants. Additionally, Plaintiff argues that the Court applied the wrong standard of review in its Order.[2] Plaintiff failed to raise the foregoing issues in prior filings and memoranda, and the law clearly bars Plaintiff from using their motion to reconsider to present issues they could have raised prior to judgment but did not. See Anderson Memorial Hosp., Inc., 313 S.C. at 498, 443 S.E. 2d at 400.

Rule 52(b), SCRCP, states:

> Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial

[2] Plaintiff's counsel conceded during the hearing on Defendants' Motion to Compel Arbitration and Stay Proceedings Until the Completion of Arbitration on March 27, 2025, that the applicable standard in determining the issue of arbitrability is the FAA. Therefore, the correct standard was applied.

> court an objection to such findings or has made a motion to amend them or a motion for judgment.

Plaintiff's motion identifies no factual finding that is clearly erroneous, incomplete, or unsupported by the record, nor does it show any legal conclusion that requires alteration. Green v. Johnson, 446 S.C. 326, 919 S.E.2d 894 (2025).

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

AND IT IS SO ORDERED.

_____

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina
December 12, 2025

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Charleston Common Pleas

Case Caption: Frank Perrelli Jr VS Vacation Inspirations , defendant, et al

Case Number: 2024CP1004606

Type: Order/Other

IT IS SO ORDERED.

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

The South Carolina Court of Appeals

Peter Skoler and Patricia Skoler, Appellants,

v.

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

Appellate Case No. 2026-000058

ORDER

This appeal arises out of the circuit court's order granting Respondents' motion to compel arbitration and stay proceedings. Because the underlying order is not immediately appealable, this appeal is dismissed. *See Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co.*, 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003) (holding an order compelling arbitration is not immediately appealable). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

_____, J.
FOR THE COURT

Columbia, South Carolina

cc:
David Whitten Wolf, Esquire
Abigail Edwards Saunders, Esquire
John A. Massalon, Esquire

FILED
Jan 20 2026

The South Carolina Court of Appeals

Frank Perrelli Jr., Appellant,

v.

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

Appellate Case No. 2026-000043

ORDER

This appeal arises out of the circuit court's order granting Respondents' motion to compel arbitration and stay proceedings. Because the underlying order is not immediately appealable, this appeal is dismissed. *See Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co.*, 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003) (holding an order compelling arbitration is not immediately appealable). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

_____, J.
FOR THE COURT

Columbia, South Carolina

FILED
Jan 20 2026

cc:
David Whitten Wolf, Esquire
Abigail Edwards Saunders, Esquire
Jeffrey Wayne Buncher, Jr., Esquire
Barry Krell, Esquire
John A. Massalon, Esquire

ELECTRONICALLY FILED - 2024 May 21 3:26 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1002646

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
PETER SKOLER and PATRICIA SKOLER,	)	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 Peter Skoler and Patricia Skoler (hereinafter "Plaintiffs") complaining of the above-named Defendants, Vacation Inspirations (hereinafter "VI"); Destination Travel, LLC (hereinafter "DT"); Joseph Shirley (hereinafter "Shirley"); Randy Gardner (hereinafter "Gardner"); and Jeffrey Pumilia (hereinafter "Pumilia")(collectively, VI, DT, Shirley, Gardner, and Pumilia shall hereinafter be referred to as the "Defendants"), alleging and saying as follows:

PARTIES, JURISDICTION AND VENUE

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

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

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41. The Agreement provided that:

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

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

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

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

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

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

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

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

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

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

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

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

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

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

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

FOR A SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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

May 21, 2024
Charleston, South Carolina

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VERIFICATION OF COMPLAINT

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

Peter Skoler

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

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

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

Patricia Skoler

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

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

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

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

GENERAL DENIAL

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

RESPONSE TO SPECIFIC ALLEGATIONS

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

PARTIES, JURISDICTION AND VENUE

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

2. Denied.

3. Admitted.

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4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

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

9. Admitted.

FACTS

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

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

12. Admitted.

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

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

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

16. Denied.

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

18. Admitted

19. Denied.

20. Admitted.

21. Admitted

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

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

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

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

26. Admitted.

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

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

29. Admitted.

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

purchase a VI Membership, but admit the remaining allegations.

31. Denied.

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

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

34. Denied.

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

36. Denied.

37. Denied.

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

39. Denied as alleged.

40. Admitted.

41. Admitted.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

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

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

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

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

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

50. Denied.

51. Denied.

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

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

54. Denied.

55. Denied.

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

57. Denied.

58. Denied.

SECOND CAUSE OF ACTION
(Unfair Trade Practices)

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

60. Denied.

61. Denied.

62. The document mentioned speaks for itself.

63. The document mentioned speaks for itself.

64. The document mentioned speaks for itself.

65. Denied.

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

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

THIRD CAUSE OF ACTION
(Injunctive Relief)

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

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

FOURTH CAUSE OF ACTION
(Equitable Relief - Recission)

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

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied. There were no misrepresentations.

90. Denied.

91. Denied.

92. Denied.

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93. Denied.

94. Denied.

95. Denied.

96. Denied.

FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Defendants deny that any representations were false.

103. Defendants deny that any representations were false.

104. Defendants deny that any representations were false.

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

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

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

107. Denied.

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

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

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

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

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

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SEVENTH AFFIRMATIVE DEFENSE

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

EIGHT AFFIRMATIVE DEFENSE

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

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

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

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

s/ Barry Krell
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(Pending Pro Hac Vice)

Attorneys for Defendants

July 3, 2024
Charleston, South Carolina

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ELECTRONICALLY FILED - 2024 Sep 13 4:47 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004606

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

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

PARTIES, JURISDICTION AND VENUE

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

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

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51. The Agreement provided that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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

September 5, 2024
Charleston, South Carolina

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VERIFICATION OF COMPLAINT

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

Frank Perrelli, Jr.

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

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

Notary Public for the State of Connecticut
My Commission Expires:

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

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

GENERAL DENIAL

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

RESPONSE TO SPECIFIC ALLEGATIONS

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

PARTIES, JURISDICTION AND VENUE

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

2. Denied.

3. Admitted.

4. Admitted.

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5. Admitted.

6. Admitted.

7. Admitted.

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

9. Admitted.

FACTS

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

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

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

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

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

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

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

17. Defendants deny the allegations as written.

18. Defendants deny the allegations as written.

19. Defendants deny the allegations as written.

20. Defendants deny the allegations as written.

21. Defendants admit the allegations.

22. Defendants deny the allegations.

23. Defendants deny the allegations as written

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

25. Defendants admit the allegations as written.

26. Defendants admit the allegations as written.

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

28. Defendants deny the allegations as written.

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

30. Defendants deny the allegations as written.

31. Defendants admit the allegations as written.

32. Defendants admit the allegations as written.

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

34. Defendants deny the allegations as written.

35. Defendants admit the allegations as written.

36. Defendants deny the allegations as written.

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37. Defendants believe that the allegation is accurate.

38. Defendants deny the allegations as written.

39. Defendants believe that the allegation is accurate.

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

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

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

43. Defendants deny the allegations as written.

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

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

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

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

48. Defendants deny the allegations.

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49. Defendants deny the allegations.

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

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

52. Defendants deny the allegations as written.

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

FIRST CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

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

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

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

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

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

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

63. The allegations are denied.

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

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

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

67. Denied.

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

69. Denied.

70. Denied.

SECOND CAUSE OF ACTION
(Unfair Trade Practices)

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

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72. Denied.

73. Denied.

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

75. The document mentioned speaks for itself.

76. The document mentioned speaks for itself.

77. Denied.

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

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

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

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

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

FOURTH CAUSE OF ACTION
(Equitable Relief-Rescission)

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

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

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

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

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

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

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

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

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FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

110. Denied.

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

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

119. Denied. There were no false representations.

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

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

122. Denied.

123. Denied. There was no false information.

124. Denied.

ELECTRONICALLY FILED - 2024 Nov 04 10:41 AM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004606

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATION DEFENSE

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

THIRD AFFIRMATION DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

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

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

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

iii. That all relief sought by Plaintiff be denied;

iv. Tax the costs of litigation against Plaintiff; and

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

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

s/ Barry Krell
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(Pending Pro Hac Vice)

Attorneys for Defendants

November 4, 2024
Charleston, South Carolina

ELECTRONICALLY FILED - 2024 Nov 04 10:41 AM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004606

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON CASE NO.2024CP1002646

PATRICIA SKOLER
Plaintiff,
-vs- TRANSCRIPT OF RECORD
VACATION INSPIRATIONS, LLC
Defendant.

March 27, 2025
Charleston, SC

BEFORE:
The Honorable Deadra L. Jefferson, Judge.

APPEARANCES:
David W. Wolf
Attorney for Plaintiff

John A. Massalon
Attorney for Defendant

Abigail Saunders
Attorney for Plaintiff

Emily H. Walker, CVR
Court Reporter

THE COURT: (audio missing) Skoler and Patricia Skoler versus Vacation Inspirations, Destination Travel LLC, Joseph -- excuse me, Joseph Shirley, Randy Gardner, and Jeffrey Pumilia, P-U-M-I-L-I-A. 2024 CP 10-2646.

It's before the Court on the defendants', plural, motion to compel arbitration and stay proceedings, which was filed on 11/12/2024. Their memo in support was filed on March 25th of 2025. Did you all file something in opposition? I'm referring to the plaintiffs.

MR. WOLF: Yes, Your Honor.

THE COURT: When was it filed?

MR. WOLF: I want to say it was on March 13th, and then we filed a surreply this morning.

THE COURT: Bear with me just one second.

MR. WOLF: Yes, Your Honor.

THE COURT: You all can take your seats.

MR. WOLF: Thank you.

MR. MASSALON: Thank you, Your Honor.

(WHEREUPON, the Court researched the referenced documents.)

THE COURT: Here we go. Plaintiff's memo in opposition. 3/13.

Okay. This is the defendants' motion to compel

arbitration. You may proceed.

MR. MASSALON: Thank you, Your Honor.

THE COURT: You're welcome. And good morning, Mr. Massalon. I'm sorry. It would help if I look up, right? Mr. Massalon's appearing for the defendants. Mr. Wolf and Ms. Saunders are appearing for the plaintiffs. You may proceed.

MR. MASSALON: Thank you, Your Honor.

THE COURT: You're welcome.

MR. MASSALON: And if I may begin with a quick procedural question?

THE COURT: Sure.

MR. MASSALON: We also have the next case on the motions docket.

THE COURT: Exactly. Which is Frank Perelli versus Vacation Inspirations. I assume it's the same motion. When I looked at it earlier, I was assuming it was basically the same, but I think we have to -- it's the same folk, isn't it?

MR. MASSALON: You are correct. It, it's -- we don't really have any arguments that --

THE COURT: If y'all want you can --

MR. MASSALON: -- right.

THE COURT: -- in that same time if there's no exception.

MR. WOLF: There is none, Your Honor.
THE COURT: Okay.
MR. MASSALON: If we could do them in tandem then.
THE COURT: That's fine.
MR. MASSALON: That would probably make you a little happier and a little more efficient.
So as I said, Your Honor, I'm John Massalon representing the defendants in this case. I'll give you just a little background first about the Skoler case, which was filed first, then about the Perelli case, and then I'll go into my argument.
Mr. and Mrs. Skoler signed a agreement with Vacation Inspirations, basically purchased a travel club membership, March 21 of '22. A copy of the agreement is actually attached to the motion. I have an extra one if you'd like it, but --
THE COURT: No, I have the file.
MR. MASSALON: The purchase price was $5,593. The agreement contains a provision to arbitrate any disputes.
THE COURT: Got to comply with South Carolina law?
MR. MASSALON: This is an FAA case, Your Honor.
THE COURT: Okay. So you concede it does not comply with South Carolina, and you are then reverting to the FAA, alleging there's some interstate commerce

implicated?

MR. MASSALON: Yes, Your Honor. And, in fact, I do not believe that is disputed. I think we both argued under the FAA. We submitted an affidavit.

THE COURT: All y'all conceding the FAA applies?

MR. WOLF: Yes, Your Honor, we are.

THE COURT: Okay. Thank you.

MR. MASSALON: So it's an FAA case, not a South Carolina case, Your Honor.

THE COURT: Mm-hmm.

MR. MASSALON: And I, I will not read you the arbitration agreement, but just to highlight a couple provisions of it. It's very broad. It applies to any controversy, claim, or dispute relating to the agreement.

It says it will be resolved and decided by binding arbitration in accordance with the commercial rules of the AAA, but not under the auspices. So this is a commercial rules case, but it's not being administered by the AAA. And a judgment may be awarded by the arbitrator entered in any court of jurisdiction. And that Vacation Inspirations gets to select the arbitrator.

There aren't any limitations on what the arbitrator can hear, what relief can be awarded, no

damage limitations, no waivers, anything like that. Just a broad arbitration agreement.

Now the agreement also includes an addendum/exception to the contract. That's the next page. And on it has handwritten changes in both cases, both the Skoler case and in the Perelli case.

And then lastly, there's a document attached called a Vacation Inspirations Membership Acknowledgment, which contains a list of questions signed by these folks, and one of the questions is, did you buy this membership because of high-pressure sales tactics. The answer in both cases was no.

Nevertheless, on May 21st, the Skolers filed this complaint alleging various causes of action. One of them being that the agreement was a result of high-pressure sales tactics. We filed this motion to compel arbitration.

As far as Perelli goes, the only additional facts that relate to the Perelli case are, they signed their agreement October 22 of 2022. The purchase price, slightly different, $5,595. Contains the same arbitration provision. They also have an addendum that's got some handwritten changes on it. They acknowledged in the final membership acknowledgment agreement that they did not buy because of

high-pressure sales tactics. They, too, filed a lawsuit here in Charleston alleging basically that the contract was the result of high-pressure sales tactics.

As I mentioned, we filed an affidavit in support of our motion to show the interstate commerce aspect of this.

THE COURT: I'm sorry. I didn't hear your last sentence.

MR. MASSALON: To show the interstate commerce that was involved in this. There's an affidavit that we filed in the Perelli case. But it basically describes the interstate commerce aspects of all of these transactions.

THE COURT: I think they concede the FAA applies --

MR. MASSALON: Yes, ma'am.

THE COURT: -- correct?

MR. MASSALON: So as Your Honor is aware --

THE COURT: As far as I understand, y'all agree that's the analysis.

MR. WOLF: We concede the FAA applies, Your Honor.

THE COURT: Okay. Yes, sir.

MR. MASSALON: So under the, the agreement the commercial rules apply. And, and this is cited in the memo, but Rule 7 of the commercial rules gives the

arbitrator two powers. One of them is to rule on his or her own jurisdiction, including objections with respect to the existence, scope, or validity of the arbitration agreement, or to the arbitrability of any claim. Second thing under Rule 7(b), the arbitrator shall have the power to determine the existence or validity of a contract of which the arbitration agreement is a part.

So under the commercial rules, just to summarize, the arbitrator not only gets to decide his or her jurisdiction, but also the validity of any contract that contains the clause.

Now there's a Supreme Court case that we cite in the materials called Henry Schein versus Archer and White Sales. And the Court, in that case, basically decided that when the parties agree that issues like arbitrability will be decided by the arbitrator, that the Court has to defer to that under the FAA.

Now the question in Henry Schein was the, what, what we call the wholly meritless exception. And for a time in federal court there was, or seemed to be an exception to arbitrability if somebody claimed that the question of arbitrability was wholly meritless, then some courts would decide that. Schein said no. If they let the arbitrator decide arbitrability, even

wholly meritless gets decided by the arbitrator.

Now in the subsequent South Carolina case of Masters versus KOL, we cite that in the materials as well. That is a state case decided under the FAA. And in that case a car purchaser challenged a dealer's claim that the dispute had to be arbitrated. And, and the grounds alleged there were that the original agreement was moot and unenforceable, because of some subsequent agreements that the parties made.

And the Court in that case, citing Schein and some other cases, held that questions about whether the arbitration contract was moot or unenforceable were for the arbitrator, not the Court. And, and significantly in that case, in Masters, the Court said, while the default procedure for the Court is to decide issues of whether a valid agreement to arbitrate exists or not, whether the dispute falls within, and whether the dispute falls within the agreements scope, the parties may delegate this determination to the arbitrator if they clearly or unmistakably do so.

Now as, as I understand the plaintiff's argument first in this case, they argue that under the Palmetto Bluff case that was decided last year, that they get a decision on unconscionability in court before they have to go to arbitration, if, if they have to go. If they

win the unconscionability argument in court, then they don't.

The reason that I don't think that Palmetto Bluff applies in this situation is that is clearly a South Carolina arbitration act case. And, and I won't read it to Your Honor, but in the opinion, one of the first questions they address is does the FAA apply or does the state act apply? And they find in that case, Palmetto Bluff, the state act applies. And so they analyze the unconscionability under that set of laws and rules.

Our view, Your Honor, is that because this is a FAA case and because the rule cited give the arbitrator the authority to decide the validity of the contract, that the issues of unconscionability would be decided by the arbitrator in this case and, and not by the Court.

