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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas J. Rode, Circuit Court Judge

Appellate Case No. 2026-000910

Christopher Sawyer and Terese Sawyer, Appellants,

v.

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

RECORD ON APPEAL – Volume I

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

s/Abby Edwards Saunders

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

Attorneys for Appellants

Other Counsel of Record:

John A. Massalon (SC Bar #10279)
Carris Steichen Land (SC Bar #104264)
Wills, Massalon & Allen LLC
Post Office Box 859
Charleston, South Carolina 29402
Tel. (843) 727-1144
jmassalon@wmalawfirm.net
cland@wmalawfirm.net

Jeffrey Wayne Buncher, Jr. (SC Bar #78890)
Uricchio Howe Krell Jacobson
Toporek Theos & Keith, PA
Post Office Box 399
Charleston, SC 29402
Tel. (843) 723-7491
jeff@uricchio.com

Attorneys for Respondents

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1002642

Terese Sawyer et al
PLAINTIFF(S)

Vacation Inspirations et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on October 7, 2025, on Defendant Vacation Inspiration's Motion to Compel Arbitration and Stay Proceedings. All parties were represented by counsel. Upon review of the memoranda, arguments, and materials provided, the Court is inclined to GRANT Defendant's Motion to Compel Arbitration and Stay Proceedings, and directs the Defendant to submit a proposed order.

THEREFORE, within ten days, Defendants shall submit to the Court a draft order (in MS.Word format) consistent with the above. This Form 4 Order is not final. A more formal order will follow after receipt to the proposed order from Defendants.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/20/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Terese Sawyer , plaintiff, et al VS Vacation Inspirations , defendant,
et al

Case Number: 2024CP1002642

Type: Order/Electronic Form 4

So Ordered

s/ T.J. Rode (#2792)

Electronically signed on 2025-10-20 09:58:03 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1002642

Terese Sawyer et al
PLAINTIFF(S)

Vacation Inspirations et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on October 7, 2025, on Defendant Vacation Inspiration's Motion to Compel Arbitration and Stay Proceedings. In response to the letter filed by Plaintiff's Counsel on October 30, 2025, the Court requests that within ten (10) days, the Plaintiffs provide the following:

1. A list of Plaintiff's objections to the proposed order received from Defendants
2. A proposed order compelling arbitration that Plaintiff's counsel asserts is (other than the result) not objectionable (in MS.Word format).

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/10/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Charleston Common Pleas

Case Caption: Terese Sawyer , plaintiff, et al VS Vacation Inspirations , defendant,
et al

Case Number: 2024CP1002642

Type: Order/Electronic Form 4

So Ordered

s/ T.J. Rode (#2792)

Electronically signed on 2025-11-10 12:46:57 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
CHRISTOPHER SAWYER and TERESE SAWYER,	)	Civil Action No. 2024-CP-10-02642
	)	
PLAINTIFFS,	)	
	)	
vs.	)	ORDER GRANTING MOTION TO
	)	STAY & COMPEL ARBITRATION
VACATION INSPIRATIONS,	)	
DESTINATION TRAVEL, LLC,	)	
JOSEPH SHIRLEY, RANDY	)	
GARDNER, and JEFFREY PUMILIA,	)	
	)	
DEFENDANTS.	)	
_____	)	

This matter came before the Court on October 7, 2025, on Defendants’ motion to compel arbitration and stay proceedings. After consideration of the parties’ memoranda and argument of counsel, the Court hereby GRANTS Defendants’ Motion to Compel Arbitration 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 in May 2021 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 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.

On May 21, 2024, Plaintiffs filed a lawsuit against Defendants in the Charleston County Court of Common Pleas. In their Verified Complaint, Plaintiffs allege that Defendants: (1) violated South Carolina's Unfair Trade Practices Act ("SCUTPA"), and/or (2) made negligent or fraudulent misrepresentations. For relief, Plaintiffs seek: 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) rescission of the contract. Defendants answered and filed a counterclaim on July 3, 2024. Plaintiffs answered the counterclaim on August 1, 2024.

On November 12, 2024, Defendants filed the instant Motion to Compel Arbitration and Stay Proceedings. After hearing argument from the parties, on October 20, 2025, the Court entered a Form 4 Order which indicated it was inclined to GRANT Defendants' motion and the Court subsequently received proposed Orders from both parties. This Order constitutes the formal and final order on the Motion.

CONCLUSIONS OF LAW

The Court finds the matters at issue have 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 (1995); See also Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538 (2001). Plaintiffs allege in their Complaint that they are residents of Pennsylvania and that Defendants are residents of Charleston or businesses operating here. The connection to interstate commerce 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. Furthermore, during oral argument on the Motion, Plaintiffs' counsel stipulated that the FAA applies to this case.

Pursuant to the FAA, all issues of arbitrability and enforceability are for the court to decide unless there is "clear and unmistakable evidence" that the parties agreed to do so. See e.g. Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63, 72 (2019) ("[C]ourts 'should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so.'" (citation omitted)). To examine whether there is "clear and unmistakable evidence," the Court turns to the language of the agreement. The Court need not consider Plaintiffs' unconscionability arguments because parties are presumed to have read the agreement they signed.

The arbitration provision states that "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)..."

As an initial matter the parties do not agree whether the AAA Commercial Arbitration Rules apply or whether the AAA Consumer Arbitration Rules apply. However, the Court finds it makes no difference as it concerns the issue at hand, because the proposed orders submitted by the parties reflect that the relevant provision of the AAA Commercial Arbitration Rules and Consumer Arbitration Rules provide the same.

Plaintiff represents that the AAA Consumer Rules provide at Rule R-7(a) and (b) that:

The arbitrator shall have the power to rule on their own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or 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 Consumer Arbitration Rules R-7(a) and (b) as cited by Plaintiff.

Similarly, Defendant asserts that the AAA Commercial Arbitration Rules provide at R-7(a) and (b) the same:

The arbitrator shall have the power to rule on their own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or 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) as cited by Defendant.

Under the Federal Arbitration Act, the arbitrator should decide arbitrability and issues about the enforceability of the contract 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 "[w]hile 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." The Court concludes as a matter of law that the parties agreed to delegate issues regarding the enforceability of the Purchase Agreement itself to the arbitrator.

Plaintiffs also contend that even if the Court is to compel arbitration, it must modify several aspects of the arbitration process which Plaintiffs claim are unconscionable or against public policy because it does not provide for an independent forum. Specifically, Plaintiff complains of the provision of the agreement that allows the Defendant to pick the arbitrator. However, Plaintiff provides no binding authority to support this Court's ability, pre-arbitration, to alter the terms of the parties' agreement as it concerns the selection of an arbitrator.

THEREFORE, it is ORDERED that:

1. All issues including questions regarding arbitrability, the Plaintiffs' claims, the defenses raised by the Defendants, Defendants' counterclaim and other matters shall be determined and decided through arbitration, and it will be for the arbitrator to determine the appropriate arbitration rules; and
2. All proceedings in the within case are hereby stayed pending arbitration.

End of Order.

[electronic signature page to follow]



Charleston Common Pleas

Case Caption: Terese Sawyer , plaintiff, et al VS Vacation Inspirations , defendant,
et al
Case Number: 2024CP1002642
Type: Order/Compel

So Ordered

s/ T.J. Rode (#2792)

Electronically signed on 2025-12-09 13:26:01 page 6 of 6

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1002642

Terese Sawyer et al
PLAINTIFF(S)

Vacation Inspirations et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Pursuant to Rule 59(e) SCRPC, Plaintiffs Christopher Sawyer and Terese Sawyer filed a motion to alter or amend the order of this Court dated December 9, 2025. Under the applicable standard, this motion is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/16/2026 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Charleston Common Pleas

Case Caption: Terese Sawyer , plaintiff, et al VS Vacation Inspirations , defendant,
et al

Case Number: 2024CP1002642

Type: Order/Electronic Form 4

So Ordered

s/ T.J. Rode (#2792)

Electronically signed on 2026-03-16 11:38:52 page 3 of 3

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

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

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are residents and citizens of the State of Pennsylvania;
2. Defendant VI is, upon information and belief, an unincorporated business association operating in Charleston County, South Carolina;
3. Defendant DT is a South Carolina limited liability company operating in Charleston County, South Carolina;

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

16. The sales presentation was for a VI travel membership and travel related services, as distributed by DT (the "Membership") and that VI had such great offers that it had the ability to choose who they would allow to be members;

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

18. All three couples turned off their cell phones;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39. Lindsay produced a Purchase Agreement (the "Agreement") and filled in its blanks with the date, Plaintiff Christopher Sawyer's information, the purchase price of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,995.00), and reflected that the Documentation Fee of Three Hundred Ninety-Nine and 00/100 Dollars (\$399.00) and first year dues of One Hundred Ninety-Nine and 00/100 Dollars (\$199) were waived for a grand total of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,995.00).

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

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

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

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

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

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

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

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

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

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

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

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

- a. A ban on cellphone usage which prevented Plaintiff's from researching Defendants and reviewing online reviews prior to purchasing a Membership;
- b. Rushed contracting in order to create anxiety through the fear of missing out on Defendant VI's travel membership and travel related services, which was described as a "Once in a lifetime opportunity;"
- c. Rushed contracting in order to create anxiety through the representation that the discounted Memberships were only available on the day of the presentation and would not be available afterwards;
- d. Presented deceptive claims regarding awards presented to Defendant VI by cruise lines with regard to the services provided to consumers through the Membership;
- e. Utilized coercive sales tactics that prevented Plaintiffs from making a free and informed choice;
- f. Ingratiating themselves with attendees by telling an attendee who purchased a Membership "Welcome to the family;"
- g. Representing to attendees with a military background that their significant other is in law enforcement and that they understand the burdens of first responders and that they would not provide a membership product that could not be useful to such individuals and their families;
- h. Representing that DT and VI were family-owned businesses that employed family members in order to imply it was trustworthy and reliable when it was not;
- i. Fostered an environment that created the impression that the Defendants' business was a City of Charleston operated location, like a visitor's bureau;
- j. Creating the appearance of scarcity of discounted Memberships in order to incentivize purchases;
- k. Creating an incentive for participants to purchase a Membership in order to escape the undue influence that Defendants' sales tactics generated;
- l. Upon information belief, planting imposter presentation participants to announce they desire to purchase a Membership in order to encourage the other attendees to purchase a Membership as well;