Second, Your Honor, and, and these are, are alternative arguments in case you address the merits of the case first. Plaintiffs argue that this is an adhesion contract, a take-it-or-leave-it deal. And because of that they get special scrutiny of this contract. Our argument on that, Your Honor, is when you look at these contracts, they certainly do contain a lot of printed material. However, as I've noted in

my opening, they also contain a provision for addenda and exceptions. And both of these plaintiffs, or all three of these plaintiffs, took advantage of that. And they all have handwritten terms, both contracts have handwritten terms in them. Which I think takes it out of the adhesion contract and into the negotiated contract category.

The second argument that, that plaintiffs make is that under this arbitration provision it is a fundamentally unfair process because Vacation Inspirations gets to choose the arbitrator. And for that reason they shouldn't be required to go even though we say they agreed to go.

The problem with that argument, Your Honor, I think is, is twofold. First, and we cite these rules in the materials. Under the commercial rules, Rule 14, if the parties agree to a particular way of appointing the arbitrator, in this case that Vacation Inspirations gets to choose, then that's binding on them. And that's Rule 14(a) of the commercial rules.

And, significantly, Rule 19 says this. An arbitrator shall be impartial and independent, and shall perform his or her duties with diligence and in good faith and shall be subject to disqualification for partiality or lack of independence. So, so this is not

a case, and the plaintiffs rely extensively on a, a case, Hooters case, involving a procedure that they say is fundamentally unfair to employees because the employer controlled all these aspects of the arbitration. But here Vacation Inspirations gets to pick the arbitrator. But under the rules he or she has to be independent and non-biased. So it's a fair forum.

And moreover, as Your Honor, I'm sure, is aware, the rules, the ADR rules in South Carolina for arbitrators require arbitrators to be neutral. So, again, if a lawyer is chosen, he or she has to be neutral under those rules as well. And, again, there aren't any exclusions, no claims are excluded, no claims that are waived, no damage limits, none of that kind of limitation that the Court in Hooters found was unfair. So this is a fair forum for arbitrating these disputes.

Next, Your Honor, the, the plaintiffs really kind of flood the zone with a lot of arguments that are factual arguments about why they believe these agreements are unconscionable. And they are things like, for instance, you know, they were asked to turn off their cell phones. And that the, they didn't have a lawyer with them to advise them about the agreements,

and a lot of things of that nature. They were unsophisticated. There was unequal bargaining power. Lots of those kinds of things, all of which are, are not proven. They're just arguments. They're just factual averments.

And, and what I would say first is, under the, the law, as I understand it, they're immaterial because the arbitrator should decide all of those. But under the FAA, this is Section 4, 9 USC Section 4, if there are factual issues going to arbitrability that the Court decides needed to be decided, I, I don't believe those can be decided on this motion. Because you take the basic issue of high-pressure sales tactics. They say these agreements were the result of high-pressure sales tactics. We have a document signed by each of them that says they weren't. So, so that's a classic factual issue.

Another argument the plaintiffs make is no reasonable person would sign these agreements. Reasonableness I think is a, is a classic factual determination. Yet they ask the Court to make that finding in their favor to defeat arbitration without a trial or an evidentiary hearing on that. And so under the FAA I don't believe that that is permitted. I think a hearing or a trial is required. And I think

that's another reason it should go to arbitration, because arbitrators are set up to do those kinds of things and do them efficiently.

The last couple of things, Your Honor, and then I'll sit down. There is a lot of dialogue in the agreements about the consumer arbitration rules. And the FAA, as you probably know, Your Honor, has a set of rules for consumer transactions that are different slightly than the ones for commercial transactions. And the, the argument as I understand it from the plaintiffs is, that the consumer rules apply because there's a footnote on the first page of the commercial rules that basically says, for cases administered by the FAA, they can apply whatever rules they think should apply. I think employment rules are one of them. Consumer rules are another.

The problem with that argument, Your Honor, is that this is not an FAA-administered arbitration. And so, in our view that footnote does not apply to this case. The other problem with it, I think, Your Honor, is that it basically brings us back to the same place because under Rule 14 of the consumer rules it, that the same jurisdiction provision is in the consumer rules as in the commercial rules. So, again, it loops us right back to the authority of the arbitrator to

decide his or her own jurisdiction and decide issues about validity or not of contract. So, we don't think the consumer rules apply. Even if the Court disagrees with me, I believe that it takes us back to the same place that I argued earlier.

And then lastly, Your Honor, there was a point in the plaintiff's initial memorandum that this motion should be dismissed because my co-counsel did not consult with them before they filed it.

And what I would say on that, Your Honor, is, is I think that's a form-over-substance argument. Pretty clearly, the plaintiffs in this case would not have consented to the relief we request in this motion. I'm, I'm certain that my co-counsel knew that when they filed it. As you can see, they're fighting like tigers to stay out of arbitration. And they've submitted a memorandum in opposition and a surreply, and so I think for that reason, Your Honor, the Rule 11 argument should fail.

And this matter should be referred to arbitration, and the plaintiffs can make all these arguments in arbitration. And we can get a just, fair, and efficient result there. Thank you.

THE COURT: You're welcome. Who would like to respond?

MR. WOLF: Your Honor, I'll do that on behalf of the plaintiffs. Now, when I first began preparing for my comments today, my initial thought was to attack each of the claims that Mr. Massalon just presented to the Court. But then upon a little bit more reflection, I started looking at the, kind of, how South Carolina got to the point that we are today, Your Honor. And I started to, kind of, recognize that there's been a shift in South Carolina's public policy regarding protection of consumers generally, and more specifically, with regard to arbitration agreements. And I think that that's the difference that you're seeing between the two parties' positions today, Your Honor.

Now, I remember when I was in law school we were taught about caveat emptor, let the buyer beware. And that was, has been the law of the land here in South Carolina for a very long time. And that's reflected in a lot of early contract decisions and arbitration enforcement decisions, Your Honor.

However, when considering the more recent South Carolina cases, you'll see that there's been a policy shift to caveat venditor, Your Honor. Let the seller beware, and that's evident in these cases.

Starting in 1989, Kennedy versus Columbia

Lumber -- excuse me, began a slow erosion of the caveat emptor analysis when our Supreme Court, which stated at that time, judicial cognizance of the fact of a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller.

Next in Lackey versus Green Tree Financial, the Court of Appeals explored the role of unconscionability in an arbitration agreement by stating, the issues raised in this case have not been thoroughly addressed in the state before. Finding the arbitration provision permitted Green Tree to both select the arbitrator with the consent of Lackey, and dealing with other alleged infirmities, which included lack of mutuality and finding that they did not invalidate the arbitration agreement.

The Supreme Court next addressed the issue, in Munoz versus Green Tree Financial, again, Your Honor, where they compelled arbitration after finding that mutuality of remedy does not apply here. An agreement providing for arbitration does not determine the remedy for a breach of contract, but only the forum in which the remedy for the breach is determined. Sounds very familiar.

Although citing Lackey for the proposition that the lack of mutuality, Your Honor, it does not

invalidate a contract. It does appear that unconscionability was raised -- or sorry, it didn't appear that the issue of unconscionability was raised by the plaintiffs in that case.

However, we have clear indication from the Supreme Court in Simpson versus MSA Myrtle Beach, where the Court ruled that the Munoz decision, the one I just referenced, failed to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender. And the rumblings of a paradigm shift began by Kennedy and (inaudible) were even more evident at that point, Your Honor.

From there Smith versus DR Horton confirmed those foundational principles and concurred in the public policy shift to protect consumers. Not just home consumers or car consumers, Your Honor, but consumers in general. To suggest that nonessential purchases by consumers deserve less protection than an essential purchase in arbitration is unsupported by the case law in South Carolina, Your Honor.

After Smith, in Simmons versus Benson Hyundai, which is, which references the Schein case that Mr. Massalon relies on, in the unambiguous requirement that before referring a dispute to an arbitrator, the

Court determined that compelling arbitration would be inappropriate after finding the parties never formed an agreement to arbitrate.

Next, and the case that I think is most on point, Your Honor, Chief Justice Kittredge authoring the opinion in Damico versus Lennar combined all the analysis from these prior cases, and explored the analytical flow that a trial court would follow in order to determine a motion to compel that's disputed by an unconscionability defense.

I think our memorandum in opposition provides analysis on these steps, Your Honor, so I won't waste the Court's time going through all of those. The lack of mutuality, unfair bargaining power between the parties are certainly included in that.

So, the next case is 315 Corley versus Palmetto Bluff that Mr. Massalon pointed out to the Court. That's a Court of Appeals decision that applied the Damico framework. Now I think it's worth pointing out, Your Honor, Damico is an FAA case, so this distinction without a difference that was raised about Palmetto Bluff or Corley really is a red herring because Damico goes through the process of analyzing whether it impacts interstate commerce, applies to FAA, still follows the determination is this an adhesion contract?

Are the two prejudicial prongs, procedural and substantive unconscionability found in the case? And if so, the Court is the, the proper adjudicator of whether that happened, or should be a valid agreement or not, Your Honor.

After Corley, four months ago the South Carolina Supreme Court in Hoskins versus Mungo homes, applied the same framework just like in Damico, and found that the unconscionability in the arbitration clause resulted in invalidity where there was no agreement to arbitrate, and it was the Court's job to determine that first and foremost.

So, in this instance, all these cases illustrate the points that the defendants are making in their memorandum are based on, they say at the very beginning it's based on all applicable law, Your Honor. But they are cherry-picking unsuitable and inapposite cases to suggest the outcome in this case. But if you look at the recent developments in arbitrability based on unconscionability, Your Honor, you look at the Schein case from the U.S. Supreme Court. You know, they cite that case, but they ignore the critical language that to be sure, and I'll try and find that reference so that I can state it correctly. To be sure before referring a dispute to an arbitrator, the Court

determines whether a valid arbitration agreement exists. This is Schein. This is the very case that the defendants assert says that the Court shouldn't have any place in this decision.

Now, just briefly, I want to touch on a few other points --

THE COURT: I want y'all to wrap it up. This was set for 15 minutes. I've got about ten other people here waiting to have their cases heard. I don't mean to interrupt you, but, I know it may sound funny to lawyers, but I read everything y'all send me.

MR. WOLF: No, and I believe that, Your Honor --

THE COURT: Yeah.

MR. WOLF: -- but I'm trying to reply to the statements that were made.

THE COURT: Yeah. But I need you to sort of come to a close because I've got a bunch of folk that have been patiently waiting.

MR. WOLF: I get it, Your Honor.

THE COURT: And I appreciate it. Thank you.

MR. WOLF: Yep. So the addenda is also, you know, non-applicable. The Damico court, as the Court's well aware from reading it, states that that case, Lennar, had blanks that needed to be filled out, and the Court still found that it was an unconscionable arbitration

agreement. The arbitration agreement didn't have any blanks to be filled out, Your Honor. So, you know, relying on that diverts from the attention that needs to be placed on the arbitration provision.

The commercial rules, by their own statement, the footnote that he referenced says, that if it involves a consumer transaction, the consumer rules apply. Whether it's under the auspices of a AAA or not. This is all the crafty manipulation of legal counsel to, to try and put the defendants in the best position, just like Damico talks about.

And the, the defendants should not be rewarded today, Your Honor, by being able to manipulate the terms of the agreement for their benefit. This is an unconscionable arbitration provision, and it should be decided by this Court that the arbitration should not be compelled. Therefore, we would ask the Court to deny the motion.

THE COURT: Please submit proposed orders on both cases within five days of today, making any findings of fact and conclusions of law consistent with the record. Thank you.

ALL: Thank you, Your Honor.

END OF TRANSCRIPT OF RECORD.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

I, the undersigned Emily H. Walker, official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, who listened to the digital recording created by DCRP, do hereby certify that said hearing is a true, correct, and verbatim transcript of said recorded, discernible proceedings, except for the portions noted where no transcript was possible due to the lack of discernible wording, noted by (inaudible), relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina, on the 27th of March, 2025.

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

In witness whereof, I have hereunto subscribed my name, this 26th of February, 2026.

Emily H. Walker, CVR
Court Reporter

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON CASE NO.2024CP1004606

FRANK PERELLI, JR.
Plaintiff,
-vs- TRANSCRIPT OF RECORD
VACATION INSPIRATIONS, LLC.
Defendant.

March 27, 2025
Charleston, SC

BEFORE:
The Honorable Deadra L. Jefferson, Judge.

APPEARANCES:
David Wolf
Attorney for Plaintiff

John A. Massalon
Attorney for Defendant

Abigail Saunders
Attorney for Plaintiff

Emily H. Walker, CVR
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THE COURT: (audio missing) Skoler and Patricia Skoler versus Vacation Inspirations, Destination Travel LLC, Joseph -- excuse me, Joseph Shirley, Randy Gardner, and Jeffrey Pumilia, P-U-M-I-L-I-A. 2024 CP 10-2646.

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MR. WOLF: Yes, Your Honor.

THE COURT: When was it filed?

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THE COURT: Bear with me just one second.

MR. WOLF: Yes, Your Honor.

THE COURT: You all can take your seats.

MR. WOLF: Thank you.

MR. MASSALON: Thank you, Your Honor.

(WHEREUPON, the Court researched the referenced documents.)

THE COURT: Here we go. Plaintiff's memo in opposition. 3/13.

Okay. This is the defendants' motion to compel

arbitration. You may proceed.

MR. MASSALON: Thank you, Your Honor.

THE COURT: You're welcome. And good morning, Mr. Massalon. I'm sorry. It would help if I look up, right? Mr. Massalon's appearing for the defendants. Mr. Wolf and Ms. Saunders are appearing for the plaintiffs. You may proceed.

MR. MASSALON: Thank you, Your Honor.

THE COURT: You're welcome.

MR. MASSALON: And if I may begin with a quick procedural question?

THE COURT: Sure.

MR. MASSALON: We also have the next case on the motions docket.

THE COURT: Exactly. Which is Frank Perelli versus Vacation Inspirations. I assume it's the same motion. When I looked at it earlier, I was assuming it was basically the same, but I think we have to -- it's the same folk, isn't it?

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MR. MASSALON: -- right.

THE COURT: -- in that same time if there's no exception.

MR. WOLF: There is none, Your Honor.
THE COURT: Okay.
MR. MASSALON: If we could do them in tandem then.
THE COURT: That's fine.
MR. MASSALON: That would probably make you a little happier and a little more efficient.
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There aren't any limitations on what the arbitrator can hear, what relief can be awarded, no

damage limitations, no waivers, anything like that. Just a broad arbitration agreement.

Now the agreement also includes an addendum/exception to the contract. That's the next page. And on it has handwritten changes in both cases, both the Skoler case and in the Perelli case.

And then lastly, there's a document attached called a Vacation Inspirations Membership Acknowledgment, which contains a list of questions signed by these folks, and one of the questions is, did you buy this membership because of high-pressure sales tactics. The answer in both cases was no.

Nevertheless, on May 21st, the Skolers filed this complaint alleging various causes of action. One of them being that the agreement was a result of high-pressure sales tactics. We filed this motion to compel arbitration.

As far as Perelli goes, the only additional facts that relate to the Perelli case are, they signed their agreement October 22 of 2022. The purchase price, slightly different, $5,595. Contains the same arbitration provision. They also have an addendum that's got some handwritten changes on it. They acknowledged in the final membership acknowledgment agreement that they did not buy because of

high-pressure sales tactics. They, too, filed a lawsuit here in Charleston alleging basically that the contract was the result of high-pressure sales tactics.

As I mentioned, we filed an affidavit in support of our motion to show the interstate commerce aspect of this.

THE COURT: I'm sorry. I didn't hear your last sentence.

MR. MASSALON: To show the interstate commerce that was involved in this. There's an affidavit that we filed in the Perelli case. But it basically describes the interstate commerce aspects of all of these transactions.

THE COURT: I think they concede the FAA applies --

MR. MASSALON: Yes, ma'am.

THE COURT: -- correct?

MR. MASSALON: So as Your Honor is aware --

THE COURT: As far as I understand, y'all agree that's the analysis.

MR. WOLF: We concede the FAA applies, Your Honor.

THE COURT: Okay. Yes, sir.

MR. MASSALON: So under the, the agreement the commercial rules apply. And, and this is cited in the memo, but Rule 7 of the commercial rules gives the

arbitrator two powers. One of them is to rule on his or her own jurisdiction, including objections with respect to the existence, scope, or validity of the arbitration agreement, or to the arbitrability of any claim. Second thing under Rule 7(b), the arbitrator shall have the power to determine the existence or validity of a contract of which the arbitration agreement is a part.

So under the commercial rules, just to summarize, the arbitrator not only gets to decide his or her jurisdiction, but also the validity of any contract that contains the clause.

Now there's a Supreme Court case that we cite in the materials called Henry Schein versus Archer and White Sales. And the Court, in that case, basically decided that when the parties agree that issues like arbitrability will be decided by the arbitrator, that the Court has to defer to that under the FAA.

Now the question in Henry Schein was the, what, what we call the wholly meritless exception. And for a time in federal court there was, or seemed to be an exception to arbitrability if somebody claimed that the question of arbitrability was wholly meritless, then some courts would decide that. Schein said no. If they let the arbitrator decide arbitrability, even

wholly meritless gets decided by the arbitrator.

Now in the subsequent South Carolina case of Masters versus KOL, we cite that in the materials as well. That is a state case decided under the FAA. And in that case a car purchaser challenged a dealer's claim that the dispute had to be arbitrated. And, and the grounds alleged there were that the original agreement was moot and unenforceable, because of some subsequent agreements that the parties made.

And the Court in that case, citing Schein and some other cases, held that questions about whether the arbitration contract was moot or unenforceable were for the arbitrator, not the Court. And, and significantly in that case, in Masters, the Court said, while the default procedure for the Court is to decide issues of whether a valid agreement to arbitrate exists or not, whether the dispute falls within, and whether the dispute falls within the agreements scope, the parties may delegate this determination to the arbitrator if they clearly or unmistakably do so.

Now as, as I understand the plaintiff's argument first in this case, they argue that under the Palmetto Bluff case that was decided last year, that they get a decision on unconscionability in court before they have to go to arbitration, if, if they have to go. If they

win the unconscionability argument in court, then they don't.

The reason that I don't think that Palmetto Bluff applies in this situation is that is clearly a South Carolina arbitration act case. And, and I won't read it to Your Honor, but in the opinion, one of the first questions they address is does the FAA apply or does the state act apply? And they find in that case, Palmetto Bluff, the state act applies. And so they analyze the unconscionability under that set of laws and rules.

Our view, Your Honor, is that because this is a FAA case and because the rule cited give the arbitrator the authority to decide the validity of the contract, that the issues of unconscionability would be decided by the arbitrator in this case and, and not by the Court.

Second, Your Honor, and, and these are, are alternative arguments in case you address the merits of the case first. Plaintiffs argue that this is an adhesion contract, a take-it-or-leave-it deal. And because of that they get special scrutiny of this contract. Our argument on that, Your Honor, is when you look at these contracts, they certainly do contain a lot of printed material. However, as I've noted in

my opening, they also contain a provision for addenda and exceptions. And both of these plaintiffs, or all three of these plaintiffs, took advantage of that. And they all have handwritten terms, both contracts have handwritten terms in them. Which I think takes it out of the adhesion contract and into the negotiated contract category.

The second argument that, that plaintiffs make is that under this arbitration provision it is a fundamentally unfair process because Vacation Inspirations gets to choose the arbitrator. And for that reason they shouldn't be required to go even though we say they agreed to go.

The problem with that argument, Your Honor, I think is, is twofold. First, and we cite these rules in the materials. Under the commercial rules, Rule 14, if the parties agree to a particular way of appointing the arbitrator, in this case that Vacation Inspirations gets to choose, then that's binding on them. And that's Rule 14(a) of the commercial rules.

And, significantly, Rule 19 says this. An arbitrator shall be impartial and independent, and shall perform his or her duties with diligence and in good faith and shall be subject to disqualification for partiality or lack of independence. So, so this is not

a case, and the plaintiffs rely extensively on a, a case, Hooters case, involving a procedure that they say is fundamentally unfair to employees because the employer controlled all these aspects of the arbitration. But here Vacation Inspirations gets to pick the arbitrator. But under the rules he or she has to be independent and non-biased. So it's a fair forum.

And moreover, as Your Honor, I'm sure, is aware, the rules, the ADR rules in South Carolina for arbitrators require arbitrators to be neutral. So, again, if a lawyer is chosen, he or she has to be neutral under those rules as well. And, again, there aren't any exclusions, no claims are excluded, no claims that are waived, no damage limits, none of that kind of limitation that the Court in Hooters found was unfair. So this is a fair forum for arbitrating these disputes.

Next, Your Honor, the, the plaintiffs really kind of flood the zone with a lot of arguments that are factual arguments about why they believe these agreements are unconscionable. And they are things like, for instance, you know, they were asked to turn off their cell phones. And that the, they didn't have a lawyer with them to advise them about the agreements,

and a lot of things of that nature. They were unsophisticated. There was unequal bargaining power. Lots of those kinds of things, all of which are, are not proven. They're just arguments. They're just factual averments.

And, and what I would say first is, under the, the law, as I understand it, they're immaterial because the arbitrator should decide all of those. But under the FAA, this is Section 4, 9 USC Section 4, if there are factual issues going to arbitrability that the Court decides needed to be decided, I, I don't believe those can be decided on this motion. Because you take the basic issue of high-pressure sales tactics. They say these agreements were the result of high-pressure sales tactics. We have a document signed by each of them that says they weren't. So, so that's a classic factual issue.

Another argument the plaintiffs make is no reasonable person would sign these agreements. Reasonableness I think is a, is a classic factual determination. Yet they ask the Court to make that finding in their favor to defeat arbitration without a trial or an evidentiary hearing on that. And so under the FAA I don't believe that that is permitted. I think a hearing or a trial is required. And I think

that's another reason it should go to arbitration, because arbitrators are set up to do those kinds of things and do them efficiently.

The last couple of things, Your Honor, and then I'll sit down. There is a lot of dialogue in the agreements about the consumer arbitration rules. And the FAA, as you probably know, Your Honor, has a set of rules for consumer transactions that are different slightly than the ones for commercial transactions. And the, the argument as I understand it from the plaintiffs is, that the consumer rules apply because there's a footnote on the first page of the commercial rules that basically says, for cases administered by the FAA, they can apply whatever rules they think should apply. I think employment rules are one of them. Consumer rules are another.

The problem with that argument, Your Honor, is that this is not an FAA-administered arbitration. And so, in our view that footnote does not apply to this case. The other problem with it, I think, Your Honor, is that it basically brings us back to the same place because under Rule 14 of the consumer rules it, that the same jurisdiction provision is in the consumer rules as in the commercial rules. So, again, it loops us right back to the authority of the arbitrator to

decide his or her own jurisdiction and decide issues about validity or not of contract. So, we don't think the consumer rules apply. Even if the Court disagrees with me, I believe that it takes us back to the same place that I argued earlier.

And then lastly, Your Honor, there was a point in the plaintiff's initial memorandum that this motion should be dismissed because my co-counsel did not consult with them before they filed it.

And what I would say on that, Your Honor, is, is I think that's a form-over-substance argument. Pretty clearly, the plaintiffs in this case would not have consented to the relief we request in this motion. I'm, I'm certain that my co-counsel knew that when they filed it. As you can see, they're fighting like tigers to stay out of arbitration. And they've submitted a memorandum in opposition and a surreply, and so I think for that reason, Your Honor, the Rule 11 argument should fail.

And this matter should be referred to arbitration, and the plaintiffs can make all these arguments in arbitration. And we can get a just, fair, and efficient result there. Thank you.

THE COURT: You're welcome. Who would like to respond?

MR. WOLF: Your Honor, I'll do that on behalf of the plaintiffs. Now, when I first began preparing for my comments today, my initial thought was to attack each of the claims that Mr. Massalon just presented to the Court. But then upon a little bit more reflection, I started looking at the, kind of, how South Carolina got to the point that we are today, Your Honor. And I started to, kind of, recognize that there's been a shift in South Carolina's public policy regarding protection of consumers generally, and more specifically, with regard to arbitration agreements. And I think that that's the difference that you're seeing between the two parties' positions today, Your Honor.

Now, I remember when I was in law school we were taught about caveat emptor, let the buyer beware. And that was, has been the law of the land here in South Carolina for a very long time. And that's reflected in a lot of early contract decisions and arbitration enforcement decisions, Your Honor.

However, when considering the more recent South Carolina cases, you'll see that there's been a policy shift to caveat venditor, Your Honor. Let the seller beware, and that's evident in these cases.

Starting in 1989, Kennedy versus Columbia

Lumber -- excuse me, began a slow erosion of the caveat emptor analysis when our Supreme Court, which stated at that time, judicial cognizance of the fact of a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller.

Next in Lackey versus Green Tree Financial, the Court of Appeals explored the role of unconscionability in an arbitration agreement by stating, the issues raised in this case have not been thoroughly addressed in the state before. Finding the arbitration provision permitted Green Tree to both select the arbitrator with the consent of Lackey, and dealing with other alleged infirmities, which included lack of mutuality and finding that they did not invalidate the arbitration agreement.

The Supreme Court next addressed the issue, in Munoz versus Green Tree Financial, again, Your Honor, where they compelled arbitration after finding that mutuality of remedy does not apply here. An agreement providing for arbitration does not determine the remedy for a breach of contract, but only the forum in which the remedy for the breach is determined. Sounds very familiar.

Although citing Lackey for the proposition that the lack of mutuality, Your Honor, it does not

invalidate a contract. It does appear that unconscionability was raised -- or sorry, it didn't appear that the issue of unconscionability was raised by the plaintiffs in that case.

However, we have clear indication from the Supreme Court in Simpson versus MSA Myrtle Beach, where the Court ruled that the Munoz decision, the one I just referenced, failed to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender. And the rumblings of a paradigm shift began by Kennedy and (inaudible) were even more evident at that point, Your Honor.

From there Smith versus DR Horton confirmed those foundational principles and concurred in the public policy shift to protect consumers. Not just home consumers or car consumers, Your Honor, but consumers in general. To suggest that nonessential purchases by consumers deserve less protection than an essential purchase in arbitration is unsupported by the case law in South Carolina, Your Honor.

After Smith, in Simmons versus Benson Hyundai, which is, which references the Schein case that Mr. Massalon relies on, in the unambiguous requirement that before referring a dispute to an arbitrator, the

Court determined that compelling arbitration would be inappropriate after finding the parties never formed an agreement to arbitrate.

Next, and the case that I think is most on point, Your Honor, Chief Justice Kittredge authoring the opinion in Damico versus Lennar combined all the analysis from these prior cases, and explored the analytical flow that a trial court would follow in order to determine a motion to compel that's disputed by an unconscionability defense.

I think our memorandum in opposition provides analysis on these steps, Your Honor, so I won't waste the Court's time going through all of those. The lack of mutuality, unfair bargaining power between the parties are certainly included in that.

So, the next case is 315 Corley versus Palmetto Bluff that Mr. Massalon pointed out to the Court. That's a Court of Appeals decision that applied the Damico framework. Now I think it's worth pointing out, Your Honor, Damico is an FAA case, so this distinction without a difference that was raised about Palmetto Bluff or Corley really is a red herring because Damico goes through the process of analyzing whether it impacts interstate commerce, applies to FAA, still follows the determination is this an adhesion contract?

Are the two prejudicial prongs, procedural and substantive unconscionability found in the case? And if so, the Court is the, the proper adjudicator of whether that happened, or should be a valid agreement or not, Your Honor.

After Corley, four months ago the South Carolina Supreme Court in Hoskins versus Mungo homes, applied the same framework just like in Damico, and found that the unconscionability in the arbitration clause resulted in invalidity where there was no agreement to arbitrate, and it was the Court's job to determine that first and foremost.

So, in this instance, all these cases illustrate the points that the defendants are making in their memorandum are based on, they say at the very beginning it's based on all applicable law, Your Honor. But they are cherry-picking unsuitable and inapposite cases to suggest the outcome in this case. But if you look at the recent developments in arbitrability based on unconscionability, Your Honor, you look at the Schein case from the U.S. Supreme Court. You know, they cite that case, but they ignore the critical language that to be sure, and I'll try and find that reference so that I can state it correctly. To be sure before referring a dispute to an arbitrator, the Court

determines whether a valid arbitration agreement exists. This is Schein. This is the very case that the defendants assert says that the Court shouldn't have any place in this decision.

Now, just briefly, I want to touch on a few other points --

THE COURT: I want y'all to wrap it up. This was set for 15 minutes. I've got about ten other people here waiting to have their cases heard. I don't mean to interrupt you, but, I know it may sound funny to lawyers, but I read everything y'all send me.

MR. WOLF: No, and I believe that, Your Honor --

THE COURT: Yeah.

MR. WOLF: -- but I'm trying to reply to the statements that were made.

THE COURT: Yeah. But I need you to sort of come to a close because I've got a bunch of folk that have been patiently waiting.

MR. WOLF: I get it, Your Honor.

THE COURT: And I appreciate it. Thank you.

MR. WOLF: Yep. So the addenda is also, you know, non-applicable. The Damico court, as the Court's well aware from reading it, states that that case, Lennar, had blanks that needed to be filled out, and the Court still found that it was an unconscionable arbitration

agreement. The arbitration agreement didn't have any blanks to be filled out, Your Honor. So, you know, relying on that diverts from the attention that needs to be placed on the arbitration provision.

The commercial rules, by their own statement, the footnote that he referenced says, that if it involves a consumer transaction, the consumer rules apply. Whether it's under the auspices of a AAA or not. This is all the crafty manipulation of legal counsel to, to try and put the defendants in the best position, just like Damico talks about.

And the, the defendants should not be rewarded today, Your Honor, by being able to manipulate the terms of the agreement for their benefit. This is an unconscionable arbitration provision, and it should be decided by this Court that the arbitration should not be compelled. Therefore, we would ask the Court to deny the motion.

THE COURT: Please submit proposed orders on both cases within five days of today, making any findings of fact and conclusions of law consistent with the record. Thank you.

ALL: Thank you, Your Honor.

END OF TRANSCRIPT OF RECORD.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

I, the undersigned Emily H. Walker, official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina, on the 27th of March, 2025.

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

In witness whereof, I have hereunto subscribed my name, this 26th of February, 2026.

Emily H. Walker, CVR
Court Reporter

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-02646
Peter Skoler and Patricia Skoler, Plaintiffs, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH, SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA Defendants.	**Notice of Motion and Defendants' Motion to Compel Arbitration and Stay Proceedings in this Case Until Completion of Arbitration**

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned counsel hereby move the Court for an Order compelling Plaintiffs to submit this matter to arbitration and to stay proceedings in this case pending arbitration. Defendants bring this Motion based on the AGREEMENT, attached as Exhibit 1. That document, signed by Plaintiffs states, in part: "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") . . . ."

This Motion is based upon the South Carolina Rules of Civil Procedure, the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* ("FAA"), the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-20, all applicable law, and the terms of the Arbitration Agreement.

A complete copy of this agreement is provided as an Exhibit to this Motion. This Motion will also be supported by the pleadings in this action, the controlling statutes, applicable case law, any relevant affidavits, any appropriate memoranda of law filed in support of this Motion, any additional documents required by the Court, and such supporting arguments as may be submitted in connection herewith.

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In addition, Defendants show that all litigation, discovery and other matters in the within case should be stayed pending the Court's Order to Compel Arbitration and the completion of arbitration.

CONCLUSION

Defendants respectfully request a hearing on this Motion and that the Court enter an Order compelling the parties to arbitration and staying all proceedings (including discovery) until the completion of arbitration.

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

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Attorneys for Defendants

November 12, 2024
Charleston, South Carolina

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Vacation Inspirations Membership

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 (Patty) 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	$ N/A	$ $

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

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

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

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

Patricia R Skoler
Client/Purchaser

Client/Purchaser

Janet Stewart
Sales Representative

D. 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.

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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.

Patricia R Stokes
Client Date

Janet Stewart
Sales Representative Date 3-21-22

Client Date 3/21/22

G. Pace
Manager Date 3-21-22

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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) ~~N~~ 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 $ 0 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

Pamela R Stoler
Purchaser

Purchaser

Janet Stewart
Sales Representative

Manager

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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

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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 _____ Member

ELECTRONICALLY FILED - 2024 Nov 12 3:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004606

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-04606
Frank Perelli, Jr., Plaintiff, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH, SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA Defendants.	**Notice of Motion and Defendants' Motion to Compel Arbitration and Stay Proceedings in this Case Until Completion of Arbitration**

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned counsel hereby move the Court for an Order compelling Plaintiff to submit this matter to arbitration and to stay proceedings in this case pending arbitration. Defendants bring this Motion based on the AGREEMENT, attached as Exhibit 1. That document, signed by Plaintiff states, in part: "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") . . . ."

This Motion is based upon the South Carolina Rules of Civil Procedure, the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* ("FAA"), the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-20, all applicable law, and the terms of the Arbitration Agreement.

A complete copy of this agreement is provided as an Exhibit to this Motion. This Motion will also be supported by the pleadings in this action, the controlling statutes, applicable case law, any relevant affidavits, any appropriate memoranda of law filed in support of this Motion, any additional documents required by the Court, and such supporting arguments as may be submitted in connection herewith.

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In addition, Defendants show that all litigation, discovery and other matters in the within case should be stayed pending the Court's Order to Compel Arbitration and the completion of arbitration.

CONCLUSION

Defendants respectfully request a hearing on this Motion and that the Court enter an Order compelling the parties to arbitration and staying all proceedings (including discovery) until the completion of arbitration.

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

s/ Barry Krell
Barry Krell, Bar No. 3573
Jeff Buncher, Jr., Bar No. 78890
17 ½ Broad Street – Post Office Box 399
Charleston, South Carolina 29402
Tel: (843) 723-7491; Fax: (843) 577-4179
barry@uricchio.com
jeff@uricchio.com

David N. Levine
6400 Powers Ferry Rd.
Suite 220
Atlanta, Georgia 30339
770-671-8500
770-988-9844 facsimile
dnlevine@dnllaw.com
(Pending Pro Hac Vice)

Attorneys for Defendants

November 12, 2024
Charleston, South Carolina

Vacation Inspirations Membership
PURCHASE AGREEMENT
Distributed by Destination Travel, LLC

MEMBER #[redacted]

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 Perelli 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

_____
Client/Purchaser

Lanay Stewart
Sales Representative

_____
Manager

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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.