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

53. The Agreement provided that:

- a. Plaintiffs were entitled “to request up to two week(s) of condominium accommodations per year provided by VI” after originally being advised that they would receive four weeks in the Platinum Membership.
- b. “THE UNDERSIGNED MEMBER ACKNOWLEDGES **THIS IS A NON-CANCELABLE CONTRACT**. THIS IS NOT A TIMESHARE, HEALTH CLUB, BUYERS CLUB, NOR DOOR TO DOOR SALES CONTRACT AGREEMENT. PLEASE MAKE YOUR DECISION ACCORDINGLY.”
- c. “Client acknowledges that this agreement is not subject to any “right of rescission” and may not be cancelled.”
- d. “Any controversy, claim or dispute arising out of or relating to this Purchase Agreement, shall be resolved and decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) (however, not under the auspices of AAA), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall be selected by VI. Upon final award, arbitrator compensation and cost of the location shall be paid by the non-prevailing party. The arbitration shall take place in Charleston, S.C. at the Charleston County Courthouse or other location determined by VI.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

107. Defendants made the misrepresentations to Plaintiffs, with the intent that Plaintiffs would act upon that information in deciding whether or not to purchase a Membership for Five Thousand Five Hundred Ninety-Five and 00/100 Dollars (\$5,595.00);

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

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

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

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

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

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

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

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

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

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

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

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

120. Defendants made the misrepresentations to Plaintiffs, with the intent that Plaintiffs would act upon that information in deciding whether or not to purchase a Membership for Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,595.00);

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

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

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

124. Over the period since the Agreement was executed, the Plaintiffs have discovered the falsity of Defendants' representations regarding the scarcity of discounted memberships, Defendants' receipt of industry awards for the quality of the services Defendants provide; and the

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

- a. Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,995.00) in actual damages, and,
- b. The costs of bringing this action, including court costs, expenses and legal fees;

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

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

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

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

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

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

130. That Plaintiffs, having no other reliable information related to the scarcity of discounted memberships, Defendants' receipt of industry awards for their services, or Defendants'

ability to provide the services to purchasers as outlined in their presentation to Plaintiffs, justifiably relied on the false information communicated by the Defendants prior to executing the Agreement;

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

- a. Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,995.00) from the purchase of the Membership, and,
- b. The costs of bringing this action, including court costs, expenses and legal fees;

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

- (1) declaring that the arbitration clause contained in the Agreement is invalid and unenforceable;
- (2) ruling that Defendants have willfully violated the South Carolina Unfair Trade Practices Act and Plaintiffs are entitled to trebled damages, based upon their actual damages of Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,995.00) from the purchase of the Membership, and their reasonable attorneys' fees;
- (3) ruling that Defendants are committing ongoing violations or attempted violations of Chapter 5 of Title 39, the South Carolina Unfair Trade Practices Act and issue an injunction against Defendants from acting in violation of the Act;
- (4) ruling that Defendants induced Plaintiffs to enter into the Agreement by way of fraudulent representations which they did not intend to perform and that Plaintiffs are entitled to rescind the Agreement;
- (5) ruling that Defendants fraudulently misrepresented their program and services to be provided under the Agreement and award Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,995.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiffs;
- (6) ruling that Defendants negligently misrepresented their program and services to be provided under the Agreement and award Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,995.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiffs;
- (7) such other and further relief as the Court may deem appropriate.

Respectfully submitted,

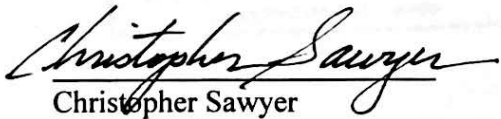
s/David W. Wolf
 David W. Wolf (S.C. Bar No.: 17041)
 David W. Wolf, P.A.
 748-D St. Andrews Boulevard
 Charleston, South Carolina 29407
 Telephone: (843) 853-9000
 Facsimile: (843) 853-9002
 E-mail: david@wolfllaw.com
 Attorney for Plaintiff

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

May 21, 2024
 Charleston, South Carolina

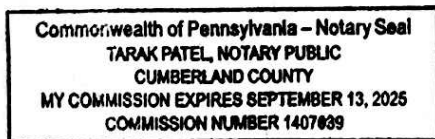
VERIFICATION OF COMPLAINT

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


 Christopher Sawyer

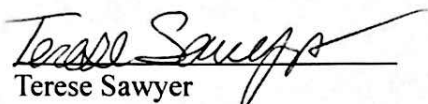
Sworn to before me this 17th day of May, 2024.


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

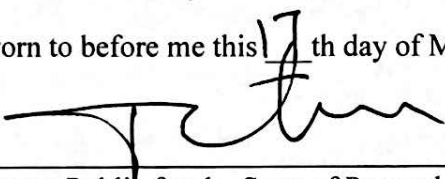


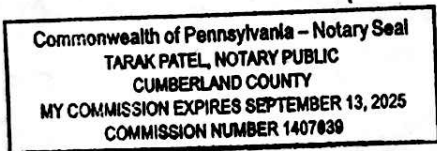
VERIFICATION OF COMPLAINT

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


Terese Sawyer

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


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



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

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

GENERAL DENIAL

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

RESPONSE TO SPECIFIC ALLEGATIONS

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

PARTIES, JURISDICTION AND VENUE

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

4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Jurisdiction is admitted and the remainder of the allegations are denied.
9. Admitted.

FACTS

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

11. Admitted.

12. Admitted.

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

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

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

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

17. Denied.

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

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

“public scolding” and deny the remaining allegations.

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

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

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

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

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

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

26. Admitted.

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

28. Admitted.

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

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

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

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

admitted.

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

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

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

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

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

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

39. Admitted.

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

41. Denied as alleged.

42. Denied.

43. Admitted.

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

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

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

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

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

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

50. Denied.

51. Denied. Additionally, Defendants show that at all relevant times herein, there was a sign posted in the window in accordance with City of Charleston requirements. The sign notes as follows: “Vacation Inspirations, Vacation Membership Seller, This business is not affiliated with the City of Charleston, The Charleston Visitor Reception and Transportation Center or the Charleston Area Convention and Visitors Bureau”.

52. Admitted.

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

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

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

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

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

58. Admitted.

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

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

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Declaratory Judgment)

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

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

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

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

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

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

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

68. Denied as alleged.

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

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

71. Denied.

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

73. Denied as alleged.

74. Denied.

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

76. Denied.

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

SECOND CAUSE OF ACTION
(Unfair Trade Practices)

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

79. Denied.

80. Denied.

81. The document mentioned speaks for itself.

82. The document mentioned speaks for itself.

83. The document mentioned speaks for itself.

84. Denied.

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

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

THIRD CAUSE OF ACTION
(Injunctive Relief)

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

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

FOURTH CAUSE OF ACTION
(Equitable Relief - Rescission)

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

103. Denied.

104. Denied.

105. Denied. There were no false representations.

106. Denied.

107. Denied.

108. Denied.

109. Denied. There were no false representations.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

117. Denied.

118. Denied.

119. Denied.

120. Denied.

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

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

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

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

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

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

126. Denied.

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

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

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

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

131. Denied.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHT AFFIRMATIVE DEFENSE

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

COUNTERCLAIM

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

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

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

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

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

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

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

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

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

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

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

July 3, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
	)	
CHRISTOPHER SAWYER and TERESE SAWYER,	)	Civil Action No. 2024-CP-10-02642
	)	
PLAINTIFFS,	)	
	)	
vs.	)	PLAINTIFFS' REPLY TO DEFENDANTS' COUNTERCLAIM
	)	
VACATION INSPIRATIONS,	)	
DESTINATION TRAVEL, LLC, JOSEPH SHIRLEY, RANDY GARDNER, and	)	
JEFFREY PUMILIA,	)	
	)	
DEFENDANTS.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

COME NOW Plaintiffs Christopher Sawyer and Terese Sawyer (hereinafter "Plaintiffs") replying to the Counterclaim 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:

FOR A FIRST DEFENSE

1. Plaintiffs deny each and every allegation of the Defendants' Counterclaim not hereinafter specifically, expressly, or unconditionally admitted.
2. Paragraphs 1-139 of Defendants' Answer to Plaintiffs' Complaint require no response of Plaintiffs. To the extent said Paragraphs contain any allegations against Plaintiffs, the allegations are denied.

3. The allegations of Paragraph 140 are conclusions of law, and therefore, no response is required. To the extent a response is required, Plaintiffs admit that this Honorable Court has jurisdiction and venue is proper.
4. Plaintiffs deny all allegations in Paragraph 141.
5. Plaintiffs deny all allegations in Paragraph 142.
6. Plaintiffs deny all allegations in Paragraph 143.
7. Plaintiffs deny all allegations in Paragraph 144.
8. Plaintiffs deny all allegations in Paragraph 145. Answering further, Plaintiffs deny any willful, wanton or reckless behavior.
9. Plaintiffs deny all allegations in Paragraph 146.
10. Plaintiffs deny the WHEREFORE paragraph of Defendants' Answer and Counterclaim and all subparts therein.
11. Plaintiffs deny the Defendants' Prayer for Relief in its entirety.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

12. Plaintiffs allege that Defendants' Counterclaim fails to state facts sufficient to constitute a cause of action against Plaintiffs pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil procedures. Therefore, Defendants Counterclaim against Plaintiffs should be dismissed. Defendants are not entitled to recover from Plaintiffs in any sum whatsoever.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(No Damages)**

13. Defendants have not suffered damages as the natural and proximate cause from any alleged wrongful act or acts allegedly committed.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Unclean Hands)**

14. Plaintiffs allege Defendant was negligent, grossly negligent, willful, wanton, and reckless resulting in damages sustained by Plaintiffs and other third-parties. Therefore, Defendants come to the Court with unclean hands and such inequitable conduct by Defendants constitutes a bar and complete defense to any claim for equitable relief.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Statute of Limitations)**

15. Defendants' claims may be barred by the applicable statute of limitations.

**FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Contribution)**

16. Plaintiffs reserve and assert all rights under S.C. Code. Ann §15-38-15.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Third Party Acts)**

17. Plaintiffs assert that any alleged personal or reputational injury to Defendants, which is denied, was caused by acts of a third party, not by any conduct of Plaintiffs.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Truth)**

18. Plaintiffs lack any information or knowledge as to the alleged false, misleading, negative or defamatory statements and the speaker's basis for the statements; however, if it turns out that such statements were justified or truthful, Plaintiffs assert such truth or justification as a defense to those alleged statements.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Opinion)**

19. Plaintiffs lack information and knowledge as to the alleged false and/or misleading information and the speaker's basis for them. However, if such information was a matter of opinion, then Plaintiffs assert opinion as the defense to the alleged false and/or misleading information.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Privilege)**

20. Plaintiffs lack information and knowledge as to the alleged false and/or misleading information and the speaker's basis for them; however, if turns out that such communications were subject to an absolute, qualified or conditional privilege, then Plaintiffs assert such privilege as a defense to those statements.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Self-Publication)**