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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 _____ Date 10/8/22 _____ Date 10/8/22
Client — Sales Representative

_____ Date _____ Date 10/8/22
Client — Manager

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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 2022

Purchaser

Purchaser

Larry Stewart
Sales Representative

Manager

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

_____ Date
Name as it appears on Card (Printed)

_____ Date
Signature

ELECTRONICALLY FILED - 2024-Nov-12 3:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004606

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

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ELECTRONICALLY FILED - 2025 Mar 13 4:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1002646

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

TO THE DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEYS:

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

SUMMARY OF ARGUMENT

I. THE VACATION INSPIRATIONS' MEMBERSHIP PURCHASE AGREEMENT IS A CONTRACT OF ADHESION ENTERED INTO UNDER THE AUSPICES OF HIGH-PRESSURE SALES TACTICS.

II. THE TERMS OF THE ARBITRATION PROVISION ARE UNCONSIONABLE, OPPRESSIVE, AND UNENFORCEABLE.

III. SEVERANCE OF THE OFFENDING TERMS OF THE ARBITRATION PROVISION REQUIRES WOULD BE IMPERMISSIBLE "BLUE-PENCILING" OF A CONTRACT DISPUTE AND WOULD VIOLATE PUBLIC POLICY.

IV. PURSUANT TO RULE 11, DEFENDANTS' COUNSEL FAILED TO CONSULT IN GOOD FAITH WITH PLAINTIFFS' COUNSEL PRIOR TO FILING THEIR MOTION TO COMPEL ARBITRAITON AND STAY PROCEEDINGS.

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ARBITRATION

> 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 cation 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).

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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)).

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"A take-it-or-leave-it contract of adhesion is not necessarily unconscionable, even though it may indicate one party lacked a meaningful choice." *Id*. (referencing 17A AM. JUR. 2d *Contracts* §274; 17 C.J.S. *Contracts* § 9 & n.9 (2020)). Additionally, "the contract terms must be so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Id.* (quoting *Fanning* at 403, 245). "Although procedural and substantive unconscionability must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability, both need not be present to the same degree; the agreement may be judged on a sliding scale: the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa. 17A AM. JUR. 2d *Contracts* § 272. "In an exceptional case, however, a court may find that a contract provision is so outrageous as to warrant holding it unenforceable on the grounds of substantive unconscionability alone." *Id*.

The recent and on point *Damico* opinion, authored by Chief Justice Kittredge, spells out the applicable procedure for a trial court to make the required determination whether there exists a valid arbitration agreement.

> [T]he same principles of unconscionability apply to contract terms and arbitration provisions alike. The touchstone of the analysis begins with the presence or absence of meaningful choice. Whether one party lacks a meaningful choice . . . typically speaks to the fundamental fairness of the bargaining process. 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.

Damico at 612-13, 755-56 (quoting *Fanning* at 403, 245; *D.R. Horton* at 49, 4; and *Simpson* at 25, 669; also referencing 17A AM. JUR. *Contracts* § 272; 17 C.J.S. *Contracts* § 10). "Parties frequently claim they lack a meaningful choice when a contract of adhesion is involved." *Id*. at 613, 756

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(*citing D.R. Horton* at 49, 4). "Because contracts of adhesion are non-negotiable, '[a]n offeree faced with such a contract has two choices: complete adherence or outright rejection.'" *Id*. at 613, 756 (citing *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 394 (Ct. App. 1998). "Adhesion contracts are not per se unconscionable. However, given that one party to an adhesion contract 'has virtually no voice in the formulation of the [ ] terms and language' under in the contract, courts tend to view adhesive arbitration agreement with 'considerable skepticism,' as it remains doubtful 'any true agreement ever existed to submit the disputes to arbitration.'" *Id*. (*citing Simpson* at 26, and *Lackey* at 394; also referencing 17A AM. JUR. *Contracts* § 274 (noting that "[c]ontracts of adhesion are enforceable unless they are unconscionable," but "[n]evertheless, the fact that a contract is one of adhesion is a strong indicator that [there was] an absence of meaningful choice"; and 17 C.J.S. *Contracts* §9 ("A consumer transaction which is essentially a contract of adhesion may be examined by the courts with special scrutiny to assure that it is not applied in an unfair or unconscionable manner against the party who did not participate in its drafting."). "The distinction between a contract of adhesion and unconscionability is worth emphasizing; *adhesive contracts are not unconscionable in and of themselves so long as the terms are even-handed*." *Id*. at 614, 756.

In *Damico*, the South Carolina Supreme Court was tasked with: 1) identifying what portions of two agreements (a purchase and sale agreement and a limited home warranty agreement), each of which incorporated the other agreement by reference, constituted the arbitration agreement as required by *Prima Paint;* and 2) determining whether that arbitration agreement validly existed or was unconscionable. After finding the relevant arbitration provisions, which used identical language in each instance, were standalone provisions within the respective agreements, the Court found that the validity determination should be limited solely to each

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respective provision in the agreement and that the cross-references to the other agreement provided no additional substance to the scope or procedure of the arbitration proceedings. The Court then shifted its analysis to whether any "contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate the arbitration agreements without contravening 9 U.S.C. § 2. *Id*. at 611 (quoting *Casarotto* at 687). The Plaintiffs in *Damico* asserted that the arbitration provision (along with the two agreements as a whole) were unconscionable and, therefore, invalid necessitating a review of the two prongs of unconscionability by the Court.

Before recognizing that that the *Damico* agreements were contracts of adhesion, the Court stressed that while "it is common practice for the sophisticated drafter of contracts to routinely argue that a particular contract is not one of adhesion when that is plainly untrue", "unconscionability requires a finding of a lack of meaningful choice coupled with unreasonably oppressive terms." *Id*. at 614. Further stating that, "an adhesion contract with fair terms is certainly not unconscionable, and the mere fact a contract is one of adhesion does not doom the contract-drafter's case. *Id*. The Court then recognized the relevant agreements as contracts of adhesion because all of the homebuyers in the development after their names, property address and purchase price were written into the blanks provided for that information. *Id*. It was also recognized that the terms of the agreement of particular interest to the defendant were non-negotiable, as they were preprinted, even though some of the terms did not apply to all homebuyers. *Id*. Next, after considering "the sophistication of Petitioners, as individual homebuyers, pales in comparison to Lennar," and that "Lennar has sold thousands of homes in the Carolinas, whereas Petitioners will likely only purchase, at best, a handful of homes in their lifetime," the Court found Lennar was "significantly more sophisticated than Petitioners in home buying transactions." *Id*. at 614-15, 756. Because the factors combined to "highlight the significant disparity in the parties' bargaining

power, with Lennar enjoying a much stronger bargaining position" the court found the homebuyers "lacked a meaningful choice in their ability to negotiate the arbitration agreement." *Id*. A similarly large disparity exists here.

FACTUAL SUMMARY AND PROCEDURAL BACKGROUND

On May 21, 2024, Plaintiffs filed this action, by and through their Attorneys David D. Wolf and Abigail Edwards Saunders, 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 and requested a Jury Trial. 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.".

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Defendants, nor Defendants' Counsel did not make 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 imbalance (procedural unconscionability) and because its text is one-sided and fundamentally unfair (substantive unconscionability). Thus, Plaintiffs respectfully request that this Court deny the Motion to Compel.

ARGUMENT

I. CONTRACT OF ADHESION

The Vacation Inspirations Membership Purchase Agreement Distributed by Destination Travel, LLC (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 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"). The first sentence of the Terms and Conditions provides "[t]hese Terms and Conditions are part of the Membership

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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.

While the arbitration provision 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.

II. UNCONCIONABILITY

A. Absence of Meaningful Choice & High Pressure Tactics:

In accordance with *Damico* and its forebears, Paragraph VIII 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 contained in Paragraph VIII 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

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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 Agreement. The relative disparity in the parties' bargaining power and sophistication in this context is stark. Plaintiffs are individuals in their 60s 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

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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:

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> [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

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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, 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.

C. AAA Consumer Rules:

The American Arbitration Association has six different sets of "Rules, Forms & Fees." They are:

1) Commercial Arbitration Rules;
2) Construction Industry Arbitration Rules;
3) Employment Arbitration Rules;
4) International Dispute Resolution;
5) Consumer Arbitration Rules; and
6) Labor Arbitration Rules."

American Arbitration Association, *Rules, Forms & Fees*, www.adr.org, http:adr.org/arbitration (last visited Dec. 12.2024).

According to the AAA website, under its Commercial Practice Area, "[t]he AAA provides efficient, effective alternative dispute resolution (ADR) case administration for business-to-business (B2B) claims. Our goal is to get parties back to business. In addition to the AAA's Commercial Arbitration Rules, we offer specialized rules and supplements tailored for specific types of business disputes." *Id.* at Practice Areas, Commercial, www.adr.org/commercial (last visited Dec. 12, 2024). However, when visiting the Consumer practice area, one would find that "[t]he AAA provides for fair administration of consumer disputes – and will exercise its authority

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to decline administration of arbitration demands where an arbitration clause contains material violations of the AAA Consumer Due Process Protocol, developed in 1998 in cooperation with representatives from government agencies, consumer interest groups, education institutions, and businesses.

The goal of the Protocol, in concert with the AAA Consumer Arbitration Rules, is to ensure evenhandedness in the administration of consumer-disputes resolution. These rules apply only to disputes regarding a product or service for personal or household use." *Id*. at Practice Areas, Consumer, www.adr.org/consumer (last visited Dec. 12, 2024). A review of the Consumer Due Process Protocol Statement of Principles, attached as Exhibit A, quickly illustrates why the Defendants' sought an alternative and more friendly forum under the Commercial Arbitration Rules despite the transaction at issue being consumer in nature.

Principle 1 of the Statement provides that '[a]ll parties are entitled to a fundamentally fair ADR Process. As embodiments of fundamental fairness, these Principles should be observed in structuring ADR Programs." *Id*. Principle 2 of the Statement provides that '[p]roviders of goods and services should undertake reasonable measures to provide Consumers with full and accurate information regarding Consumer ADR Programs. At the time the Consumer contracts for goods or services, such measures should include (1) clear and adequate notice regarding the ADR provisions, including a statement indicating whether participation in the ADR Program is mandatory or optional, and (2) reasonable means by which Consumers may obtain additional information regarding the ADR Program. After a dispute arises, Consumers should have access to all information necessary for effective participation in ADR." *Id*. Principle 3 provides "1. Independent and Impartial Neutral. All parties are entitled to a Neutral who is independent and impartial. 2. Independent Administration. If participation in mediation or arbitration is mandatory,

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the procedure should be administered by an Independent ADR Institution. Administrative services should include the maintenance of a panel of prospective Neutrals, facilitation of Neutral selection, collection and distribution of Neutral's fees and expenses, oversight and implementation of ADR rules and procedures, and monitoring of Neutral qualifications, performance, and adherence to pertinent rules, procedures and ethical standards. 3. Standards for Neutrals. The independent ADR Institution should make reasonable efforts to ensure that Neutrals understand and conform to pertinent ADR rules, procedures and ethical standards. 4. Selection of Neutrals. The Consumer and Provider should have an equal voice in the selection of Neutrals in connection with a specific dispute. 5. Disclosure and Disqualification. Beginning at the time of appointment, Neutrals should be required to disclose to the Independent ADR Institution any circumstance likely to affect impartiality, including any bias or financial or personal interest which might affect the result of the ADR proceeding, or any past or present relationship or experience with the parties or their representatives, including past ADR experiences. The Independent ADR Institution should communicate any such information to the parties and other Neutrals, if any. Upon objection of a party to continued service of the Neutral, the Independent ADR Institution should determine whether the Neutral should be disqualified and should inform the parties of its decision. The disclosure obligation of the Neutral and procedure for disqualification should continue throughout the period of appointment. *Id*. While the balance of the principles are self-explanatory, Principle 7's requirement that the arbitration be at a "Reasonably Convenient Location" is noteworthy. This principle provides that "[i]n the case of face-to-face proceedings, the proceedings should be conducted at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination should be made by the Independent ADR Institution or by the Neutral."

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Id. In the present case, an arbitration in Charleston is far less convenient for the Consumers than Defendants, who either reside or conduct business here. Most of the Consumers Defendants target for their products/services are visitors to Charleston, so a return would require each to travel back from an inconvenient location for an arbitration.

In an effort to avoid administration by the AAA and compliance with its Consumer Due Process Protocol Statement of Principles, Defendants specified in the pre-printed dispute resolution provision of the Agreement that the arbitration would not be 'under the auspices of the AAA,' which eliminates any oversight by the AAA to insure fair arbitral proceedings. In doing so, VI's selected arbitrator is free to 'interpret' the rules however the arbitrator deems fit. Because that individual is likely to get more business from VI than from VI's Clients, it would not be unreasonable for a Client to see the arbitrator as biased in favor of the Defendants, which further suggests an impropriety in order to discourage Clients from seeking dispute resolution. The Defendants' efforts to manipulate the "ADR Program," as defined by the Statement of Principles, is yet another deceptive tactic employed to unfairly manipulate Plaintiffs to believe Defendants were legitimate and upstanding businesses/businessmen in order to take advantage of them, by insulating themselves from adherence to the Principles adopted by reputable Independent ADR Institutions, stacking the deck in their favor at any arbitration, and seeking assistance from this Court to do so by requesting the Plaintiffs be compelled to participate in a fundamentally unfair arbitration.

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

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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) Plaintiffs were not represented by independent counsel and as tourists to the area likely did not have reasonable recourse to appropriate legal representation; 5) 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 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.

III. SEVERABILITY

There is no severability clause in the arbitration agreement or the Agreement as a whole, so the arbitration provision must stand or fall as it is written, or the Court would be impermissibly "blue penciling" the Agreement and modifying a material term in dispute between the parties. As with the Plaintiffs in *Damico* and in the recent decision of the South Carolina Supreme Court in *Huskins v. Mungo Homes, LLC*, 444 S.C. 592 (2024) (reversing the courts of appeals' decision to compel arbitration after severing a void clause), the instant transaction involves a consumer transaction. The Court has "emphasized the importance of case-by-case analysis in order to address the unique circumstances inherent in the various types of consumer transactions." *Damico* at 611. In *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 50 (2016), which resulted from a new home purchase like *Damico*, the South Carolina Supreme Court referenced its shift "from following the doctrine of *caveat emptor* ('let the buyer beware') to the doctrine of *caveat venditor* ('let the seller

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beware'), which expresses the public policy to protect consumers in various contexts, which would include the one here. Recently, the South Carolina Supreme Court provided further guidance in *Huskins*, which involved an arbitration provision that limited the claims period to ninety (90) days after the claim arose, by stating that "We have been steadfast in protecting home buyers from unscrupulous and overreaching terms, and applying severance here would erode that laudable public policy." *Huskins* at 597. Without a severability clause in the arbitration clause, the *Huskins* Court found that the facts and circumstances did not illustrate any indication that the parties intend for the provision to be severable and refused to sever the unconscionable portions from the remainder of the arbitration provision. Like *Huskins*, there are no facts or circumstances in the instant matter which manifest an intent of the parties to sever any unenforceable provisions from the enforceable ones. As with *Huskins*, the Defendants "insisted upon an adhesion contract so its terms could not be varied and would stick. [The Defendants] are stuck with their choice. Were we to hold otherwise, parties who impose standard form adhesion contracts on weaker parties would have no downside to throwing in blatantly illegal terms betting they will go unchallenged or, at worst, that courts will throw them out and enforce the rest." *Id*.

However, even if severance were permitted in the present case, after considering the unscrupulous and overreaching terms of the Dispute Resolution provision, there would be no arbitration provision left to apply in the instant case. The first sentence requires 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." Membership Terms and Conditions ¶ VIII. Applying Commercial Arbitration Rules

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to a consumer transaction in order to avoid the procedural protections offered by the AAA in such transactions is unscrupulous and overreaching. Affording one party the sole right to select the arbitrator, as the Dispute Resolution provision grants to the Defendants is also unscrupulous and overreaching. In fact, the AAA's Consumer Due Process Protocol Statement of Principles expressly prohibits one party having such superior authority to direct the proceedings as the Defendants have awarded themselves through the Dispute Resolution provision. While the award of attorneys' fees and costs to the prevailing party is ordinarily even-handed, when one party is granted the selection of the arbitrator, at the very least the appearance that a biased neutral may award such fees and costs creates an *in terrorem* impact on the Client, just as acknowledged in *Damico* and *Huskins* decisions. See *Damico* at 623 ("Moreover, we do not doubt that 'for every arbitration agreement that finds its way to court, there are thousands that exercise an in terrorem effect on [consumers] who respect their contractual obligations.") (citation omitted). Similarly, the location selection rights are tainted with the same flaw as the grant of attorney's fees and costs such that no portion of the arbitration provision is immune in the event of severance.