21. To the extent that any alleged false and/or misleading information was published by Plaintiffs, said self-publication would constitute a defense to Defendants' claims based upon such information.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(No Agency)**

22. Plaintiffs cannot be vicariously liable for any alleged defamatory comments or other actions complained about that were committed outside the scope of any alleged agency or authority of Plaintiffs. The alleged tortious actions were conducted without the consent or knowledge of Plaintiffs.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Justification)**

23. Plaintiffs lack information as to the alleged allegations proffered by Defendants but if it should turn out that such conduct was justified, then Plaintiffs assert such justification as a defense. Defendants' Counterclaim is barred to the extent the conduct of Plaintiffs was justified.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(No Conspiracy)**

24. To the extent Defendants allege that Plaintiffs conspired, such combination cannot constitute conspiracy. Plaintiffs cannot conspire with themselves. There is no combination or agreement of two or more persons to commit an unlawful act and no commission of an overt act in furtherance of an agreement.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Punitive Damages)**

25. Defendants' claims for punitive damages as alleged in the Counterclaim are not permitted by South Carolina law.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Statutory Protections)**

26. Plaintiffs affirmatively assert that Plaintiffs are entitled to any and all benefits, joint and several liability protections, and all monetary limitations and caps of liability and/or damages, specifically punitive damages, as provide in S.C. Code Ann. §15-32-510; 15-§32-520; §15-32-530; §15-32-540; and any other applicable provisions under the Acts,

which Plaintiffs plead as a limitation or partial bar to the Defendants' Counterclaim and alleged Damages.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Reservation of Rights)**

27. Plaintiffs have not had an opportunity to conduct a sufficient investigation or engage in adequate discovery touching on the circumstances of these allegations. Plaintiffs hereby give notice that Plaintiffs intend to assert any further affirmative defenses that may be supported by fact and law, including but not limited to, defense that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Plaintiffs thus reserve their right to amend this Answer to the Counterclaim to assert any such defense.

WHEREFORE, having fully answered Defendants Counterclaim, Plaintiffs pray that the Defendants' Counterclaim be dismissed with prejudice, and that Plaintiffs be awarded costs, reasonable fees associated with this matter, and for such other and further relief as this Honorable Court may deem to be just and proper.

Respectfully submitted,

s/David W. Wolf
David W. Wolf (S.C. Bar No.: 17041)
David W. Wolf, P.A.
748-D St. Andrews Boulevard
Charleston, South Carolina 29407
Telephone: (843) 853-9000
Facsimile: (843) 853-9002
E-mail: david@wolflaw.com
Attorney for Plaintiff

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

July 31, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
COUNTY OF CHARLESTON CASE NO.:2024-CP-10-02642

**** TRANSCRIPTION OF DIGITAL COURTROOM ****

October 7, 2025

BEFORE: The Honorable Thomas J. Rode

TERESE SAWYER, LLC,

Plaintiff,

vs.

VACATION INSPIRATIONS,

Defendant.

RECEIVED
May 06 2026
SC Court of Appeals

APPEARANCES:

David Whitten Wolf, Esq.
Appearing for the Plaintiff.

John Massalon, Esq.
Appearing for the Defendant.

Recorded by: Digital Courtroom

Transcriber: Natalie Dahl, RPR
SC Official Court Reporter

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: ndahl@sccourts.org

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(NONE)	

EXHIBITS

(NONE)

Transcript Legend

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

P R O C E E D I N G S

THE COURT: Sawyer versus Vacation
Inspiration. Give me a second to pull it up.

Sorry about that. We are also our own court
reporter, so we're going to make sure we're all
right.

All right. I'm happy to hear from you, sir.

MR. MASSALON: Thank you, Your honor. For
the record, I'm John Massalon. I'm here for the
defendants, and we're here today on a motion to
stay and compel arbitration.

Just a little bit of background, Judge. In
May of 2021, the plaintiffs in this case purchased
a vacation membership from Vacation Inspirations.
The plaintiffs allege in their complaint they are
residents of Pennsylvania. My clients are all
residents of South Carolina. I have a copy of the
purchase agreement which was filed with the motions
(indiscernible) that contains an arbitration
agreement that is in the membership terms and
conditions.

Additionally, we have filed an affidavit from
Randy Gardner. There are actually three cases that
Mr. Wolf has filed, three different plaintiffs.
And Mr. Gardner's affidavit was originally filed in

1 one of the earlier cases, and it shows that matter
2 is at issue in this complaint involving interstate
3 commerce. I don't believe that that is a disputed
4 issue. I believe that it is conceded that the FAA
5 applies to this (indiscernible).

6 In May of 2024, the plaintiffs filed a
7 complaint with a number of allegations, one of
8 which challenged the arbitration clause,
9 (indiscernible) for a declaratory judgment, that
10 the arbitration agreement was valid. My client's
11 answer filed a counterclaim and reply, which was
12 filed in November. My client filed a motion to
13 compel and stay arbitration.

14 One thing I would call Your Honor's attention
15 to before I get into the substance of it, Judge
16 Jefferson has already heard and decided the other
17 two cases. So the --

18 THE COURT: Are those the same --

19 MR. MASSALON: Same arbitration provision.

20 THE COURT: Same defendants and same
21 contract?

22 MR. MASSALON: Same contract, same
23 defendants, different plaintiffs.

24 We refer to those -- and we actually attached
25 copies of her order to our memorandum -- they are

1 the Skoler case, which is 2024-2646, and 2024-0460
2 (indiscernible) case. She heard those motions,
3 issued an order staying the case, and compelling
4 arbitration. The plaintiffs have moved for a
5 reconsideration of that, and those motions to
6 reconsider are still pending.

7 And so as a first instance -- although, Your
8 Honor, I don't take a position that Judge
9 Jefferson's order is a binding precedent on you.
10 My first request is that you either defer this
11 hearing or refer it to her, or do something that
12 would be appropriate in this context procedurally
13 to allow her an opportunity to decide the motions
14 for reconsideration before this decision is
15 rendered.

16 If you are not inclined to do that, my second
17 request would be to do what she did, which is to
18 grant the motion, compel arbitration, and stay the
19 case.

20 Now, the reason I think you should do that,
21 Your Honor, is pretty straightforward. As I said,
22 I don't believe it is disputed that the FAA applies
23 to this case. Attached to the motion is a copy of
24 the documents that the plaintiff signed in Roman
25 numeral eight of the membership terms and

1 conditions. It provides that dispute resolution
2 will be under the rules of the Commercial
3 Arbitration Rules of the American Arbitration
4 Association. It says that it's not going to be
5 administered by the AAA, but that AAA rules apply.
6 We've attached these rules to our motion, Your
7 Honor, but under Rule 7 of the Commercial Rules of
8 the AAA, it says a couple of things that I think
9 are dispositive of this motion.

10 First, it says the arbitrator shall have the
11 power to rule on his or her own jurisdiction,
12 including any objections with respect to the
13 existent scope or validity of the arbitration
14 agreement, or to the arbitrability of any claim or
15 counterclaim without first needing to refer to
16 court. And that is Rule 7(a).

17 Rule 7(b) says, The arbitrator shall have the
18 power to determine the existence or the validity of
19 a contract of which the arbitration clause forms in
20 part.

21 The plaintiffs have submitted an extensive
22 memorandum arguing that the decision about
23 arbitrability is, in the first instance, for the
24 court, and only if you decide that the claims are
25 arbitrable to go to arbitration and arbitrate. I

1 think the hole in that rationale, Your Honor, is
 2 that the supreme court precedent says just the
 3 opposite. We cite to a case called Henry Schein in
 4 the materials. And that case and (indiscernible)
 5 memorandum, it deals with the wholly merit
 6 exception to arbitration, but not entirely.

7 And what Schein says is what federal
 8 jurisprudence has said for a long time, and I
 9 believe most of South Carolina jurisprudence, which
 10 is if the arbitration agreement clearly delegates
 11 the decision on arbitrability to the arbitrator,
 12 then the court does not decide those threshold
 13 issues of arbitration.

14 Instead, the proper procedure, I believe,
 15 under the FAA, would be for the court to refer the
 16 case to arbitration in accordance with the parties'
 17 agreement, in the Rules of AAA, and let the
 18 arbitrator decide these issues that Mr. Wolf wants
 19 you to decide to deny arbitration. I believe given
 20 the contract -- and the rules delegate -- all of
 21 that goes to the arbitrator. And I think the
 22 Schein case and the cases stated in Schein clearly
 23 state that under federal law that if the parties
 24 agree do that, then the court can't override that
 25 contract, and the arbitrator can decide all of

1 these things that they would like to be decided.

2 Now, couple of other things, Your Honor, and
3 I only have two or three more hours of this before
4 I (indiscernible). So that part is pretty
5 straightforward.

6 The plaintiffs' memorandum -- and I'll
7 address a couple of things in the anticipation of
8 that, that's the one I have to get back up again
9 after this (indiscernible) is finished. But a few
10 things that are argued, first, there is a long
11 argument that summary judgment standard should
12 apply to this, and that if there are issues of
13 disputed fact, then the court can't grant the
14 motion without an evidentiary hearing on those
15 disputed issues of fact.

16 Again, the reason I don't agree with that is,
17 one, because that is what the parties agree the
18 arbitrator would do. The second is that the --
19 under Section 4 of the Federal Arbitration Act,
20 there is actually a provision that allows for an
21 evidentiary hearing on issues like this.

22 THE COURT: In front of the arbitrator?

23 MR. MASSALON: In front of the arbitrator or
24 in front of the court. I think, for me, because
25 the issues were delegated to the arbitrator, the

1 arbitrator can conduct a Section 4 hearing
2 (indiscernible). But, again, that is another
3 reason that I think that the Court should refer
4 this case to arbitration. Because if the
5 arbitrator decides there needs to be an evidentiary
6 hearing on arbitrability, he or she can be in that
7 hearing (indiscernible) FAA and case law to do
8 that. And, also, the process here is really not
9 conducive to that, because what the plaintiffs
10 would like to do instead is decide it's not
11 arbitrable or substantive contractual reasons.

12 And if, in fact, that happens, then the --
13 it's kind of the analytical cart before the horse.
14 Instead of doing what the parties agreed to do, let
15 the arbitrator decide that, the court would be
16 basically assuming the jurisdiction of what the
17 parties granted to the arbitrator to decide
18 arbitrability.

19 So, again, I'm not saying that we need to
20 have a trial on arbitrability, but if the
21 arbitrator decides that that is so, he or she could
22 do that at arbitration.

23 The next thing that may be argued is that the
24 plaintiffs shouldn't have to arbitrate because the
25 arbitration provision that was agreed to is

1 fundamentally unfair. And as I understand or
2 anticipate that argument, it is that the
3 arbitration agreement provides that my client gets
4 to choose the arbitrator. And because of that, the
5 plaintiffs argue and assume that a biased
6 arbitrator will be chosen who will decide in my
7 client's favor.