IV. RULE 11

This Honorable Court should also deny Defendants Motion to Compel Arbitration for violation of Rule 11. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Defendants' Counsel failed to consult in good faith with Plaintiffs' Counsel prior to filing the Motion. Specifically, Defendants' Counsel did not certify in the Motion that consultation would serve no useful purpose or could not be timely held.

Rule 11(a) of the South Carolina Rules of Civil Procedure states, in pertinent part:

> All motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless

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> the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held.
>
> If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11 places a "Duty of Consultation" upon a moving party, meaning the moving party must consult with opposing counsel before a Motion is filed. There are certain situations where Counsel has no duty to consult before filing the Motion. *See* Rule 11(a), SCRCP ("There is no duty of consultation on motions to dismiss, for summary judgment, for new trial, or judgment NOV, or on motions in Family Court for temporary relief pursuant to Family Court Rule 21, or in real estate foreclosure cases, or with pro se litigants.") None of these exceptions are applicable to the case *sub judice*. Defendants' Counsel clearly had a duty to consult prior to filing Defendants' Motion to Compel Arbitration and Stay Proceedings.

Further, Defendants' Motion to Compel Arbitration and Stay Proceedings did not include an Affirmation stating that the Defendants' Attorneys attempted in good faith to resolve the Motion before filing. The Plaintiffs and their Counsel did not receive any communications from Defendants' Counsel, either written or oral, regarding Defendants' Motion prior to Defendant filing the Motion.

A Movant may certify that consultation would serve no useful purpose or could not be timely held. *See* Rule 11(a), SCRCP (stating that "…unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held."). Defendants' Motion failed to include a Certification stating that consultation would serve no useful purpose or

consultation could not be timely held. Thus, there was no evidence or indication that consulting with Plaintiffs' and their Counsel would serve no useful purpose.

Defendants' Motion to Compel Arbitration and Stay Proceedings violates Rule 11 of the South Carolina Rules of Civil Procedure. Defendants' Counsel did not initiate any meaningful communication to discuss the issues raised in the Motion before filing it, demonstrating a lack of good faith effort to resolve the matter. This Honorable Court should deny Defendants' Motion and award Plaintiffs reasonable expenses incurred responding to the Motion, including reasonable Attorneys' Fees.

CONCLUSION

Based upon this Memorandum, applicable case law, and any other documents filed with this Court, Plaintiffs respectfully request that this Honorable Court find the following: (1) the arbitration provision included in the Agreement was not validly agreed upon by the parties; (2) such provision is not enforceable because it is unconscionable; (3) severance of the offending terms of the arbitration provision requires would constitute impermissible "blue-penciling" of a contract dispute and would violate public policy; and (4) Defendants' filing of their Motion to Compel Arbitration and Stay Proceedings and the failure to consult with Plaintiffs' Counsel is a violation of Rule 11(a).

For the reasons set forth herein and in accordance with The Federal Arbitration Act, Rule 11 of the South Carolina Rules of Civil Procedure, and all other applicable case law, specifically *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611 (2022), Plaintiffs respectfully request that this Honorable Court deny Defendants' Motion to Compel Arbitration and Stay Proceedings, as well as, award Plaintiffs their attorneys' fees for responding to Defendants' Motion.

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Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
FRANK PERRELLI, JR.,	)	Civil Action No. 2024-CP-10-04606
	)	
PLAINTIFF,	)	
	)	
vs.	)	**PLAINTIFF'S 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.	)	
	)	

TO THE DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEYS:

Plaintiff Frank Perrelli, Jr. (hereinafter "Plaintiff") by and through his undersigned counsel hereby submits this Memorandum in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings in this Case Until Completion of Arbitration.

SUMMARY OF ARGUMENT

I. THE VACATION INSPIRATIONS' MEMBERSHIP PURCHASE AGREEMENT IS A CONTRACT OF ADHESION ENTERED INTO UNDER THE AUSPICES OF HIGH-PRESSURE SALES TACTICS.

II. THE TERMS OF THE ARBITRATION PROVISION ARE UNCONSIONABLE, OPPRESSIVE, AND UNENFORCEABLE.

III. SEVERANCE OF THE OFFENDING TERMS OF THE ARBITRATION PROVISION REQUIRES WOULD BE IMPERMISSIBLE "BLUE-PENCILING" OF A CONTRACT DISPUTE AND WOULD VIOLATE PUBLIC POLICY.

IV. PURSUANT TO RULE 11, DEFENDANTS' COUNSEL FAILED TO CONSULT IN GOOD FAITH WITH PLAINTIFF'S COUNSEL PRIOR TO FILING THEIR MOTION TO COMPEL ARBITRAITON AND STAY PROCEEDINGS.

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ARBITRATION

> 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 cation 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).

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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)).

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"A take-it-or-leave-it contract of adhesion is not necessarily unconscionable, even though it may indicate one party lacked a meaningful choice." *Id*. (referencing 17A AM. JUR. 2d *Contracts* §274; 17 C.J.S. *Contracts* § 9 & n.9 (2020)). Additionally, "the contract terms must be so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Id.* (quoting *Fanning* at 403, 245). "Although procedural and substantive unconscionability must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability, both need not be present to the same degree; the agreement may be judged on a sliding scale: the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa. 17A AM. JUR. 2d *Contracts* § 272. "In an exceptional case, however, a court may find that a contract provision is so outrageous as to warrant holding it unenforceable on the grounds of substantive unconscionability alone." *Id*.

The recent and on point *Damico* opinion, authored by Chief Justice Kittredge, spells out the applicable procedure for a trial court to make the required determination whether there exists a valid arbitration agreement.

> [T]he same principles of unconscionability apply to contract terms and arbitration provisions alike. The touchstone of the analysis begins with the presence or absence of meaningful choice. Whether one party lacks a meaningful choice . . . typically speaks to the fundamental fairness of the bargaining process. 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.

Damico at 612-13, 755-56 (quoting *Fanning* at 403, 245; *D.R. Horton* at 49, 4; and *Simpson* at 25, 669; also referencing 17A AM. JUR. *Contracts* § 272; 17 C.J.S. *Contracts* § 10). "Parties frequently claim they lack a meaningful choice when a contract of adhesion is involved." *Id*. at 613, 756

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(*citing D.R. Horton* at 49, 4). "Because contracts of adhesion are non-negotiable, '[a]n offeree faced with such a contract has two choices: complete adherence or outright rejection.'" *Id*. at 613, 756 (citing *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 394 (Ct. App. 1998). "Adhesion contracts are not per se unconscionable. However, given that one party to an adhesion contract 'has virtually no voice in the formulation of the [ ] terms and language' under in the contract, courts tend to view adhesive arbitration agreement with 'considerable skepticism,' as it remains doubtful 'any true agreement ever existed to submit the disputes to arbitration.'" *Id*. (*citing Simpson* at 26, and *Lackey* at 394; also referencing 17A AM. JUR. *Contracts* § 274 (noting that "[c]ontracts of adhesion are enforceable unless they are unconscionable," but "[n]evertheless, the fact that a contract is one of adhesion is a strong indicator that [there was] an absence of meaningful choice"; and 17 C.J.S. *Contracts* §9 ("A consumer transaction which is essentially a contract of adhesion may be examined by the courts with special scrutiny to assure that it is not applied in an unfair or unconscionable manner against the party who did not participate in its drafting."). "The distinction between a contract of adhesion and unconscionability is worth emphasizing; *adhesive contracts are not unconscionable in and of themselves so long as the terms are even-handed*." *Id*. at 614, 756.

In *Damico*, the South Carolina Supreme Court was tasked with: 1) identifying what portions of two agreements (a purchase and sale agreement and a limited home warranty agreement), each of which incorporated the other agreement by reference, constituted the arbitration agreement as required by *Prima Paint;* and 2) determining whether that arbitration agreement validly existed or was unconscionable. After finding the relevant arbitration provisions, which used identical language in each instance, were standalone provisions within the respective agreements, the Court found that the validity determination should be limited solely to each

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respective provision in the agreement and that the cross-references to the other agreement provided no additional substance to the scope or procedure of the arbitration proceedings. The Court then shifted its analysis to whether any "contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate the arbitration agreements without contravening 9 U.S.C. § 2. *Id*. at 611 (quoting *Casarotto* at 687). The Plaintiffs in *Damico* asserted that the arbitration provision (along with the two agreements as a whole) were unconscionable and, therefore, invalid necessitating a review of the two prongs of unconscionability by the Court.

Before recognizing that that the *Damico* agreements were contracts of adhesion, the Court stressed that while "it is common practice for the sophisticated drafter of contracts to routinely argue that a particular contract is not one of adhesion when that is plainly untrue", "unconscionability requires a finding of a lack of meaningful choice coupled with unreasonably oppressive terms." *Id*. at 614. Further stating that, "an adhesion contract with fair terms is certainly not unconscionable, and the mere fact a contract is one of adhesion does not doom the contract-drafter's case. *Id*. The Court then recognized the relevant agreements as contracts of adhesion because all of the homebuyers in the development after their names, property address and purchase price were written into the blanks provided for that information. *Id*. It was also recognized that the terms of the agreement of particular interest to the defendant were non-negotiable, as they were preprinted, even though some of the terms did not apply to all homebuyers. *Id*. Next, after considering "the sophistication of Petitioners, as individual homebuyers, pales in comparison to Lennar," and that "Lennar has sold thousands of homes in the Carolinas, whereas Petitioners will likely only purchase, at best, a handful of homes in their lifetime," the Court found Lennar was "significantly more sophisticated than Petitioners in home buying transactions." *Id*. at 614-15, 756. Because the factors combined to "highlight the significant disparity in the parties' bargaining

power, with Lennar enjoying a much stronger bargaining position" the court found the homebuyers "lacked a meaningful choice in their ability to negotiate the arbitration agreement." *Id*. A similarly large disparity exists here.

FACTUAL SUMMARY AND PROCEDURAL BACKGROUND

On September 13, 2024, Plaintiff filed this action, by and through his Attorneys David D. Wolf and Abigail Edwards Saunders, 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 Plaintiff, by and through a Purchase Agreement (the "Agreement") entered into by Defendants and Plaintiff 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 November 4, 2024, Defendants filed their "Answer and Affirmative Defenses." On November 5, 2024, Plaintiff served his 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.". Neither

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Defendants, nor Defendants' Counsel, made any attempt to consult with Plaintiff and his Attorneys prior to filing their Motion as required by Rule 11.

Opposing Defendants' Motion, Plaintiff asserts 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 imbalance (procedural unconscionability) and because its text is one-sided and fundamentally unfair (substantive unconscionability). Thus, Plaintiff respectfully request that this Court deny the Motion to Compel.

ARGUMENT

I. CONTRACT OF ADHESION

The Vacation Inspirations Membership Purchase Agreement Distributed by Destination Travel, LLC (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 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 Client 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"). The first sentence of the Terms and Conditions provides "[t]hese Terms and Conditions are part of the Membership

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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.

While the arbitration provision 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.

II. UNCONCIONABILITY

A. Absence of Meaningful Choice & High Pressure Tactics:

In accordance with *Damico* and its forebears, Paragraph VIII 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 contained in Paragraph VIII 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 Plaintiff

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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. Plaintiff was permitted no input into the terms of the Agreement. The relative disparity in the parties' bargaining power and sophistication in this context is stark. Plaintiff is an elderly individual who traveled to South Carolina for the first time and had 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 Plaintiff could afford to purchase the membership, much like a home purchaser, his 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. Plaintiff did not travel with any legal counsel and did not have an opportunity, nor was 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, Plaintiff 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 Plaintiff in the completion of his forms. It is also worth noting that Defendants' restriction on the use of cell phones served

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to prevent Plaintiff 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, Plaintiff 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:

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> [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

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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, 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.

C. AAA Consumer Rules:

The American Arbitration Association has six different sets of "Rules, Forms & Fees." They are:

1) Commercial Arbitration Rules;
2) Construction Industry Arbitration Rules;
3) Employment Arbitration Rules;
4) International Dispute Resolution;
5) Consumer Arbitration Rules; and
6) Labor Arbitration Rules."

American Arbitration Association, *Rules, Forms & Fees*, www.adr.org, http:adr.org/arbitration (last visited Dec. 12.2024).

According to the AAA website, under its Commercial Practice Area, "[t]he AAA provides efficient, effective alternative dispute resolution (ADR) case administration for business-to-business (B2B) claims. Our goal is to get parties back to business. In addition to the AAA's Commercial Arbitration Rules, we offer specialized rules and supplements tailored for specific types of business disputes." *Id.* at Practice Areas, Commercial, www.adr.org/commercial (last visited Dec. 12, 2024). However, when visiting the Consumer practice area, one would find that "[t]he AAA provides for fair administration of consumer disputes – and will exercise its authority

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to decline administration of arbitration demands where an arbitration clause contains material violations of the AAA Consumer Due Process Protocol, developed in 1998 in cooperation with representatives from government agencies, consumer interest groups, education institutions, and businesses.

The goal of the Protocol, in concert with the AAA Consumer Arbitration Rules, is to ensure evenhandedness in the administration of consumer-disputes resolution. These rules apply only to disputes regarding a product or service for personal or household use." *Id*. at Practice Areas, Consumer, www.adr.org/consumer (last visited Dec. 12, 2024). A review of the Consumer Due Process Protocol Statement of Principles, attached as Exhibit A, quickly illustrates why the Defendants' sought an alternative and more friendly forum under the Commercial Arbitration Rules despite the transaction at issue being consumer in nature.

Principle 1 of the Statement provides that '[a]ll parties are entitled to a fundamentally fair ADR Process. As embodiments of fundamental fairness, these Principles should be observed in structuring ADR Programs." *Id*. Principle 2 of the Statement provides that '[p]roviders of goods and services should undertake reasonable measures to provide Consumers with full and accurate information regarding Consumer ADR Programs. At the time the Consumer contracts for goods or services, such measures should include (1) clear and adequate notice regarding the ADR provisions, including a statement indicating whether participation in the ADR Program is mandatory or optional, and (2) reasonable means by which Consumers may obtain additional information regarding the ADR Program. After a dispute arises, Consumers should have access to all information necessary for effective participation in ADR." *Id*. Principle 3 provides "1. Independent and Impartial Neutral. All parties are entitled to a Neutral who is independent and impartial. 2. Independent Administration. If participation in mediation or arbitration is mandatory,

the procedure should be administered by an Independent ADR Institution. Administrative services should include the maintenance of a panel of prospective Neutrals, facilitation of Neutral selection, collection and distribution of Neutral's fees and expenses, oversight and implementation of ADR rules and procedures, and monitoring of Neutral qualifications, performance, and adherence to pertinent rules, procedures and ethical standards. 3. Standards for Neutrals. The independent ADR Institution should make reasonable efforts to ensure that Neutrals understand and conform to pertinent ADR rules, procedures and ethical standards. 4. Selection of Neutrals. The Consumer and Provider should have an equal voice in the selection of Neutrals in connection with a specific dispute. 5. Disclosure and Disqualification. Beginning at the time of appointment, Neutrals should be required to disclose to the Independent ADR Institution any circumstance likely to affect impartiality, including any bias or financial or personal interest which might affect the result of the ADR proceeding, or any past or present relationship or experience with the parties or their representatives, including past ADR experiences. The Independent ADR Institution should communicate any such information to the parties and other Neutrals, if any. Upon objection of a party to continued service of the Neutral, the Independent ADR Institution should determine whether the Neutral should be disqualified and should inform the parties of its decision. The disclosure obligation of the Neutral and procedure for disqualification should continue throughout the period of appointment. *Id*. While the balance of the principles are self-explanatory, Principle 7's requirement that the arbitration be at a "Reasonably Convenient Location" is noteworthy. This principle provides that "[i]n the case of face-to-face proceedings, the proceedings should be conducted at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination should be made by the Independent ADR Institution or by the Neutral."

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Id. In the present case, an arbitration in Charleston is far less convenient for the Consumers than Defendants, who either reside or conduct business here. Most of the Consumers Defendants target for their products/services are visitors to Charleston, so a return would require each to travel back from an inconvenient location for an arbitration.

In an effort to avoid administration by the AAA and compliance with its Consumer Due Process Protocol Statement of Principles, Defendants specified in the pre-printed dispute resolution provision of the Agreement that the arbitration would not be 'under the auspices of the AAA,' which eliminates any oversight by the AAA to insure fair arbitral proceedings. In doing so, VI's selected arbitrator is free to 'interpret' the rules however the arbitrator deems fit. Because that individual is likely to get more business from VI than from VI's Clients, it would not be unreasonable for a Client to see the arbitrator as biased in favor of the Defendants, which further suggests an impropriety in order to discourage Clients from seeking dispute resolution. The Defendants' efforts to manipulate the "ADR Program," as defined by the Statement of Principles, is yet another deceptive tactic employed to unfairly manipulate Plaintiff to believe Defendants were legitimate and upstanding businesses/businessmen in order to take advantage of him, by insulating themselves from adherence to the Principles adopted by reputable Independent ADR Institutions, stacking the deck in their favor at any arbitration, and seeking assistance from this Court to do so by requesting Plaintiff be compelled to participate in a fundamentally unfair arbitration.