8 The reason that I don't think that that is --
9 or should be a concern, and does not prevent
10 arbitration here, is a couple of things. First,
11 the arbitration agreement doesn't limit what the
12 arbitrator can do or decide. So I think all the
13 claims here that are alleged can be decided by the
14 arbitrator.

15 Second thing is under the rules of the -- the
16 AAA -- and we cite these in the material -- an
17 arbitrator has to be neutral. Before anybody to
18 accept an arbitration assignment in a case like
19 this, he or she can't be biased. And if he or she
20 is biased, Mr. Wolf could ask and rightfully have
21 that arbitrator disqualified.

22 Also, the South Carolina Rules of Alternative
23 Dispute Resolution on arbitration would require the
24 same neutrality as kind of a touchstone of
25 arbitrator qualifications.

1 So the idea that, one, we would choose
2 somebody that would be biased is not correct. And,
3 secondly, even if any client was inclined to do
4 that, the arbitrator should not accept an
5 assignment in which he or she would be biased and
6 would be disqualified if it were.

7 And, finally, Your Honor, there is some
8 reference in the arguments to the consumer
9 arbitration rules. Again, I think that's a red
10 herring. I don't think the consumer arbitration
11 rules has anything to do with this case.

12 There is a little bit of a fine point of
13 arbitration, which you may be familiar with, that
14 if the AAA administers an arbitration, there is
15 some discretion from the arbitrator to apply a
16 different set of AAA rules if they are
17 administered. This is not a AAA administered
18 arbitration. The parties agree to comply with the
19 commercial rules. So, again, I don't think the
20 commercial rules have anything to do with this.

21 I'm glad to answers any questions; but,
22 otherwise, I'll sit down and let Mr. Wolf.

23 THE COURT: Thank you.

24 MR. WOLF: Thank you. And may it please the
25 Court, Your Honor. My name is David Wolf. I'm

1 here on behalf of the plaintiffs.

2 I would like to begin with the request with
3 regard to transfer or refer. There is no legal
4 support, that I'm aware of, and I've not seen a
5 case that indicates that because a motion is under
6 advisement or under reconsideration the matter
7 cannot go forward today. I wasn't involved in the
8 scheduling of this. I can't explain to the Court
9 why this case didn't get scheduled with the other
10 ones, but what I can tell Your Honor is that
11 opportunism should not be rewarded. At no point
12 during that prior hearing did the defendants
13 reference this case, ask the Court to put it in
14 consideration, or to make a ruling on it. So I
15 think it's properly before the Court, and I think
16 that the Court should proceed so that this matter,
17 however it is decided, can also proceed.

18 We filed this case over a year ago, Your
19 Honor, and my clients would like to be able to move
20 forward. They believe that it should be -- this
21 case proceed in discovery going forward, but
22 whichever way it is, the plaintiffs would like it
23 to proceed.

24 Now, the biggest disagreement that I have
25 with what Mr. Massalon says is, you know, he keeps

1 talking about how the parties agreed to these
2 contract terms. The plaintiffs do not agree with
3 that, Your Honor. The plaintiffs assert that the
4 formation efforts necessary to make a valid
5 contract do not exist. My clients had not been
6 over the age of 18 or suffered from some mental
7 infirmity, Your Honor, there would be some analysis
8 of the facts to make a determination about whether
9 or not there is capacity.

10 If the determination was made that there was
11 no capacity, then the Court would find that there
12 was no agreement. Well, unconscionability, fraud,
13 and duress similarly require a finding to determine
14 whether or not there is a valid agreement. And the
15 federal arbitration agreements specifically says
16 that. In its language it says "subject to defenses
17 that the state law provides." My clients have
18 raised these defenses.

19 So there is not an agreement to arbitrate at
20 this point without findings of fact, and that's why
21 the summary judgment analysis where the facts are
22 considered in the light most favorable to the
23 non-moving party is important. Because the
24 verified complaint in this case, Your Honor, has
25 plenty of assertions that this military family from

1 Pennsylvania came down and visited here in
2 Charleston and were taken advantage of by
3 high-pressured sales tactics, and for those reasons
4 this agreement is not valid, and there is no valid
5 agreement to arbitrate.

6 If that's the case, Mr. Massalon's argument
7 under Schein falls apart. Even the Schein court
8 stated that it was the wholly groundless exception
9 that they were overruling. They weren't saying
10 that the court's fact finding and obligation as
11 specified in Section 4 of the FAA didn't apply. In
12 that case they specifically say we're not taking a
13 position on whether the contract delegated the
14 arbitrability issue to the arbitrator.

15 So when he tells you that's the controlling
16 law, neither the U.S. Supreme Court nor South
17 Carolina's precedent says what Mr. Massalon has
18 suggested to the Court today. It specifically
19 holds back and remands the case to the court of
20 appeals to make that determination.

21 Now, Your Honor, the important thing in this
22 is -- and I thought it was a more recent
23 development, but South Carolina as far back as 1793
24 in a case called Timrod versus Shoolbred announced
25 that South Carolina would apply the civil law rule

1 of caveat venditor, let the seller beware. And
2 they adopted it as a public policy for the State of
3 South Carolina to protect consumers.

4 Since then, in the 1800s, 1900s, and as
5 recently as the last five years, the South Carolina
6 Supreme Court in D.R. Horton and Damico have
7 reiterated the South Carolina public policy to
8 protect consumers, that when AAA administers
9 arbitration agreements, it insists that the
10 consumer rules apply when consumers are involved,
11 and that's why the defendants wrote this agreement
12 in a way to protect themselves to the detriment of
13 the consumers.

14 If the court were implying to go to
15 www.ADR.org, the American Arbitration Association's
16 website, scroll down to the section called
17 "expertise across industries," you would see on the
18 top set of boxes, "commercial disputes," "consumer
19 disputes." In the "commercial disputes" section,
20 it states that it is for business-to-business
21 disputes. That's not what we're dealing with, Your
22 Honor. These are consumers that came to South
23 Carolina and should not be subjected to the fact
24 that the commercial rules say that a commercial
25 arbitrator gets to decide these issues without it

1 being brought to their attention.

2 The consumers section specifies that it's for
3 disputes between consumers and businesses over
4 contracts for goods and services for personal or
5 household use. That is what is appropriate here,
6 and that's what should be applied. But the AAA
7 would not apply to the commercial rules under this
8 setting, nor should the Court allow that in.

9 Finally, Your Honor, the defendants have
10 suggested that the selection of the arbitrator
11 would be neutral, but that's exactly what the
12 Fourth Circuit Court of Appeals in Phillips versus
13 Hooters determined could not happen. That case
14 goes through, and they got to select the arbitrator
15 in that case, and the Court calls it a sham to
16 think that any fair and just could come out of the
17 scenario that begins with one party having the sole
18 decision making over who the arbitrator is. And I
19 think that applies just the same in this case, Your
20 Honor.

21 Thank you.

22 THE COURT: Any reply, Mr. Massalon?

23 MR. MASSALON: Just a couple quick things,
24 Your Honor.

25 First, as for the opportunism should not be

1 rewarded argument, I can't let that pass because it
2 was no effort at opportunism. Those motions were
3 scheduled -- I agree with Mr. Wolf that he had no
4 input in the scheduling of them, and neither did I.
5 But I have experienced it before in trying to get
6 things before the court that was not on the roster,
7 and generally my experience is that judges hear
8 what's on the roster. And I don't know why this
9 was not scheduled, but it was not. I don't think
10 any of the attorneys have any role in that. It
11 certainly was no effort by us to take advantage of
12 anything. It just came up that way. And so no one
13 is doing anything there (indiscernible).

14 Now, as far as the argument about the
15 consumer transactions, again, I mentioned to the
16 Court that the cases that deal with consumer
17 transactions are sort of for consumer issues. This
18 is a vacation club membership. Discretionary
19 purchase. Not really kind of meat-and-potatoes
20 housing, you know, consumer goods. So the question
21 is whether any of the rationale of those cases
22 apply here.

23 As for the AAA rules, again, I don't have a
24 copy of the consumer rules with us, but I believe
25 that they contain similar provisions to the

1 commercial rules about arbitrators having
2 jurisdictions beside arbitrability, and also about
3 the neutrality of the arbitrator. And so, again,
4 despite plaintiffs' concerns to the contrary, I
5 just don't know of an arbitrator that would serve
6 if he or she had a conflict. We would pick one
7 that didn't have a conflict (indiscernible).

8 And then the last thing that I would mention,
9 Your Honor, is the -- I also don't have this with
10 me, and I'm going back a little bit, but what I
11 recall about the Hooters case is that the
12 decision-making authority of the arbitrator in that
13 case was circumscribed. And, again, I wish I had a
14 copy of the case with me, and if I misquoted it,
15 it's just because I've lost my memory. It is not
16 what it once was. But I believe that the
17 arbitrator in that case was not only selected by
18 one of the parties, but also had limitations on
19 what he or she could do.

20 But, again, in this case I would conclude by
21 referring back to the arbitration rule, and I
22 believe it's the same in the (indiscernible) rules.
23 It says that the arbitrator shall have the power to
24 determine the existence or validity of a contract
25 of which the arbitration clause is (indiscernible).

1 I would invite the Court to consider what Mr. Wolf
2 is asking, which is he is asking the Court to
3 decide the case is not arbitrable because the
4 agreements with my client were unconscionable. If
5 the Court reaches that decision, it seems like this
6 case is over, because it's a contract case, and I
7 guess Mr. Wolf might say, well, I still have got
8 some claims for unfair trade practices and some
9 other tort claims, but that is a substantive
10 decision about whether the parties have agreed.
11 And, again, as I mentioned in my initial argument,
12 I think that really turns the arbitrability
13 decision on its head and asks for a decision on the
14 merits of the case before there is a decision on
15 the arbitrability of it.

16 And, again, there's no certainty that the
17 arbitrator decides that the case is arbitrable. I
18 would say that arbitrators being arbitrators
19 generally decide things that are arbitrable, and
20 I'm not blind to that, right. I don't ignore that
21 reality. But, I mean, he or she has got to make a
22 considered decision about that, and what they
23 decide is what they decide. But I think the
24 federal law, the Schein case, and I would invite
25 Your Honor to read it, was about the wholly merits

1 exception. But it says in there, in part, things
2 like, We have held a court may not rule on the
3 merits of the underlying claim that is assigned by
4 contract to an arbitrator, even if it appears to
5 the Court it can be frivolous. Even if the Court
6 thinks that the argument is frivolous, I think
7 Schein and the case they cite in there saying the
8 arbitrator gets to decide the rules.