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 Plaintiff was an individual on vacation in Charleston; 2) Defendants are involved in transactions of this nature hundreds or more times a year, while Plaintiff has only ever purchased the instant Travel

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Membership; 3) the arbitration provision was contained in a preprinted portion of the Agreement in which Plaintiff had only the choice of whether to "take it or leave it at the time of the purchase; 4) Plaintiff was not represented by independent counsel and as a tourist to the area likely did not have reasonable recourse to appropriate legal representation; 5) 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 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.

III. SEVERABILITY

There is no severability clause in the arbitration agreement or the Agreement as a whole, so the arbitration provision must stand or fall as it is written, or the Court would be impermissibly "blue penciling" the Agreement and modifying a material term in dispute between the parties. As with the Plaintiffs in *Damico* and in the recent decision of the South Carolina Supreme Court in *Huskins v. Mungo Homes, LLC*, 444 S.C. 592 (2024) (reversing the courts of appeals' decision to compel arbitration after severing a void clause), the instant transaction involves a consumer transaction. The Court has "emphasized the importance of case-by-case analysis in order to address the unique circumstances inherent in the various types of consumer transactions." *Damico* at 611. In *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 50 (2016), which resulted from a new home purchase like *Damico*, the South Carolina Supreme Court referenced its shift "from following the doctrine of *caveat emptor* ('let the buyer beware') to the doctrine of *caveat venditor* ('let the seller

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beware'), which expresses the public policy to protect consumers in various contexts, which would include the one here. Recently, the South Carolina Supreme Court provided further guidance in *Huskins*, which involved an arbitration provision that limited the claims period to ninety (90) days after the claim arose, by stating that "We have been steadfast in protecting home buyers from unscrupulous and overreaching terms, and applying severance here would erode that laudable public policy." *Huskins* at 597. Without a severability clause in the arbitration clause, the *Huskins* Court found that the facts and circumstances did not illustrate any indication that the parties intend for the provision to be severable and refused to sever the unconscionable portions from the remainder of the arbitration provision. Like *Huskins*, there are no facts or circumstances in the instant matter which manifest an intent of the parties to sever any unenforceable provisions from the enforceable ones. As with *Huskins*, the Defendants "insisted upon an adhesion contract so its terms could not be varied and would stick. [The Defendants] are stuck with their choice. Were we to hold otherwise, parties who impose standard form adhesion contracts on weaker parties would have no downside to throwing in blatantly illegal terms betting they will go unchallenged or, at worst, that courts will throw them out and enforce the rest." *Id*.

However, even if severance were permitted in the present case, after considering the unscrupulous and overreaching terms of the Dispute Resolution provision, there would be no arbitration provision left to apply in the instant case. The first sentence requires 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." Membership Terms and Conditions ¶ VIII. Applying Commercial Arbitration Rules

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to a consumer transaction in order to avoid the procedural protections offered by the AAA in such transactions is unscrupulous and overreaching. Affording one party the sole right to select the arbitrator, as the Dispute Resolution provision grants to the Defendants is also unscrupulous and overreaching. In fact, the AAA's Consumer Due Process Protocol Statement of Principles expressly prohibits one party having such superior authority to direct the proceedings as the Defendants have awarded themselves through the Dispute Resolution provision. While the award of attorneys' fees and costs to the prevailing party is ordinarily even-handed, when one party is granted the selection of the arbitrator, at the very least the appearance that a biased neutral may award such fees and costs creates an in terrorem impact on the Client, just as acknowledged in *Damico* and *Huskins* decisions. See *Damico* at 623 ("Moreover, we do not doubt that 'for every arbitration agreement that finds its way to court, there are thousands that exercise an in terrorem effect on [consumers] who respect their contractual obligations.") (citation omitted). Similarly, the location selection rights are tainted with the same flaw as the grant of attorney's fees and costs such that no portion of the arbitration provision is immune in the event of severance.

IV. RULE 11

This Honorable Court should also deny Defendants Motion to Compel Arbitration for violation of Rule 11. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Defendants' Counsel failed to consult in good faith with Plaintiff's Counsel prior to filing the Motion. Specifically, Defendants' Counsel did not certify in the Motion that consultation would serve no useful purpose or could not be timely held.

Rule 11(a) of the South Carolina Rules of Civil Procedure states, in pertinent part:

> All motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless

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> the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held.
>
> If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11 places a "Duty of Consultation" upon a moving party, meaning the moving party must consult with opposing counsel before a Motion is filed. There are certain situations where Counsel has no duty to consult before filing the Motion. See Rule 11(a), SCRCP ("There is no duty of consultation on motions to dismiss, for summary judgment, for new trial, or judgment NOV, or on motions in Family Court for temporary relief pursuant to Family Court Rule 21, or in real estate foreclosure cases, or with pro se litigants.") None of these exceptions are applicable to the case sub judice. Defendants' Counsel clearly had a duty to consult prior to filing Defendants' Motion to Compel Arbitration and Stay Proceedings.

Further, Defendants' Motion to Compel Arbitration and Stay Proceedings did not include an Affirmation stating that the Defendants' Attorneys attempted in good faith to resolve the Motion before filing. The Plaintiff and his Counsel did not receive any communications from Defendants' Counsel, either written or oral, regarding Defendants' Motion prior to Defendant filing the Motion.

A Movant may certify that consultation would serve no useful purpose or could not be timely held. See Rule 11(a), SCRCP (stating that "…unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held."). Defendants' Motion failed to include a Certification stating that consultation would serve no useful purpose or

consultation could not be timely held. Thus, there was no evidence or indication that consulting with Plaintiff's and his Counsel would serve no useful purpose.

Defendants' Motion to Compel Arbitration and Stay Proceedings violates Rule 11 of the South Carolina Rules of Civil Procedure. Defendants' Counsel did not initiate any meaningful communication to discuss the issues raised in the Motion before filing it, demonstrating a lack of good faith effort to resolve the matter. This Honorable Court should deny Defendants' Motion and award Plaintiff reasonable expenses incurred responding to the Motion, including reasonable Attorneys' Fees.

CONCLUSION

Based upon this Memorandum, applicable case law, and any other documents filed with this Court, Plaintiff respectfully requests that this Honorable Court find the following: (1) the arbitration provision included in the Agreement was not validly agreed upon by the parties; (2) such provision is not enforceable because it is unconscionable; (3) severance of the offending terms of the arbitration provision requires would constitute impermissible "blue-penciling" of a contract dispute and would violate public policy; and (4) Defendants' filing of their Motion to Compel Arbitration and Stay Proceedings and the failure to consult with Plaintiff's Counsel is a violation of Rule 11(a).

For the reasons set forth herein and in accordance with The Federal Arbitration Act, Rule 11 of the South Carolina Rules of Civil Procedure, and all other applicable case law, specifically *Damico v. Lennar Carolinas*, LLC, 437 S.C. 596, 611 (2022), Plaintiff respectfully requests that this Honorable Court deny Defendants' Motion to Compel Arbitration and Stay Proceedings, as well as, award Plaintiff his attorneys' fees for responding to Defendants' Motion.

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Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-2646
PETER SKOLER AND PATRICIA SKOLER, Plaintiffs, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, AND JEFFREY PUMILIA, Defendants.	))))))))))))	**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

Defendants by and through their undersigned counsel, hereby file their Memorandum in support of their Motion to Compel Arbitration and Stay Proceedings, as follows:

SHORT FACTUAL BACKGROUND AND LITIGATION HISTORY

On or about March 21, 2022, Plaintiffs purchased a Vacation Inspirations Membership in Charleston, South Carolina. Plaintiffs are resident of Massachusetts. Defendants are all residents of the State of South Carolina. A copy of the Purchase Agreement (Vacation Inspirations Membership) (the "Purchase Agreement") is attached to the pending Motion as an Exhibit. The Purchase Agreement contemplates the use of telephones, faxes and emails to book travel and cruises outside the State of South Carolina, all in and affecting interstate commerce. Additionally, Defendants attach the affidavit of Randy Gardner filed in C.A. #2024-CP-10-4606 which conclusively shows that the matters at issue in Plaintiffs' complaint involve interstate commerce.

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On May 21, 2024, Plaintiffs filed their Complaint containing numerous counts and allegations. On November 4, 2024, Defendants filed their Answer and Affirmative Defenses. On November 12, 2024, Defendants filed the within Motion to Compel Arbitration and Stay Proceedings, all to enforce that portion of the Purchase Agreement clearly providing for arbitration (rather than litigation) in the Dispute Resolution section therein.

Defendants rely upon the provisions of the Federal Arbitration Act ("FAA"), the affidavit of Randy Gardner attached as an Exhibit hereto, and all other applicable laws in support of their Motion.

ARGUMENT AND CITATION OF AUTHORITY

I. ONLY THE ARBITRATOR HAS JURISDICTION TO DECIDE ISSUES OF ARBITRABILITY

Defendants' Motion to Compel Arbitration specifically relies upon all applicable law, including, but not limited to the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "FAA"), as well as the terms of the arbitration requirement contained in the Purchase (Membership) Agreement. The arbitration paragraph includes the following provision:

> 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 [Vacation Inspirations].

See Agreement attached to Defendants' Motion to Compel Arbitration at Para. VIII.

Pursuant to the FAA and the Commercial Arbitration Rules of the AAA and agreed to by Plaintiffs, and the citations below, the question of arbitrability is to be determined and decided by the arbitrator, and respectfully, not the Court.

Rule R-7(a) and (b) of the Commercial Rules provide as follows:

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> The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
>
> The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

See FAA, Rule R-7(a) and (b). Therefore, the Court must defer to the arbitrator all issues and the Court should grant the pending Motion to Compel Arbitration.

This issue has been decided by the United States Supreme Court in the case of Henry Schein, Inc. vs. Archer & White Sales, Inc., 586 U.S. 63,139 S. Ct. 524(2019). In that case the arbitration provision provided that any dispute [with unrelated exceptions] **"shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association [AAA]. The place of arbitration shall be in Charlotte, North Carolina."** See Schein, Inc., 586 U.S. at 66, 139 S. Ct. at 528 (internal citations omitted) (emphasis added).

The United States Supreme Court held the requirement the arbitration be conducted in accordance with the Arbitration Rules of the American Arbitration Association means that only the arbitrator and not the trial Court could decide the arbitrability question.

The Schein Supreme Court decision goes on to state the following:

> When the parties' contract delegates the arbitrability question to the arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue.

Schein, Inc., 586 U.S. at 68, 139 S. Ct. at 529. The Court also stated:

> When the parties' contract delegates the arbitrability question to the arbitrator, the courts must respect the parties' decision as embodied in the contract.

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Id. at 71, 139 S. Ct. 524 at 531. In the arbitration provision herein, the Purchase Agreement clearly and unequivocally invoked the Commercial Arbitration Rules of the AAA. As noted below, the AAA Commercial Rules specifically provide for such delegation to the arbitrator.

The Purchase Agreement and the arbitration clause have the required nexus to interstate commerce as set forth in the Gardner Affidavit to invoke the arbitration provisions of the FAA. See generally, Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 115 S. Ct. 834 (1995). Therefore, under the Federal Arbitration Act, the Court may not decide whether an arbitration agreement applies to the instant dispute if the parties clearly and unmistakably delegated the question to an arbitrator. See e.g., Masters v. KOL, Inc., 431 S.C. 28, 30, 846 S.E.2d 893, 894 (Ct. App. 2020).

Moreover, under any circumstance, arbitration should be required under the FAA. "[The FAA applies . . . to any arbitration agreement regarding a transaction that in fact involves interstate commerce." See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001)Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). So long as interstate commerce is involved, the FAA controls arbitration. Mr. Gardner's affidavit provides clear evidence of the necessary involvement with interstate commerce. The arbitration should be conducted under the AAA Commercial Rules and in accordance with the FAA with any issues regarding arbitrability decided by the arbitrator. The Motion to Compel Arbitration and Stay Proceedings should be granted and any issues regarding arbitrability should be decided by the arbitrator.

II. PLAINTIFFS ARE PRESUMED TO HAVE READ, UNDERSTOOD AND AGREED TO THE TERMS OF THE PURCHASE AGREEMENT, INCLUDING THE ARBITRATION PROVISION

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Alternatively, regardless of the decision maker, the ultimate question of arbitrability "is a matter of contract interpretation." See Am. Recovery Corp. v. Computerized Thermal Imaging, 96 F.3d 88, 92 (4th Cir. 1996) (internal citations omitted).

It is virtually black letter law that anyone who can read is presumed to have read any agreement that person signs. "[O]ne who has signed a contract is presumed to have read, understood and assented to its terms." See Gibson v. Epting, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (internal citations omitted). "A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003).

The arbitration provision herein is governed by the FAA and cannot be set aside on the ground that the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it. See Munoz, 343 S.C. 531 at 541 n.6, 542 S.E.2d at 365.

In addition, the South Carolina Supreme Court noted the following:

> "In these circumstances, we are constrained to hold that her conduct, in failing to employ the opportunity and means given her to acquaint herself with the contents of the policy, was clearly a conscious and reckless disregard of her duty in the premises and was a proximate cause of her alleged injury or damage."

See Hood v. Life & Cas. Ins. Co. of Tennessee, 173 S.C. 139, 146, 175 S.E. 76 (S.C. 1934).Plaintiffs therefore cannot argue that they did not read or understand the Purchase Agreement and all of its terms, including the arbitration provision before signing the Purchase Agreement. And as noted below, Plaintiffs had the choice and opportunity to alter or otherwise modify the arbitration provision. They simply chose not to do so before signing the Purchase

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Agreement. Plaintiffs had a meaningful choice and they accepted the terms of the Purchase Agreement, including the arbitration provision.

The Motion to Compel Arbitration and Stay Proceedings should be granted.

III. THE ARBITRATION PROVISION IS NOT UNCONSCIONABLE.

Neither the Purchase Agreement nor the arbitration provision therein is on a "take -it-or-leave-it basis with no negotiable terms and that its evident from the agreement itself. Plaintiffs failed to make any effort to negotiate the arbitration provision, even though they had the opportunity to do so and in fact, did negotiate several matters as noted below. Plaintiffs had meaningful choices, they just did not choose to make any of those choices regarding the arbitration provision.

The Purchase Agreement includes an Addendum/Exception (attached as an Exhibit to the pending Motion), which provided Plaintiffs an opportunity to alter or amend the arbitration provision. In fact, as seen on the Addendum/Exception, there are four (4) such handwritten items. None of the four (4) exceptions handwritten involve or address the arbitration provision. Plaintiffs signed the handwritten page with the exceptions. Plaintiffs had a meaningful choice, but chose not to raise any questions at the time of the Purchase Agreement regarding the arbitration provision and. Plaintiffs cannot now be permitted to claim otherwise.

Furthermore, the Plaintiffs' other arguments regarding unconscionability are based on unsubstantiated or irrelevant allegations and cannot be summarily decided by this court. The FAA provides in relevant part that "[i]f the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof." See 9 U.S.C. § 4. In making such a decision, the court is obliged to conduct a trial when a party unequivocally denies that an arbitration agreement exists and shows sufficient facts in support

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thereof. Berkeley Cty. Sch. Dist. v. Hub Int'l. Ltd., 944 F.3d 225, 234 (4th Cir. 2019). This is yet another reason why the Court should grant the Defendants' motion and refer this matter to arbitration so that the arbitrator can conduct an evidentiary hearing on the issue of arbitrability if he or she deems that necessary.

An example of such an unsubstantiated allegation is the Plaintiffs claim that the agreement is unconscionable because they were supposedly subjected to high pressure sales tactics. However, item number 10 of the Vacations Inspirations Membership Acknowledgment of the Agreement specifically asks if the decision to purchase was "based on any high pressure sales tactics" and Plaintiffs responded "no". Plaintiffs also signed that page.

As for the contention that Plaintiffs did not have equal bargaining power, it is noteworthy that this purchase was a travel club membership. It is not an essential purchase such as shelter or even a core consumer purchase such as an automobile. Under any circumstance, Plaintiffs could have just listened to the presentation and left at any time without signing the Purchase Agreement. It is not unusual for those who listen to the Defendants' sales presentation to do only that and then decline to purchase.

The request for participants in the sales presentation to turn off their cell phones is not a high pressure sales tactic. Instead, that request is made prior to the sales presentation because of the expectation that cell phone usage will be a constant distraction during the presentation.

It is irrelevant that Plaintiffs did not "travel with any legal counsel" or that he did not consult with an attorney prior to signing the Agreement. Plaintiffs cite no support for the idea that a contract is unconscionable unless the parties first have an opportunity to consult with counsel. Also, Defendants did not have any duty to advise Plaintiffs to seek legal counsel.

IV. THE AAA COMMERCIAL RULES OF ARBITRATION PROVIDE THE METHOD FOR APPOINTING A FAIR ARBITRATOR. THE ARBITRATION

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PROVISION IN THE PURCHASE AGREEMENT COMPLIES WITH THAT METHOD AND MUST BE FOLLOWED

Plaintiffs also argue that arbitration should not be compelled because the arbitration agreement that he signed does not provide a fair, unbiased forum. However, an examination of the applicable rule conclusively refutes that claim. Rule R-13 of the AAA Commercial Arbitration Rules states in part as follows:

> (a) If the agreement of the parties names an arbitrator **or specifies a method of appointment of an arbitrator,** that designation or method shall be followed. (Emphasis added).