9 And so, with that, Your Honor, I appreciate
10 your patience. Thank you.

11 THE COURT: Mr. Wolf, is it your contention
12 that a court can evaluate the unconscionability of
13 the contract at this stage?

14 MR. WOLF: No, Your Honor. My point is that
15 there are facts on which a judge or jury, or
16 whoever the trier of fact ultimately is, that can
17 determine that there are elements of the defense
18 unconscionability; and, therefore, it would not be
19 proven at this time to grant the motion the
20 defendants have requested.

21 Just like in a summary judgment scenario, if
22 the defendants were able to show that we can't
23 establish a fact for one of the elements of that
24 defense, then they can present that to the Court,
25 and if the Court agrees, then compulsion of

1 arbitration can go forward. Otherwise, it is a
2 factual issue for whoever the trier of fact is to
3 ultimately decide, like we do in every other case.
4 It openly has to be decided based on the elements,
5 and the defense that has its own elements would be
6 evaluated, too.

7 You know, the assumptions that the defendants
8 want the Court to make, like the statement just a
9 moment ago from Schein, it presumes there is an
10 agreement. Section 4 of the FAA specifically says,
11 "The Court shall hear the parties and upon being
12 satisfied with the making of the agreement for
13 arbitration or the failure to comply herewith is
14 not in issue."

15 THE COURT: But hasn't our supreme court been
16 pretty specific and pretty clear for a long time
17 that the question of an agreement to arbitrate is
18 not a question about the contract as a whole? It
19 is a question about this specific provision
20 concerning arbitration?

21 MR. WOLF: Your Honor, I agree the Prima
22 Paint analysis should be limited to the specifics
23 of that provision, but that provision is the one
24 where the defendants get to pick the arbitrator.
25 They get to pick the location. Whoever the

1 prevailing party is gets their -- the cost paid
2 for. All of that is geared towards creating an
3 unfair process that the courts have specifically
4 stated over and over again that arbitration is to
5 provide.

6 So I think that if the Court looks at the
7 arbitration provision, it's going to see that it's
8 unconscionable on its face.

9 THE COURT: I mean, the arbitration provision
10 is pretty straightforward, isn't it?

11 MR. WOLF: It is, Your Honor.

12 THE COURT: All right. I just want to make
13 clear, Mr. Wolf, your position in opposition to
14 compelling arbitration is not that the contract as
15 a whole is unconscionable, but that the specific
16 provision, which is Roman numeral eight, is
17 unconscionable?

18 MR. WOLF: Your Honor, just real quick to
19 touch on one other issue. If the Court looks at
20 Damico, you'll see unconscionability and the public
21 policy to protect consumers is referenced in there.
22 Using that as a lens, I think the only conclusion
23 to be drawn, the only reasonable conclusion, is
24 that the dispute resolution provision is
25 unconscionable. There is nothing in any of the

1 case law that talks about the public policy that
2 it's limited to core purchases, Your Honor. That
3 is an effort to get the court to ignore it when it
4 comes to these four plaintiffs that are seeking
5 redress in these cases. There's nothing to suggest
6 that it should be limited to core purchases. If
7 it's a consumer transaction, consumers should be
8 protected.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 All right. Interesting arguments. I
12 appreciate it. I'll take it under advisement.
13 Thank you for your patience.

14 (Whereupon, the hearing concluded.)
15
16
17
18
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21
22
23
24
25

RECEIVED**CERTIFICATE OF TRANSCRIBER****May 06 2026****SC Court of Appeals**

Case Name: Terese Sawyer v. Vacation Inspirations

Case No.: 2024-CP-10-02642

Date of Hearing: October 7, 2025

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

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

Natalie Dahl, RPR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	CASE NO.: 2024-CP-10-02642
	)	
CHRISTOPHER SAWYER and	)	
TERESE SAWYER	)	
	)	
Plaintiffs,	)	Notice of Motion and
	)	Defendants' Motion to Compel
v.	)	Arbitration and Stay Proceedings in
	)	this Case Until Completion of
VACATION INSPIRATIONS,	)	Arbitration
DESTINATION TRAVEL, LLC, JOSEPH,	)	
SHIRLEY, RANDY GARDNER, and	)	
JEFFREY PUMILIA	)	
Defendants.	)	
	)	

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.

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	CASE NO.: 2024-CP-10-02642
	)	
CHRISTOPHER SAWYER and	)	
TERESE SAWYER	)	
	)	
Plaintiffs,	)	DEFENDANTS' MEMORANDUM
	)	IN SUPPORT OF MOTION TO
	)	COMPEL ARBITRATION AND
	)	STAY PROCEEDINGS
v.	)	
	)	
VACATION INSPIRATIONS,	)	
DESTINATION TRAVEL, LLC, JOSEPH,	)	
SHIRLEY, RANDY GARDNER, and	)	
JEFFREY PUMILIA	)	
Defendants.	)	

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 May 27, 2021, Plaintiffs purchased a Vacation Inspirations Membership in Charleston, South Carolina. Plaintiffs are residents of Pennsylvania. 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 as Exhibit A 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.

On May 21, 2024, Plaintiffs filed their Complaint containing numerous counts and allegations. On July 3, 2024, Defendants filed their Answer and Affirmative Defenses and Counterclaim. On August 1, 2024, Plaintiffs filed their Reply to Defendants' Counterclaim. On November 12, 2024, Defendants filed the within Motion to Compel Arbitration and Stay Proceedings ("Motion"), all to enforce that portion of the Purchase Agreement clearly providing for arbitration (rather than litigation) in the Dispute Resolution section therein. The Purchase Agreement, Membership Terms and Conditions ("T&C"), Addendum/Exception to Contract ("Addendum"), Vacation Inspirations Membership Acknowledgement ("Acknowledgement") as well as an Authorization to Draft Dues ("Authorization") and a Memorandum from the Board of Directors ("Memorandum") were attached to the Motion and are not resubmitted with this memorandum. Plaintiffs served discovery, to which Defendants counsel notified Plaintiffs' counsel that Defendants would not respond to the discovery based on South Carolina cases which indicate that participating in discovery may be considered as an element of waiving the arbitration provision in the Purchase Agreement. Plaintiffs did not file a motion to compel discovery or any other potential remedy in response to Defendants' objection to participating in discovery.

Defendants rely upon the provisions of the Federal Arbitration Act ("FAA"), the affidavit of Randy Gardner above mentioned which attached as Exhibit A hereto, the documents attached to the Motion and all other applicable laws in support of their Motion.

Defendants would like the Court to be aware that the issues raised in this Motion were the subject of Defendants' Motion to Compel Arbitration and Stay Proceedings in Case No. 2024-CP-10-2646 ("Skoler" case) and Case No. 2024-CP-10-0460 ("Perrelli" case). After memoranda were submitted, the Honorable Deadra L. Jefferson, Presiding Judge, Ninth Judicial

Circuit, heard oral arguments on the motions in the Skoler case and the Perrelli case. In an order dated July 18, 2025, and filed on July 23, 2025, Judge Jefferson granted Defendants' Motion to Compel Arbitration and Stay Proceedings in the Perrelli case. A few days later in an order dated July 23, 2025, and filed on July 25, 2025, Judge Jefferson granted Defendants' Motion to Compel Arbitration and Stay Proceedings in the Skoler case. Plaintiffs in Skoler and Perrelli filed motions before Judge Jefferson to Reconsider the Court's Order Compelling Arbitration and Staying Proceedings. Those Motions to Reconsider have been briefed by all parties and the parties are awaiting a ruling by Judge Jefferson. (Copies of the Orders issued by Judge Jefferson are attached as Exhibit B.)

The arbitration language contained in the Purchase Agreement in the instant case is exactly the same as the arbitration language in Skoler and Perrelli. The only difference between Skoler, Perrelli and the instant case, (if any exists) is that in this case Defendants filed a counterclaim, which has no impact whatsoever on the issues raised in the Motion to Compel Arbitration now before this Court.

Defendants respectfully request that this case be transferred to Judge Jefferson in the interest of judicial economy and because Judge Jefferson is fully familiar with the arguments set forth by both parties, or, in the alternative, that this Court should grant Defendants' Motion based on the same rationale accepted by Judge Jefferson.

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. Paragraph VIII of the Terms and Conditions which are part of the Agreement 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 Purchase Agreement and Terms and Conditions 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:

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, without any need to refer such matters first to a court.

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, Rule R-7(a) and (b) (part of excerpt from AAA Rules attached as Exhibit 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).

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.

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 of the arbitrability decision 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." Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001) (internal citations omitted). 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. Based on comments from Plaintiffs' counsel during the hearing in the Skoler and Perrelli cases, Defendants understand that there is no dispute that the FAA applies to the question of arbitrability. 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

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. The Motion to Compel Arbitration and Stay Proceedings should be granted.

III. THE ARBITRATION PROVISION IS NOT UNCONSCIONABLE.

Defendants expect Plaintiffs to claim that the Purchase Agreement and the arbitration provision therein is unconscionable just as the Plaintiffs argued in Skoler and Perrelli. Plaintiffs failed to make any effort to negotiate the arbitration provision, even though they had the opportunity to do so. 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 with an opportunity to alter or amend the agreement. In fact, as seen on the Addendum/Exception, there are three (3) handwritten items. None of the three (3) exceptions handwritten involve or address the arbitration provision. Plaintiffs signed the handwritten page with the exceptions. Plaintiffs had a meaningful choice. Plaintiffs cannot now be permitted to claim otherwise.

Furthermore, any of the Plaintiffs' 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 arbitration so that the arbitrator can conduct an evidentiary hearing on the issue of arbitrability if he or she deems that necessary.

Defendants anticipate that Plaintiffs will argue 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 attached to the Motion 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 anticipated 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.

These Plaintiffs may argue, as did the Plaintiffs in Skoler and Perrelli, that Plaintiffs did not “travel with any legal counsel” or that they did not consult with an attorney prior to signing the Agreement. Plaintiffs cited 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.

All of the above issues were raised by the plaintiffs in Skoler and Perrelli and were decided against the Skolers and Perrelli. It is hoped that in the event this Court does not transfer the case to Judge Jefferson, this Court should and will reach the same conclusion as Judge Jefferson did.

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

Plaintiffs will likely also argue that arbitration should not be compelled because the arbitration agreement that they 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 AAA, Rule R-14. Moreover, Rule R-19(a) states in part as follows:

Any 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 AAA, Rule R-19(a). (included in excerpt from AAA Rules attached as Exhibit B). 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.

CONCLUSION

The parties agreed to the arbitration procedure in this case. Based on all of the above arguments and citation of authority, this case should be transferred to Judge Deadra Jefferson, or in the alternative, the Motion to Compel Arbitration and Stay Proceedings should be granted.

s/John A. Massalon
 John A. Massalon (SC Bar #10279)
 WILLS MASSALON & ALLEN LLC
 Post Office Box 859
 Charleston, South Carolina 29402
 843-727-1144
jmassalon@wmalawfirm.net

Barry Krell, Esquire
 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
 Attorneys for Defendants

September 26, 2025
 Charleston, South Carolina

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

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

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SUMMARY OF ARGUMENTS

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

It is well-settled that motions to compel arbitration under the FAA are decided under the same standard as motions for summary judgment pursuant to Rule 56. The Verified Complaint sets out detailed, sworn facts showing material challenges to contract formation, assent, and raise the defense of unconscionability to the Dispute Resolution provision and the contract as a whole. Defendants, by contrast, submitted **no evidence** at all to rebut Plaintiffs' sworn allegations or to create any evidentiary dispute. With no competing evidence and discovery still outstanding due to Defendants' refusal to respond, the record is insufficient to compel arbitration.

Defendants' arguments assume a valid contract without resolving threshold formation challenges and both misapply and misrepresent *Henry Schein*, which requires a court to decide formation disputes before delegating issues to an arbitrator. Defendants' arguments also summarily conclude the parties clearly and unmistakably delegated arbitrability—an untenable conclusion where elderly, unsophisticated consumers signed a rushed, non-negotiable contract with buried terms, including a one-party arbitrator selection and no-cancellation clause. These provisions, coupled with Defendants' high-pressure sales tactics make compelling arbitration legal improper.

PROCEDURAL BACKGROUND

Plaintiffs filed the Summons and Verified Complaint on May 21, 2024. Defendants were served on June 5, 2024. Defendants answered on July 3, 2024. Plaintiffs served discovery requests, including document requests and interrogatories on November 5, 2024. On November 12, 2024,

Defendants filed the Motion to Compel Arbitration and Stay Proceedings with no accompanying brief in support or memorandum of law. On November 22, 2024, Defendants' counsel notified Plaintiffs' counsel that Defendants would not be responding to the discovery requests. By Notice dated September 11, 2025, the parties were informed that Defendants' motion was scheduled for oral arguments to take place on October 7, 2025. Defendants filed a Memorandum in Support of their Motion on September 26, 2025.

FACTUAL SUMMARY

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

On July 3, 2024, Defendants filed their Answer to the Complaint, which included a Counterclaim against Plaintiffs. On August 1, 2024, Plaintiffs filed their Reply to Defendants' Counterclaim. On October 23, 2024, Plaintiffs served their First Interrogatories and First Requests

for Production to each Defendant. On November 12, 2024, Defendants filed their “Notice of Motion and Defendants’ Motion to Compel Arbitration and Stay Proceedings in this Case Until Completion of Arbitration.” Defendants, nor Defendants’ Counsel, made any attempt to consult with Plaintiffs and their Attorneys prior to filing their Motion as required by Rule 11.

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

While visiting Charleston, Plaintiffs—out-of-state consumers—entered Defendants’ inconspicuous sales facility and were called up to the counter and offered free tickets to a couple of sightseeing events if Plaintiffs attended a sales presentation the following morning. Plaintiffs were instructed by the presenter to turn off their cell phones, which prevented them from discovering the extensive negative reviews or prior enforcement actions against Defendants’ principals, once identified, for similar schemes.

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

These facts, combined with Defendants’ refusal to answer discovery directly relevant to formation and fairness, leave disputed material issues regarding assent, validity, and

unconscionability unresolved, none of which have been addressed in the Orders subject to Motions to Reconsider which Defendants included as Exhibits to their Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings—leaving these very issues unresolved and appropriate for this Court’s consideration.

ARGUMENT

A. THE COURT MUST APPLY THE PROPER STANDARD FOR MOTIONS TO COMPEL ARBITRATION UNDER THE FEDERAL ARBITRATION ACT

“Using the proper standard of review is critical to determine the proper outcome.” *Barrett v. Charleston Cnty. Sch. Dist.*, 348 S.C. 426, 431 (Ct. App. 2001); *see also Davenport v. Summer*, 269 S.C. 382, 385 (1977) (reversing the decision because “the lower court erred by failing to apply the correct legal standard”). If a motion to compel arbitration “can be decided ‘based on the face of a complaint, and documents relied upon in the complaint,’ a motion-to-dismiss standard should be used; otherwise, the summary judgment standard should be applied.” *Adler v. Gruma Corp.*, 135 F.4th 55, 63 (3d Cir. 2025) (quoting *Guidotti v. Legal Helpers Debt Resol., LLC*, 716 F.3d 764, 776 (3d Cir. 2013)). Because the Defendants attached a copy of the Agreement to their Motion to Compel Arbitration and Stay Proceedings and have since included Exhibits to the Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings, this additional evidence mandates that a summary judgment standard apply.

Plaintiffs’ Verified Complaint specifically alleges that the arbitration provision: 1) lacks mutuality; 2) introduces doubt as to the fairness and impartiality of the arbitration process; 3) inhibits a party from seeking dispute resolution; 4) undermines the neutrality of any potential arbitration proceeding and violates federal and state law; 5) is not enforceable since it is fundamentally unfair; 6) was not negotiable and Plaintiffs lacked a meaningful choice of entering into it; 7) terms are so oppressive that no reasonable person would make them and no fair and

honest person would accept them; and utilizes *in terrorem* effect *i.e.*, provisions designed to deter consumer victims from pursuing their legal rights. (Compl. ¶¶ 62 – 75).

1. It Is Well-Established that the Summary Judgment Standard Must be Applied

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

- **South Carolina Courts:** *Briody v. THI of South Carolina at Magnolia Place at Greenville, LLC*, No. 2009-CP-23-6381, 2010 WL 9935409, at *4 (S.C.Com.Pl. July 13, 2010) (“When ruling on a motion to compel arbitration, the court uses a standard analogous to the summary judgment standard.”); *Floyd v. SSC Sumter East Operating Co., LLC*, No. 2022-CP-43-00355, 2022 WL 22592977, at *2 (S.C.Com.Pl. Oct. 4, 2022) (“A motion to compel arbitration pursuant to the FAA is ‘akin to the burden on summary judgment.’”).
- **Federal Appellate Courts:** *Rowland v. Sandy Morris Fin. & Est. Plan. Servs., LLC*, 993 F.3d 253, 258 (4th Cir. 2021) (recognizing in “resolv[ing] the parties’ dispute over whether they agreed to arbitrate . . . the district court must employ the summary judgment standard”). “Most other circuits apply the summary judgment standard to motions under § 4.” *Air-Con, Inc. v. Daikin Applied Latin Am., LLC*, 21 F.4th 168, 174 (1st Cir. 2021) (collecting Federal Court of Appeals cases indicating that the First, Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. all apply the summary-judgment standard to motions to compel arbitration).
- **State Appellate Courts:** *Brown v. Child Advocs., Inc.*, No. 14-24-00012-CV, 2025 WL 1107095, at *3 (Tex. App. Apr. 15, 2025) (“[A] motion to compel arbitration is procedurally akin to a motion for summary judgment and is subject to the same evidentiary standards”); *Oaks v. Parkerson Constr., LLC*, 303 So. 3d 1141, 1144 (Ala. 2020) (“A motion to compel arbitration is analogous to a motion for summary judgment.”)
- **Courts in Fourth Circuit:** *Marshall v. Georgetown Mem’l Hosp.*, No. 221CV02733RMGJDA, 2022 WL 5434226, at *4 (D.S.C. July 7, 2022) (“When ruling on a motion to compel arbitration, courts employ the summary judgment standard.” (citing *Rowland*, 993 F.3d at 258)), *report and recommendation adopted*, No. CV 2:21-2733-RMG, 2022 WL 4078024 (D.S.C. Sept. 6, 2022), *aff’d*, 112 F.4th 211 (4th Cir. 2024); *Wolford v. United Coal Co. LLC*, 764 F. Supp. 3d 329, 334 (W.D. Va. 2025) (“The standard for deciding a motion to compel arbitration brought under the FAA . . . is similar to the standard applicable to a motion for summary judgment.” (quoting *Ayers v. Markiewicz*,

733 F. Supp. 3d 435, 441 (E.D.N.C. 2024))), *aff'd*, No. 24-1541, 2024 WL 4490699 (4th Cir. Oct. 15, 2024).

As evidenced by the case law *supra*, the overwhelming authority indicates that the summary judgment standard is appropriate on a motion to compel arbitration.

2. South Carolina Summary Judgment Standard

Although it is unclear exactly what standard the Court applied in Exhibit C to Defendants' Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings, it is not sufficiently close to the summary judgment standard and should neither receive deference from this Court, nor have this matter transferred as requested by the Defendants. "When faced with a motion to compel arbitration that is opposed based on whether an agreement to arbitrate has been made between the parties, the court must give to the opposing party the benefit of all reasonable doubts and inferences that may arise." *Estate of Clinkscales v. Fundamental Clinical and Operational Services, LLC*, No. 2018-CP-23-05088, 2019 WL 9573826, at *2 (S.C.Com.Pl. Feb. 05, 2019); *Acevedo v. Hunt Valley Holdings, LLC*, No. 2018-CP-42-03421, 2020 WL 12919238, at *1 (S.C.Com.Pl. July 10, 2020) (same); *Rowland*, 993 F.3d at 257 ("[I]n reviewing the district court's denial of a motion to compel arbitration, we accept as true the allegations of the . . . Complaint that relate to the underlying dispute between the parties.""). "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 15 (2006). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 11 (Ct. App. 2019); *see also Hansen v. DHL Lab'ys, Inc.*, 316 S.C. 505, 513, (Ct. App. 1994), *cert. granted, decision aff'd*, 319 S.C. 79 (1995)("[Q]uestions of credibility can make summary judgment inappropriate.") "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony." *David v.*

McLeod Reg'l Med. Ctr., 367 S.C. 242, 250 (2006). At a minimum, the Court's Order in Exhibit C improperly weighs Defendants' denials in their Answer (which is not treated as evidence) and in their other Exhibits over Plaintiffs' evidence in the Verified Complaints in the other matters and should not be followed.