See FAA, Rule R-13. Moreover, Rule R-18(a) states in part as follows:

> An arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for
>
> (i) Partiality or lack of independence.

See FAA, Rule R-18(a). While Rule R-18(b) permits appointment of a "non-neutral" arbitrator, that is not the case here. The arbitration clause challenged by the Plaintiffs merely allows Defendant Vacation Inspirations to choose the arbitrator, but it does not relieve the arbitrator selected of his or her obligations under the AAA Commercial Rules to be impartial and independent. Moreover South Carolina ADR Rule 13(d) has a similar provision. Contrary to Plaintiffs' arguments, the arbitration provision invoking the Commercial Rules of the American Arbitration Association fully and completely complies with and is accordance with the foregoing Rules and provides a forum for resolving this dispute by an unbiased arbitrator.

V. THE CONSUMER ARBITRATION RULES DO NOT APPLY

Defendants also note that Plaintiffs argument that the AAA Consumer Rules as cited by and relied upon by Plaintiffs is simply a "red herring" and a distraction from the actual facts. The

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arbitration provision clearly invoked the AAA Commercial Rules. The AAA Consumer Rules are not in any way relevant to any issue herein.

VI. RULE 11 MATTER

Plaintiffs clearly were not and are not desirous of participating in arbitration (even though they previously agreed to do so). Any effort to consult with Plaintiffs' counsel before filing the within motion would have been futile, as can be seen from Plaintiffs' response to the motion. The Rule 11 aspect of Plaintiffs' response cannot negate the actual issues presented herein.

CONCLUSION

The parties agreed to the arbitration procedure in this case. Based on all of the above argument and citation of authority, the Motion to Compel Arbitration and Stay Proceedings should be granted.

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ATTORNEYS FOR DEFENDANTS

CHARLESTON, SC

March 25, 2025

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-4606
FRANK PERRELLI, JR. Plaintiff. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH, SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA Defendants.	**AFFIDAVIT IN SUPPORT OF DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

AFFIDAVIT OF RANDY GARDNER

1. I am one of the named Defendants in this litigation. I am over the age of eighteen years and am not laboring under any infirmity which might affect the competency of this Affidavit. This Affidavit is made and given in support of Defendants' Motion to Compel Arbitration and Stay Proceedings. This Affidavit is made and given from my personal knowledge.

2. I am a member and a managing member of Destination Travel, LLC , a South Carolina limited liability company. I am also one of the operators of Vacation Inspirations.

3. Destination Travel distributes Vacation Inspirations memberships to Members who reside outside the State of South Carolina and throughout the United States.

4. Virtually all Vacation Inspirations memberships are sold to residents of States States other than South Carolina.

5. Virtually all sales of memberships are paid for by Members using credit cards with

banks and credit unions throughout the United States. Credit card transactions are processed by a processing company located outside the State of South Carolina. Sales proceeds are deposited in a National Bank.

6. In order to provide services to its Members, Vacation Inspirations utilizes the services of travel agents located in various cities and States outside South Carolina.

7. Vacation Inspirations also utilizes various other tour companies and other travel entities throughout the United States in order to service its Members who themselves reside in States other than South Carolina and throughout the United States.

8. Vacation Inspirations books numerous varieties of travel for its Members, including but not limited to hotels, airline reservations, rental cars, cruises and package tours throughout the United States and other countries in the world.

Randy Gardner

Sworn to and subscribed
before me this 24 day of
March, 2025.

Notary Public

William Duggan
Notary Public of South Carolina
Commission Expires:02/10/2030

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-04606
FRANK PERRELLI, JR., Plaintiff, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, AND JEFFREY PUMILIA, Defendants.	))))))))))))	**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

Defendants by and through their undersigned counsel, hereby file their Memorandum in support of their Motion to Compel Arbitration and Stay Proceedings, as follows:

SHORT FACTUAL BACKGROUND AND LITIGATION HISTORY

On or about October 8, 2022, Plaintiff purchased a Vacation Inspirations Membership in Charleston, South Carolina. Plaintiff is a resident of the State of Connecticut. Defendants are all residents of the State of South Carolina. A copy of the Purchase Agreement (Vacation Inspirations Membership) (the "Purchase Agreement") is attached to the pending Motion as an Exhibit. The Purchase Agreement contemplates the use of telephones, faxes and emails to book travel and cruises outside the State of South Carolina, all in and affecting interstate commerce. Additionally, Defendants attach the affidavit of Randy Gardner which conclusively shows that the matters at issue in Plaintiff's complaint involve interstate commerce.

On September 13, 2024, Plaintiff filed his Complaint containing numerous counts and allegations. On November 4, 2024, Defendants filed their Answer and Affirmative Defenses.

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On November 12, 2024, Defendants filed the within Motion to Compel Arbitration and Stay Proceedings, all to enforce that portion of the Purchase Agreement clearly providing for arbitration (rather than litigation) in the Dispute Resolution section therein.

Defendants rely upon the provisions of the Federal Arbitration Act ("FAA"), the affidavit of Randy Gardner attached as an Exhibit hereto, and all other applicable laws in support of their Motion.

ARGUMENT AND CITATION OF AUTHORITY

I. ONLY THE ARBITRATOR HAS JURISDICTION TO DECIDE ISSUES OF ARBITRABILITY

Defendants' Motion to Compel Arbitration specifically relies upon all applicable law, including, but not limited to the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "FAA"), as well as the terms of the arbitration requirement contained in the Purchase (Membership) Agreement. The arbitration paragraph includes the following provision:

> 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 [Vacation Inspirations].

See Agreement attached to Defendants' Motion to Compel Arbitration at Para. VIII.

Pursuant to the FAA and the Commercial Arbitration Rules of the AAA and agreed to by Plaintiff, and the citations below, the question of arbitrability is to be determined and decided by the arbitrator, and respectfully, not the Court.

Rule R-7(a) and (b) of the Commercial Rules provide as follows:

> The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.

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> The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

See FAA, Rule R-7(a) and (b). Therefore, the Court must defer to the arbitrator all issues and the Court should grant the pending Motion to Compel Arbitration.

This issue has been decided by the United States Supreme Court in the case of Henry Schein, Inc. vs. Archer & White Sales, Inc., 586 U.S. 63, 139 S. Ct. 524, (2019). In that case the arbitration provision provided that any dispute [with unrelated exceptions] **"shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association [AAA]. The place of arbitration shall be in Charlotte, North Carolina."** See Schein, Inc., 586 U.S. at 66, 139 S. Ct. at 528 (internal citations omitted) (emphasis added).

The United States Supreme Court held the requirement the arbitration be conducted in accordance with the Arbitration Rules of the American Arbitration Association means that only the arbitrator and not the trial Court could decide the arbitrability question.

The Schein Supreme Court decision goes on to state the following:

> When the parties' contract delegates the arbitrability question to the arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. *Id* at 529. …. When the parties' contract delegates the arbitrability question to the arbitrator, the courts must respect the parties' decision as embodied in the contract.

Schein, Inc., 586 U.S. at 68, 139 S. Ct. at 529. The Court also stated:

> When the parties; contract delegates the arbitrability question to the arbitrator, the courts must respect the partes' decision as embodied in the contract.

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Id. at 71, 139 S. Ct. 524 at 531. In the arbitration provision herein, the Purchase Agreement clearly and unequivocally invoked the Commercial Arbitration Rules of the AAA. As noted below, the AAA Commercial Rules specifically provide for such delegation to the arbitrator.

The Purchase Agreement and the arbitration clause have the required nexus to interstate commerce as set forth in the Gardner Affidavit to invoke the arbitration provisions of the FAA. See generally, Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 115 S. Ct. 834 (1995). Therefore, under the Federal Arbitration Act, the Court may not decide whether an arbitration agreement applies to the instant dispute if the parties clearly and unmistakably delegated the question to an arbitrator. See also Masters v. KOL, Inc., 431 S.C. 28, 846 S.E.2d 893, 894 (Ct. App. 2020).

Moreover, under any circumstance, arbitration should be required under the FAA.

"[The FAA applies . . . to any arbitration agreement regarding a transaction that in fact involves interstate commerce." See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). So long as interstate commerce is involved, the FAA controls arbitration. Mr. Gardner's affidavit provides clear evidence of the necessary involvement with interstate commerce. The arbitration should be conducted under the AAA Commercial Rules and in accordance with the FAA with any issues regarding arbitrability decided by the arbitrator. The Motion to Compel Arbitration and Stay Proceedings should be granted and any issues regarding arbitrability should be decided by the arbitrator.

II. PLAINTIFF IS PRESUMED TO HAVE READ, UNDERSTOOD AND AGREED TO THE TERMS OF THE PURCHASE AGREEMENT, INCLUDING THE ARBITRATION PROVISION

Alternatively, regardless of the decision maker, the ultimate question of arbitrability "is a matter of contract interpretation." See Am. Recovery Corp. v. Computerized Thermal Imaging, 96

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F.3d 88, 92 (4th Cir. 1996) (internal citations omitted). It is virtually black letter law that anyone who can read is presumed to have read any agreement that person signs. "[One] who has signed a contract is presumed to have read, understood and assented to its terms." Gibson v. Epting, 426 S.C. 346, 352 827 S.E.2d 178, 181 (Ct. App. 2019) (internal citations omitted). "A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003).

The arbitration provision herein is governed by the FAA and cannot be set aside on the ground that the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it. See Munoz, 343 S.C. 531 at 541 n.6, 542 S.E.2d at 365.

In addition, the South Carolina Supreme Court noted the following:

> "In these circumstances, we are constrained to hold that her conduct, in failing to employ the opportunity and means given her to acquaint herself with the contents of the policy, was clearly a conscious and reckless disregard of her duty in the premises and was a proximate cause of her alleged injury or damage."

See Hood v. Life & Cas. Ins. Co. of Tennessee, 173 S.C. 139, 146, 175 S.E. 76 (S.C. 1934). Plaintiff therefore cannot argue that he did not read or understand the Purchase Agreement and all of its terms, including the arbitration provision before signing the Purchase Agreement. And as noted below, Plaintiff had the choice and opportunity to alter or otherwise modify the arbitration provision. He simply chose not to do so before signing the Purchase Agreement. Plaintiff had a meaningful choice and he accepted the terms of the Purchase Agreement, including the arbitration provision.

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The Motion to Compel Arbitration and Stay Proceedings should be granted.

III. THE ARBITRATION PROVISION IS NOT UNCONSCIONABLE.

Neither the Purchase Agreement nor the arbitration provision therein is on a "take -it-or-leave-it basis with no negotiable terms and that its evident from the agreement itself. Plaintiff failed to make any effort to negotiate the arbitration provision, even though he had the opportunity to do so and in fact, did negotiate several matters as noted below. Plaintiff had meaningful choices, he just did not choose to make any of those choices regarding the arbitration provision.

The Purchase Agreement includes an Addendum/Exception (attached as an Exhibit to the pending Motion), which provided Plaintiff an opportunity to alter or amend the arbitration provision. In fact, as seen on the Addendum/Exception, there are four (4) such handwritten items. None of the four (4) exceptions handwritten involve or address the arbitration provision. Plaintiff signed the handwritten page with the exceptions. Plaintiff had a meaningful choice, but he chose not to raise any questions at the time of the Purchase Agreement regarding the arbitration provision and. Plaintiff cannot now be permitted to claim otherwise.

Furthermore, the Plaintiff's other arguments regarding unconscionability are based on unsubstantiated or irrelevant allegations and cannot be summarily decided by this court. The FAA provides in relevant part that "[i]f the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. See 9 U.S.C. § 4. In making such a decision, the court is obliged to conduct a trial when a party unequivocally denies that an arbitration agreement exists, and shows sufficient facts in support thereof. Berkeley Cty. Sch. Dist. v. Hub Int'l. Ltd., 944 F.3d 225, 227 (4th Cir. 2019). This is yet another reason why the Court should grant the Defendants' motion and refer this matter to

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arbitration so that the arbitrator can conduct an evidentiary hearing on the issue of arbitrability if he or she deems that necessary.

An example of such an unsubstantiated allegation is the Plaintiff claim that the agreement is unconscionable because he was supposedly subjected to high pressure sales tactics. However, item number 10 of the Vacations Inspirations Membership Acknowledgment of the Agreement specifically asks if decision to purchase was "based on any high pressure sales tactics" and Plaintiff responded "no." Plaintiff also signed that page.

As for the contention that Plaintiff did not have equal bargaining power, it is noteworthy that this purchase was a travel club membership. It is not an essential purchase such as shelter or even a core consumer purchase such as an automobile. Under any circumstance, Plaintiff could have said "no thank you" and left at any time without signing the Purchase Agreement. It is not unusual for those who listen to the Defendants' sales presentation to do only that and then decline to purchase.

The request for participants in the sales presentation to turn of their cell phones is not a high pressure sales tactic. Instead, that request is made prior to the sales presentation because of the expectation that cell phone usage will be a constant distraction during the presentation.

It is irrelevant that Plaintiff did not "travel with any legal counsel" or that he did not consult with an attorney prior to signing the Agreement. Plaintiff cites no support for the idea that a contract is unconscionable unless the parties first have an opportunity to consult with counsel. Also, Defendants did not have any duty to advise Plaintiff to seek legal counsel.

IV. THE AAA COMMERCIAL RULES OF ARBITRATION PROVIDE THE METHOD FOR APPOINTING A FAIR ARBITRATOR. THE ARBITRATION PROVISION IN THE PURCHASE AGREEMENT COMPLIES WITH THAT METHOD AND MUST BE FOLLOWED

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Plaintiff also argues that arbitration should not be compelled because the arbitration agreement that he signed does not provide a fair, unbiased forum. However, an examination of the applicable rule conclusively refutes that claim. Rule R-13 of the AAA Commercial Arbitration Rules states in part as follows:

> (a) If the agreement of the parties names an arbitrator **or specifies a method of appointment of an arbitrator,** that designation or method shall be followed. (Emphasis added).

See FAA, Rule R-13. Moreover, Rule R-18(a) states in part as follows:

> An arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for
>
> (i) Partiality or lack of independence.

See FAA, Rule R-18(a). While Rule R-18(b) permits appointment of a "non-neutral" arbitrator, that is not the case here. The arbitration clause challenged by the Plaintiff merely allows Defendant Vacation Inspirations to choose the arbitrator, but it does not relieve the arbitrator selected of his or her obligations under the AAA Commercial Rules to be "impartial and independent". Moreover South Carolina ADR Rule 13(d) has a similar provision. Contrary to Plaintiff's arguments, the arbitration provision invoking the Commercial Rules of the American Arbitration Association fully and completely complies with and is accordance with the foregoing Rules and provides a forum for resolving this dispute by an unbiased arbitrator.

V. THE CONSUMER ARBITRATION RULES DO NOT APPLY

Defendants also note that Plaintiff's argument that the AAA Consumer Rules as cited by and relied upon by Plaintiff is simply a "red herring" and a distraction from the actual facts. The arbitration provision clearly invoked the AAA Commercial Rules. The AAA Consumer Rules are not in any way relevant to any issue herein.

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VI. RULE 11 MATTER

Plaintiff was not and is not desirous of participating in arbitration (even though he agreed to do so). Any effort to consult with Plaintiff's counsel before filing the within motion would have been futile, as can be seen from Plaintiff's response to the motion. The Rule 11 aspect of Plaintiff's response cannot negate the actual issues presented herein.

CONCLUSION

The parties agreed to the arbitration procedure in this case. Based on all of the above argument and citation of authority, the Motion to Compel Arbitration and Stay Proceedings should be granted.

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ATTORNEYS FOR DEFENDANTS

CHARLESTON, SC

March 25, 2025

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-4606
FRANK PERRELLI, JR. Plaintiff. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH, SHIRLEY, RANDY GARDNER, and JEFFREY PUMILIA Defendants.	**AFFIDAVIT IN SUPPORT OF DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

AFFIDAVIT OF RANDY GARDNER

1. I am one of the named Defendants in this litigation. I am over the age of eighteen years and am not laboring under any infirmity which might affect the competency of this Affidavit. This Affidavit is made and given in support of Defendants' Motion to Compel Arbitration and Stay Proceedings. This Affidavit is made and given from my personal knowledge.

2. I am a member and a managing member of Destination Travel, LLC , a South Carolina limited liability company. I am also one of the operators of Vacation Inspirations.

3. Destination Travel distributes Vacation Inspirations memberships to Members who reside outside the State of South Carolina and throughout the United States.

4. Virtually all Vacation Inspirations memberships are sold to residents of States States other than South Carolina.

5. Virtually all sales of memberships are paid for by Members using credit cards with

banks and credit unions throughout the United States. Credit card transactions are processed by a processing company located outside the State of South Carolina. Sales proceeds are deposited in a National Bank.