3. The Verified Complaint Establishes Factual Issues to be Resolved

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

a) The Verified Complaint is Summary Judgment Evidence

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

b) Defendants' Minimal and Immaterial Evidence is not Determinative

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

Plaintiffs' allegations. This alone is reason to deny the motion to compel arbitration. Even if the Court were to somehow treat all of Defendants' pleadings, including its Answer, Motion, Memorandum in Support of its Motion, and Exhibits to any of them, as evidence, it should still not result in a grant of the motion to compel arbitration because that evidence is not sufficiently determinative. The allegations contained in the Verified Complaint (which is evidence under Rule 56(e), at an absolute minimum, creates a dispute as to the material facts.¹

c) Disputed Material Facts Preclude Compelling Arbitration

Plaintiffs' Verified Complaint provides ample evidence precluding granting the motion. If "[g]enuine issues of material fact exist, [it] preclud[es] summary judgment." *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 464 (2020). "Only when there is no genuine issue of fact concerning the formation of the agreement should the court decide as a matter of law that the parties did or did not enter into such an agreement" *Briody*, No. 2009-CP-23-6381, 2010 WL 9935409, at *4. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452 (2001). "A jury trial on the existence of an arbitration agreement is warranted when there are genuine issues of material fact regarding the parties' agreement." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 38 (Ct. App. 1999). Importantly, "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362 (2002).

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

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

settled that it cannot weigh conflicting evidence. *See John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 435 (Ct. App. 2024) (“At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact.” (citation omitted)).

4. Plaintiffs did not have the Benefit of Discovery

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

Plaintiffs served Discovery Requests on all Defendants on November 5, 2024. Defendants declined to answer the requests, responding 17 days later declining to respond to all discovery served upon Defendants. While Defendants have asserted Plaintiffs could have filed a Motion to Compel of their own to require the production of the requested discovery, but this does not change the factual circumstances before the Court or the standard upon which it must rule on the motion under consideration, except to limit the available information upon which to decide whether the Dispute Resolution provision was properly formed, validly existing and enforceable. It is well-established that “[a] party served with written discovery has a **duty to answer it**, unless the party objects based on a stated reason or moves for a protective order.” *Richardson on Behalf of 15th Cir. Drug Enf’t Unit v. Twenty-One Thousand & no/100 Dollars (\$21,000.00) U.S. Currency & Various Jewelry*, 430 S.C. 594, 598 (Ct. App. 2020) (emphasis added) (citing Rules 26(c), 33(a), 34, and *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 83 (2011)). Defendants’ refusal to respond to the discovery requests were not accompanied by any written objection or motion for a protective order filed in this or any of the cases. Defendants’ email refusing to produce discovery does not nullify the requests made by the Plaintiffs and those requests should be complied with in accordance with the rules. Whether or not a motion to compel discovery had been filed, the Court’s fact-finding duties do not change, nor does the legal standard for the finding necessary to compel

arbitration. Defendants' attempt to use that refusal as both a shield and a sword illustrates their willingness to advance duplicitous arguments in an effort to gain an advantage, just as they have when asserting that no high-pressure sales tactics were applied, the contract is not one of adhesion, denial of procedural or substantive unconscionability elements, that the contract terms (such as delegation of the arbitrability issue to the arbitrator) were agreed upon between the parties, and that the Consumer Arbitration Rules apply to the present case. Each of these issues requires consideration by the Court and a weighing of the evidence which is not permitted when the legal standard for this type of motion is applied.

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

Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, an affirmance of a denial of a motion to compel arbitration, is instructive here on the issue of discovery before deciding a motion to compel arbitration. 422 S.C. 544 (Ct. App. 2018). Our case stands in stark contrast to the facts in *Hodge*, where the Court of Appeals affirmed a Circuit Court's denial of *further* discovery for a motion to compel arbitration where (a) "the facts material to the court's decision [were] not

contested”; (b) and “because the parties submitted, without objection, all documents that they wished the court to consider.” *Id.* at 576. The *Hodge* Court concluded that further discovery “would not provide any additional material facts that would be helpful to the court in reaching its decision.” *Id.* Here, we have the total opposite situation: the material facts *are* in dispute and Plaintiffs were never given an opportunity to engage in discovery because Defendants refused to participate in the process. Given the length of time between filing and a hearing for Defendants’ motion, Plaintiffs would still be awaiting a hearing on any Motion to Compel Discovery, so no resolution of this issue could be reasonably expected prior to the hearing on the present motion. In another case examining *Hodge*, the Court of Appeals noted that the trial court “rejected [] request for leave to conduct discovery” because it found the party had “opportunity to use the South Carolina Rules of Civil Procedure to conduct discovery related to arbitration.” *Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 645 (Ct. App. 2023). The Court of Appeals concurred with the trial court and declined to allow for further discovery because “the record does not contain any discovery requests [plaintiff] ignored or any subpoenas to which she objected.” *Id.* at 650. Here, Defendants *did* ignore discovery requests and Plaintiffs were denied an opportunity to gather appropriate evidence.²

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

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

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

b) Factual Record was not Sufficiently Developed

Where, as here, there are unresolved questions of fact, the South Carolina Supreme Court mandates that trial courts “must engage in a full inquiry” into the circumstances surrounding the purported formation of the arbitration agreement “prior to any attempt to enforce the Agreement.” *See Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 388 n.13 (2014). Without discovery, the Court has not met its obligation, imposed by the FAA and envisioned by *Dean*, to conduct a full inquiry into the facts surrounding the formation of the agreement.

In cases, such as this, “with no factual record . . . summary judgment [i]s premature.” *Baxter v. Pilgrim’s Pride Corp.*, 443 S.C. 463, 467 (Ct. App. 2024). Granting a motion on a summary judgment standard is a “drastic remedy” and necessitates that the motion “must not be granted until the opposing party has had a full and fair opportunity to complete discovery” on the contested issue.⁴ *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112 (1991) (collecting authorities). To grant a motion under a summary-judgment standard, “it must be shown that further inquiry into the facts is not needed to clarify the application of the law.” *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 478 (Ct. App. 1995); *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362 (2002) (“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.”).

³ The Supreme Court of North Carolina acknowledges another option for the Court at this posture: “an intermediate option we could have pursued in this case was remanding to the trial court, where any disputed facts revealed by the record could have been addressed in an evidentiary hearing with the opportunity to test statements through cross-examination; this Court has remanded for such hearings in a variety of contexts.” *Tillman v. Com. Credit Loans, Inc.*, 362 N.C. 93, 118 (N.C. 2008) (collecting cases).

⁴ For the avoidance of doubt, Plaintiffs are certainly not positing that all discovery should be conducted, rather, limited discovery to the issues regarding the motion to compel arbitration is proper.

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

Finally, discovery on these issues is particularly important as discussed in more detail *infra* because the issues raised by Plaintiffs, including contract formation, validity, assent, unconscionability are fact-intensive under South Carolina law.⁵ See *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25 (2007) (“A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case.”); *Hardee v. Hardee*, 348 S.C. 84, 95–96 (Ct. App. 2001) (“In determining unconscionability, courts are limited to considering facts and circumstances existing when the contract was executed.” (citing Restatement (Second) of Contracts § 208 (1981))), *aff’d as modified*, 355 S.C. 382 (2003). “Both state and federal law supports plaintiffs’ limited discovery request to develop their claim that the arbitration clause is

⁵ For the avoidance of doubt, even though the Motion to Compel Arbitration is brought under the FAA, contract issues are still considered under South Carolina law. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539 (2001) (“General contract principles of state law apply to arbitration clauses governed by the FAA.”).

unconscionable.” *Dunlap v. Green Tree Servicing, LLC*, No. CIV.A. 2:05-0311, 2005 WL 3178593, at *2 (S.D.W. Va. Nov. 28, 2005) (collecting cases).

B. THE ARBITRATION PROVISION IS NOT ENFORCEABLE

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

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

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

arbitrate should be limited to the express terms of the arbitration provision and not the contract as a whole. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42 (2016).

To determine whether a valid arbitration agreement exists, “trial courts consider ‘general contract defenses’ to ensure a meeting of the minds to arbitrate existed, and that such an agreement was not the result of fraud, duress, [or] **unconscionability**.” *York v. Dodgeland of Columbia, Inc.*, 405 S.C. 67,78 (2013) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 593 (2001) (referencing *Doctor’s Assocs. v. Casarotto*, 517 U.S. 681 (1996)) (emphasis added). “At its core, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with the terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611 (2022) (citing *Fanning v. Fritz’s Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 403 (1996); 17AAM. JUR. 2d Contracts § 272 (2016) (characterizing the two prongs as procedural and substantive unconscionability, respectively); and *Id.* § 271 (“Generally, the doctrine of unconscionability protects against unfair bargains and unfair bargaining practices . . .”). A determination of whether a contract is unconscionable depends upon all of the facts and circumstances of the case. *Id.* at 611, 755 (citing *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 614 (2012)). Our courts have “emphasized the importance of a case-by-case analysis in order to address the unique circumstances inherent in the various types of consumer transactions.” *Id.* While considering guidance from the United States Court of Appeals for the Fourth Circuit, the *Damico* Court reiterated that “[i]n analyzing claims of unconscionability in the context of arbitration agreements,” the focus should be on “whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision maker.” *Id.* at 612, 755 (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24–25 (2007) (citing *Hooters of Am., Inc. v. Phillips*, 173 F. 3d 933, 938–40 (4th Cir. 1999)).

1. Plaintiffs Dispute the Contract on Formation Grounds not Enforceability

As a threshold matter, Plaintiffs dispute the *formation* and *validity* of the Agreement and are not simply asserting the Agreement, and more specifically the Dispute Resolution provision, are invalid and because an agreement was never formed due to unconscionability and/or fraud. “There is a difference between disputes over arbitrability and disputes over contract formation.” *Rowland*, 993 F.3d at 258. Plaintiffs here, in fact, contest the contract formation and related issues such as assent in invoking the purported agreement’s unconscionability. *See Meadows v. Cebridge Acquisition, LLC*, 132 F.4th 716, 730 (4th Cir. 2025) (“Procedural ***unconscionability*** is concerned with inequities, improprieties, or unfairness in the bargaining process and ***formation of the contract.***” (emphasis added)).