6. In order to provide services to its Members, Vacation Inspirations utilizes the services of travel agents located in various cities and States outside South Carolina.

7. Vacation Inspirations also utilizes various other tour companies and other travel entities throughout the United States in order to service its Members who themselves reside in States other than South Carolina and throughout the United States.

8. Vacation Inspirations books numerous varieties of travel for its Members, including but not limited to hotels, airline reservations, rental cars, cruises and package tours throughout the United States and other countries in the world.

Randy Gardner

Sworn to and subscribed
before me this 24 day of
March, 2025.

Notary Public

William Duggan
Notary Public of South Carolina
Commission Expires:02/10/2030

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ELECTRONICALLY FILED - 2025 Mar 26 5:00 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1002646

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

TO THE DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEYS:

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

SUMMARY OF ARGUMENT

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

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

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

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

I. THE QUESTION OF UNSCONSCIONABILITY IS FOR THIS COURT

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

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

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

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

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

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

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

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

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

II. THE ARBITRATION AGREEMENT IS UNCONSCIONABLE

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

The parties agree that this question is ultimately one of contract interpretation. (*See* Def. Memo at 5.) However, Plaintiffs assert that the issue of contract interpretation must await determination of whether a contract existed. In spite of clear precedent to the contrary, Defendants rely on outdated and inapposite South Carolina cases for their propositions. For example, Defendants point to *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 (2001) for the proposition

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that "[t]he arbitration provision . . . cannot be set aside on the ground that the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it." (Def. Memo at 5.) But the sparce analysis in *Munoz* was disapproved in the Supreme Court of South Carolina's seminal *Simpson* decision. *Simpson*, 373 S.C. at 17 (in finding the adhesion contract provided the consumer with no meaningful choice, declared the holding in *Munoz* "fail[ed] to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender"). *Munoz* is no longer good law in South Carolina with respect to adhesion contracts.[2]

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

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

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

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

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

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

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

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Defendants say "Plaintiffs could have just listened to the presentation and left at any time without signing the Purchase Agreement. It is not unusual for those who listen to the Defendants' sales presentation to do only that and then decline to purchase." (Def. Memo at 7.) These statements belie the circumstances and run counter to publicly available information to which the Court can take judicial notice of. One-hundred and eleven (111) complaints have been lodged with the South Carolina Department of Consumer Affairs against Vacation Inspirations as of March 26, 2025. *See:* https://applications.sc.gov/DCAComplaintSystem/Public%20Information/PublicBusinessProfile.aspx?bid=297. Nearly all the complaints are for "high pressured deceptive sales practices" or "misleading deceptive practices." These complaints speak for themselves. And the ban on cell phones served to bar potential victims from learning of the many complaints against and negative news of Defendants.[3]

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

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

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

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

CONCLUSION

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

Respectfully submitted,

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ELECTRONICALLY FILED - 2025 Mar 26 5:01 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004606

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

TO THE DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEYS:

Plaintiff Frank Perrelli, Jr., (hereinafter "Plaintiff") by and through his undersigned counsel hereby submit this Surreply Memorandum in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings in this Case Until Completion of Arbitration.

SUMMARY OF ARGUMENT

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

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

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

I. THE QUESTION OF UNSCONSCIONABILITY IS FOR THIS COURT

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

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

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

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

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

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

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

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

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

II. THE ARBITRATION AGREEMENT IS UNCONSCIONABLE

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

The parties agree that this question is ultimately one of contract interpretation. (*See* Def. Memo at 5.) However, Plaintiff asserts that the issue of contract interpretation must await determination of whether a contract existed. In spite of clear precedent to the contrary, Defendants rely on outdated and inapposite South Carolina cases for their propositions. For example, Defendants point to *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 (2001) for the proposition

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that "[t]he arbitration provision . . . cannot be set aside on the ground that the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it." (Def. Memo at 5.) But the sparce analysis in *Munoz* was disapproved in the Supreme Court of South Carolina's seminal *Simpson* decision. *Simpson*, 373 S.C. at 17 (in finding the adhesion contract provided the consumer with no meaningful choice, declared the holding in *Munoz* "fail[ed] to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender"). *Munoz* is no longer good law in South Carolina with respect to adhesion contracts.[2]

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

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

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

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

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

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

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

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Defendants say "Plaintiff could have said 'no thank you' and left at any time without signing the Purchase Agreement. It is not unusual for those who listen to the Defendants' sales presentation to do only that and then decline to purchase." (Def. Memo at 7.) These statements belie the circumstances and run counter to publicly available information to which the Court can take judicial notice of. One-hundred and eleven (111) complaints have been lodged with the South Carolina Department of Consumer Affairs against Vacation Inspirations as of March 26, 2025. *See:* https://applications.sc.gov/DCAComplaintSystem/Public%20Information/PublicBusinessProfile.aspx?bid=297. Nearly all the complaints are for "high pressured deceptive sales practices" or "misleading deceptive practices." These complaints speak for themselves. And the ban on cell phones served to bar potential victims from learning of the many complaints against and negative news of Defendants.[3]

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

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

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

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

CONCLUSION

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

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-2646
PETER SKOLER AND PATRICIA SKOLER, Plaintiffs, v. VACATION INSPIRATIONS, DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, AND JEFFREY PUMILIA, Defendants.	))))))))))))	**DEFENDANTS' AMENDED MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

Defendants by and through their undersigned counsel, hereby file their Memorandum in support of their Motion to Compel Arbitration and Stay Proceedings, as follows:

SHORT FACTUAL BACKGROUND AND LITIGATION HISTORY

On or about March 21, 2022, Plaintiffs purchased a Vacation Inspirations Membership in Charleston, South Carolina. Plaintiffs are resident of Massachusetts. Defendants are all residents of the State of South Carolina. A copy of the Purchase Agreement (Vacation Inspirations Membership) (the "Purchase Agreement") is attached to the pending Motion as an Exhibit. The Purchase Agreement contemplates the use of telephones, faxes and emails to book travel and cruises outside the State of South Carolina, all in and affecting interstate commerce. Additionally, Defendants attach the affidavit of Randy Gardner filed in C.A. #2024-CP-10-4606 which conclusively shows that the matters at issue in Plaintiffs' complaint involve interstate commerce.

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On May 21, 2024, Plaintiffs filed their Complaint containing numerous counts and allegations. On November 4, 2024, Defendants filed their Answer and Affirmative Defenses. On November 12, 2024, Defendants filed the within Motion to Compel Arbitration and Stay Proceedings, all to enforce that portion of the Purchase Agreement clearly providing for arbitration (rather than litigation) in the Dispute Resolution section therein.

Defendants rely upon the provisions of the Federal Arbitration Act ("FAA"), the affidavit of Randy Gardner attached as an Exhibit hereto, and all other applicable laws in support of their Motion.

ARGUMENT AND CITATION OF AUTHORITY

I. ONLY THE ARBITRATOR HAS JURISDICTION TO DECIDE ISSUES OF ARBITRABILITY

Defendants' Motion to Compel Arbitration specifically relies upon all applicable law, including, but not limited to the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "FAA"), as well as the terms of the arbitration requirement contained in the Purchase (Membership) Agreement. The arbitration paragraph includes the following provision:

> 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 [Vacation Inspirations].

See Agreement attached to Defendants' Motion to Compel Arbitration at Para. VIII.

Pursuant to the FAA and the Commercial Arbitration Rules of the AAA and agreed to by Plaintiffs, and the citations below, the question of arbitrability is to be determined and decided by the arbitrator, and respectfully, not the Court.

Rule R-7(a) and (b) of the Commercial Rules provide as follows:

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> The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
>
> The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

See FAA, Rule R-7(a) and (b). Therefore, the Court must defer to the arbitrator all issues and the Court should grant the pending Motion to Compel Arbitration.

This issue has been decided by the United States Supreme Court in the case of Henry Schein, Inc. vs. Archer & White Sales, Inc., 586 U.S. 63,139 S. Ct. 524(2019). In that case the arbitration provision provided that any dispute [with unrelated exceptions] **"shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association [AAA]. The place of arbitration shall be in Charlotte, North Carolina."** See Schein, Inc., 586 U.S. at 66, 139 S. Ct. at 528 (internal citations omitted) (emphasis added).

The United States Supreme Court held the requirement the arbitration be conducted in accordance with the Arbitration Rules of the American Arbitration Association means that only the arbitrator and not the trial Court could decide the arbitrability question.

The Schein Supreme Court decision goes on to state the following:

> When the parties' contract delegates the arbitrability question to the arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue.

Schein, Inc., 586 U.S. at 68, 139 S. Ct. at 529. The Court also stated:

> When the parties' contract delegates the arbitrability question to the arbitrator, the courts must respect the parties' decision as embodied in the contract.

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Id. at 71, 139 S. Ct. 524 at 531. In the arbitration provision herein, the Purchase Agreement clearly and unequivocally invoked the Commercial Arbitration Rules of the AAA. As noted below, the AAA Commercial Rules specifically provide for such delegation to the arbitrator.

The Purchase Agreement and the arbitration clause have the required nexus to interstate commerce as set forth in the Gardner Affidavit to invoke the arbitration provisions of the FAA. See generally, Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 115 S. Ct. 834 (1995). Therefore, under the Federal Arbitration Act, the Court may not decide whether an arbitration agreement applies to the instant dispute if the parties clearly and unmistakably delegated the question to an arbitrator. See e.g., Masters v. KOL, Inc., 431 S.C. 28, 30, 846 S.E.2d 893, 894 (Ct. App. 2020).

Moreover, under any circumstance, arbitration should be required under the FAA. "[The FAA applies . . . to any arbitration agreement regarding a transaction that in fact involves interstate commerce." See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). So long as interstate commerce is involved, the FAA controls arbitration. Mr. Gardner's affidavit provides clear evidence of the necessary involvement with interstate commerce. The arbitration should be conducted under the AAA Commercial Rules and in accordance with the FAA with any issues regarding arbitrability decided by the arbitrator. The Motion to Compel Arbitration and Stay Proceedings should be granted and any issues regarding arbitrability should be decided by the arbitrator.

II. PLAINTIFFS ARE PRESUMED TO HAVE READ, UNDERSTOOD AND AGREED TO THE TERMS OF THE PURCHASE AGREEMENT, INCLUDING THE ARBITRATION PROVISION

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Alternatively, regardless of the decision maker, the ultimate question of arbitrability "is a matter of contract interpretation." See Am. Recovery Corp. v. Computerized Thermal Imaging, 96 F.3d 88, 92 (4th Cir. 1996) (internal citations omitted).

It is virtually black letter law that anyone who can read is presumed to have read any agreement that person signs. "[O]ne who has signed a contract is presumed to have read, understood and assented to its terms." See Gibson v. Epting, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (internal citations omitted). "A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003).

The arbitration provision herein is governed by the FAA and cannot be set aside on the ground that the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it. See Munoz, 343 S.C. 531 at 541 n.6, 542 S.E.2d at 365.

In addition, the South Carolina Supreme Court noted the following:

> "In these circumstances, we are constrained to hold that her conduct, in failing to employ the opportunity and means given her to acquaint herself with the contents of the policy, was clearly a conscious and reckless disregard of her duty in the premises and was a proximate cause of her alleged injury or damage."

See Hood v. Life & Cas. Ins. Co. of Tennessee, 173 S.C. 139, 146, 175 S.E. 76 (S.C. 1934).Plaintiffs therefore cannot argue that they did not read or understand the Purchase Agreement and all of its terms, including the arbitration provision before signing the Purchase Agreement. And as noted below, Plaintiffs had the choice and opportunity to alter or otherwise modify the arbitration provision. They simply chose not to do so before signing the Purchase Agreement. Plaintiffs had a meaningful choice and they accepted the terms of the Purchase Agreement, including the arbitration provision.

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The Motion to Compel Arbitration and Stay Proceedings should be granted.

III. THE ARBITRATION PROVISION IS NOT UNCONSCIONABLE.

Neither the Purchase Agreement nor the arbitration provision therein is on a "take -it-or-leave-it basis with no negotiable terms and that its evident from the agreement itself. Plaintiffs failed to make any effort to negotiate the arbitration provision, even though they had the opportunity to do so and in fact, did negotiate several matters as noted below. Plaintiffs had meaningful choices, they just did not choose to make any of those choices regarding the arbitration provision.

The Purchase Agreement includes an Addendum/Exception (attached as an Exhibit to the pending Motion), which provided Plaintiffs an opportunity to alter or amend the arbitration provision. In fact, as seen on the Addendum/Exception, there are four (4) such handwritten items. None of the four (4) exceptions handwritten involve or address the arbitration provision. Plaintiffs signed the handwritten page with the exceptions. Plaintiffs had a meaningful choice, but chose not to raise any questions at the time of the Purchase Agreement regarding the arbitration provision and. Plaintiffs cannot now be permitted to claim otherwise.

Furthermore, the Plaintiffs' other arguments regarding unconscionability are based on unsubstantiated or irrelevant allegations and cannot be summarily decided by this court. The FAA provides in relevant part that "[i]f the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof." See 9 U.S.C. § 4. In making such a decision, the court is obliged to conduct a trial when a party unequivocally denies that an arbitration agreement exists and shows sufficient facts in support thereof. Berkeley Cty. Sch. Dist. v. Hub Int'l. Ltd., 944 F.3d 225, 234 (4th Cir. 2019). This is yet another reason why the Court should grant the Defendants' motion and refer this matter to

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arbitration so that the arbitrator can conduct an evidentiary hearing on the issue of arbitrability if he or she deems that necessary.

An example of such an unsubstantiated allegation is the Plaintiffs claim that the agreement is unconscionable because they were supposedly subjected to high pressure sales tactics. However, item number 10 of the Vacations Inspirations Membership Acknowledgment of the Agreement specifically asks if the decision to purchase was "based on any high pressure sales tactics" and Plaintiffs responded "no". Plaintiffs also signed that page.

As for the contention that Plaintiffs did not have equal bargaining power, it is noteworthy that this purchase was a travel club membership. It is not an essential purchase such as shelter or even a core consumer purchase such as an automobile. Under any circumstance, Plaintiffs could have just listened to the presentation and left at any time without signing the Purchase Agreement. It is not unusual for those who listen to the Defendants' sales presentation to do only that and then decline to purchase.

The request for participants in the sales presentation to turn off their cell phones is not a high pressure sales tactic. Instead, that request is made prior to the sales presentation because of the expectation that cell phone usage will be a constant distraction during the presentation.

It is irrelevant that Plaintiffs did not "travel with any legal counsel" or that he did not consult with an attorney prior to signing the Agreement. Plaintiffs cite no support for the idea that a contract is unconscionable unless the parties first have an opportunity to consult with counsel. Also, Defendants did not have any duty to advise Plaintiffs to seek legal counsel.

IV. THE AAA COMMERCIAL RULES OF ARBITRATION PROVIDE THE METHOD FOR APPOINTING A FAIR ARBITRATOR. THE ARBITRATION PROVISION IN THE PURCHASE AGREEMENT COMPLIES WITH THAT METHOD AND MUST BE FOLLOWED

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Plaintiffs also argue that arbitration should not be compelled because the arbitration agreement that he signed does not provide a fair, unbiased forum. However, an examination of the applicable rule conclusively refutes that claim. Rule R-14 of the AAA Commercial Arbitration Rules states in part as follows:

> (a) If the agreement of the parties names an arbitrator **or specifies a method of appointment of an arbitrator,** that designation or method shall be followed. (Emphasis added).

See FAA, Rule R-14 attached hereto as Exhibit B. Moreover, Rule R-19(a) states in part as follows:

> An arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for
>
> (i) Partiality or lack of independence.

See FAA, Rule R-19(a) attached hereto as Exhibit C. While Rule R-19(b) permits appointment of a "non-neutral" arbitrator, that is not the case here. The arbitration clause challenged by the Plaintiffs merely allows Defendant Vacation Inspirations to choose the arbitrator, but it does not relieve the arbitrator selected of his or her obligations under the AAA Commercial Rules to be impartial and independent. Moreover South Carolina ADR Rule 13(d) has a similar provision. Contrary to Plaintiffs' arguments, the arbitration provision invoking the Commercial Rules of the American Arbitration Association fully and completely complies with and is accordance with the foregoing Rules and provides a forum for resolving this dispute by an unbiased arbitrator.

V. THE CONSUMER ARBITRATION RULES DO NOT APPLY

Defendants also note that Plaintiffs argument that the AAA Consumer Rules as cited by and relied upon by Plaintiffs is simply a "red herring" and a distraction from the actual facts. The arbitration provision clearly invoked the AAA Commercial Rules. The AAA Consumer Rules are not in any way relevant to any issue herein.

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VI. RULE 11 MATTER

Plaintiffs clearly were not and are not desirous of participating in arbitration (even though they previously agreed to do so). Any effort to consult with Plaintiffs' counsel before filing the within motion would have been futile, as can be seen from Plaintiffs' response to the motion. The Rule 11 aspect of Plaintiffs' response cannot negate the actual issues presented herein.

CONCLUSION

The parties agreed to the arbitration procedure in this case. Based on all of the above argument and citation of authority, the Motion to Compel Arbitration and Stay Proceedings should be granted.

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