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

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

2. The Defendants’ Reliance on *Henry Schein* is Misapplied and Inaccurate

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

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

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

In *Schein*, neither party challenged the existence of an arbitration agreement. *Id.* at 66, 528. Instead, the parties disagreed about the application of the arbitration agreement’s exception for actions seeking injunctive relief. *Id.* Because the plaintiff business sought, in part, injunctive relief through an antitrust cause of action against the defendant business, it argued arbitration was barred by the terms of the contract. *Id.* Reiterating that U.S. Supreme Court has “consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties’ agreement does so by ‘clear and unmistakable’ evidence. *Id.* at 69, 529. The opinion goes on to specify:

“To be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists. See 9 U.S.C. § 2. But if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue.” *Id.*

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

Defendants’ memorandum contains two quotes from *Schein* upon which they anchor their argument that *Schein* is controlling, but omit any reference to the required evidence of ‘whether a valid arbitration agreement exists’ and/or the ‘clear and unmistakable’ delegation of ‘the

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

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

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

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

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

4. Defendants’ Position Fails to Address Formation, Validity and Delegation

As an initial matter, Plaintiffs maintain that they never entered into *any* contract, including the entire agreement, the arbitration agreement, or any delegation provision. As such, a “challenge

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

Defendants’ memorandum attempts to obfuscate the issues of formation and delegation, just as with the existence of an agreement initially, by shifting its attention to the “black letter law that anyone who can read is presumed to have read any agreement that person signs.” While this premise holds true, it still is subject to the same defenses available under the Federal Arbitration Act and South Carolina law. 9 U.S.C. § 2 and *Damico v. Lennar Carolinas, LLC* and its progeny. 437 S.C. 596 (2022)(“Thus, generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening [the FAA].”). In *Damico*, the Court considered arbitration agreements between a construction business and ‘a number of homeowners’ with regard to alleged construction defects. Instead of ruling that the arbitration contracts were enforceable because the home purchasers signed them and were presumed to have read, understood and assented to its terms, the *Damico* Court began with the threshold issue of validity of the arbitration clause. *Damico* at 609. After determining Section 16 of the purchase and sale agreement contained the operative arbitration clause, the Supreme Court found “it necessary to continue the analysis to determine whether any terms within Section 16 of the purchase and sale agreement were unconscionable in and of themselves.” *Id.* at 607. That is because, if the elements of the defense are found, the agreement would be invalidated and would

no longer constitute an agreement, so the black letter law would no longer apply. As referenced above, the Plaintiffs assert the existence of fraud and unconscionability and the Verified Complaint offers evidence to support those defenses. As a result, there exists evidence, which may either be confirmed or nullified with discovery, that the alleged arbitration clause is invalid, but when considered in the light most favorable to the Plaintiffs currently these defenses cannot be ruled out and the principles set forth in *Gibson* and even *Munoz* would be ineffectual. In fact, the *Munoz* Court specifically considered whether the arbitration clause was unconscionable and found it was not. However, if it stood for the principle presented by Defendants an unconscionability analysis would have been unnecessary because there was no dispute the Munozes signed the installment contract and security agreement. *Munoz* at 536 & 541.⁶

Given the clear dispute between the parties as to whether the delegation clause was intended by each to require the arbitration of arbitrability, there is no factual basis for finding the parties “clearly and unmistakably” agreed to the purported delegation provision. The alleged arbitration clause’s language that “[a]ny controversy . . . relating to this Purchase Agreement, shall be resolved and decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) (however, not under the auspices of AAA)” delegates anything to the Arbitrator (Agreement at 2.) is unsupported by the facts and falls short of the standard for showing a valid delegation.

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

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

Courts applying *Simply Wireless* have recognized this. In *Gordon v. Zeroed-In Tech.*, the Court stated “this Court, like Judge Hollander, is **skeptical** that a cross-reference to the JAMS Rules provides “clear and unmistakable” evidence of the parties’ intent to arbitrate arbitrability, given that **one party is unsophisticated.**” *Gordon v. Zeroed-In Tech., LLC*, No. CV 23-3284-BAH, 2025 WL 941365, at *23 (D. Md. Mar. 26, 2025) (citing *Stone v. Wells Fargo Bank, N.A.*, 361 F. Supp. 3d 539, 555 (D. Md. 2019)); *accord Collins v. Discover Fin. Servs.*, No. CV PX-17-03011, 2018 WL 6434503, at *3 (D. Md. Dec. 7, 2018) (same). As *Stone* stated aptly, “[i]t strains credulity to believe that the consumer knew—much less intended—that the cross-reference directed an arbitrator to decide arbitrability. To treat the Agreement as evidencing clear and unmistakable

evidence of plaintiff's intent would be to take a good joke too far." *Stone*, 361 F. Supp. 3d at 555 (citation omitted); see *Barmby v. Ourisman Chevrolet, Co.*, No. CV DLB-22-2312, 2023 WL 4549739, at *9 n.5 (D. Md. July 14, 2023) (indicating the unsophistication of the party in *Stone* "weighed heavily in this court's analysis" on clear and unmistakable evidence). In fact, *In re Little*, a case cited in *Masters* for the rule on the very topic of *clear and unmistakable evidence* "concur[ed]" with the reasoning in *Stone*.⁷ 610 B.R. 558, 568 (Bankr. D.S.C. 2020). *In re Little*, stated the obvious: "how unlikely it would be that an unsophisticated party would know what a set of arbitration rules were, and even less so, the specific contents of a particular rule within that set." *Id.*

In examining disputed material facts and in taking all reasonable inferences in Plaintiffs' favor, it is unclear how the agreement's invocation of the AAA rules could provide the requisite "clear and unmistakable" evidence. Unsophisticated consumers, such as the Plaintiffs, have no understanding of the AAA Commercial rules. They are especially unlikely to know that AAA rules purportedly delegates arbitrability of disputes to the arbitrator.⁷ However, the Defendants and their counsel most certainly would be aware of such 'traditional and technical legal distinctions' in order to draft a more favorable contract to benefit themselves. See *Damico* at 621. In all, the agreement under the facts in the Verified Complaint, even if it were to be properly formed (which Plaintiffs dispute), does not "clearly and unmistakably" delegate validity and arbitrability to the arbitrator.⁸

5. Contract of Adhesion

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

⁷ Moreover, all the evidence in the Verified Complaint (and in the publicly-available complaints) surrounding the high-pressure conditions that the agreement was purportedly formed under, casts doubt on this even more.

⁸ If needed, because this is such a critical and dispositive issue here, Plaintiffs would welcome supplemental briefing on this issue (and any issues as the Court wishes).

total after adding the required Documentation Fee of Three Hundred Ninety-Nine and 00/100 Dollars (\$399.00) and first year dues of One Hundred Ninety-Nine and 00/100 Dollars (\$199.00); 4) Federal Truth-in-Lending Act Disclosures, if applicable; and 5) signatures blanks for the Client/Purchasers, a Sales Representative and Manager. The recitals of the Agreement define Vacation Inspirations as “VI,” Destination Travel as “DT,” and the purchasers as “Client,” for convenient reference thereafter. Of the six ‘carbon-copy’ style, multiple copy, forms that compose the Agreement, five of them require the Clients to sign their name. The only page that does not have this requirement is the only page that contains the relevant arbitration language: the Membership Terms and Conditions page (“Terms and Conditions”). Likewise, all of the pre-printed pages are one-sided, except for the Purchase Agreement and Terms and Conditions which are each printed on the same page with the Terms and Conditions being on the rear side of the same piece of paper as the Purchase Agreement. The first sentence of the Terms and Conditions provides “[t]hese Terms and Conditions are part of the Membership Agreement”. Paragraph VIII, at the bottom of the page, is entitled “Dispute Resolution” and provides that:

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

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

It is true, as the Defendants indicate, there were blanks to be completed and an Addendum/Exception was included, but so too were there blank spaced to be filled in under the agreement considered in *Damico*. “Here, we find it manifest that the purchase and sale agreement

is a contract of adhesion given by Lennar to all of the homebuyers in the Abby, with only a few blank spaces to fill in, including the buyer's name, the relevant property address, and the purchase price. Other than those type of minor blank spaces, the terms of the purchase and sale agreement – particularly those of any consequence to Lennar – are non-negotiable, with some terms not even applying to specific homebuyers.” *Damico* at 614. The handwritten items which Defendants assert establish Plaintiffs had a meaningful choice are virtually identical in each of the three pending cases. See Exhibit A. It strains credibility that each of the plaintiffs in the three pending cases came up with the same exceptions to the Agreement and presented them to Defendants, but instead that Defendants provided them as a matter of procedure in order to manufacture just such an argument to defeat an unconscionability defense. Either way, the Defendants’ position merely necessitates an improper weighing of evidence. Factual disputes at best, and outright inaccuracies at worst, pervade Defendants’ submissions, demonstrating the danger of crediting their characterization of the record without careful scrutiny. Viewed properly, these disputes confirm that the purported agreement was an adhesion contract and unconscionable, and further show why Defendants’ attempt to compel arbitration cannot withstand meaningful judicial review. While the arbitration clause is not *per se* unconscionable simply because it is adhesive in nature, when inspected with the “considerable skepticism” referenced by the *Damico* and *Simpson* Courts its unconscionable nature is revealed. The unfair nature of the contract’s formation, its status as a consumer transaction and the lack of mutuality all weigh in favor of unconscionability.

6. Unconscionability

a) *Absence of Meaningful Choice & High-Pressure Tactics*

In accordance with *Damico* and its forebears, Paragraph VIII of the Agreement reflects the entire arbitration clause to be considered by this Court for determining if a valid arbitration agreement exists in accordance with the *Prima Paint* doctrine. The arbitration clause is not ‘geared

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

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

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

b) Oppressive and One-Sided Terms:

The terms of the arbitration provision are so oppressive that it is patent that no reasonable person would make them and no fair and honest person would accept them. When confronted with a similar scenario of one-sided arbitration provisions, the Fourth Circuit Court of Appeals found them “so one sided the that their only purpose is to undermine the neutrality of the proceeding. *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999). *Phillips* involved an employee of Hooters restaurants who alleged she had been sexually harassed and pursued a Title VII complaint. When Phillips would not agree to arbitrate the matter pursuant to the terms of an “Agreement to arbitrate employment-related disputes,” Hooters initiated a suit to compel arbitration. The federal district “court found there was no meeting of the minds on all of the

material terms of the agreement and, even if there were, Hooters' promise to arbitrate was illusory.” *Id.* at 936. Upon appeal, the Fourth Circuit Court of Appeals found rules requiring the employee to select one arbitrator from a list provided by Hooters was crafted by Hooters “to ensure a biased decisionmaker.” *Id.* at 938. The Fourth Circuit found:

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

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

In addition to the fundamentally unfair grant of authority that VI selects the arbitrator, VI's authority to select the location of the arbitration creates additional leverage for the Defendants when read along with the requirement that the non-prevailing party pays all of the costs of the arbitration, including the arbitrator's fees and the location of the arbitration. This is because a client noting that the arbitrator is selected by VI, may also see the selection of the location as an

opportunity for the Defendants to expend substantially more resources than the likely out-of-state Client can reasonably afford, thus chilling the Client's will to pursue a dispute with the Defendants. Similarly, the arbitration provision's requirement that the arbitration be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, but not under the auspices of the American Arbitration Association suggests the transaction was of a commercial in nature, rather than involving a business and consumers. This incongruity further serves to discomfit the individual Clients (as defined in the Agreement), who were *consumers* in the transaction at issue, and discourages them from pursuing dispute resolution against Defendants, who are each involved in a commercial concern and deal with such proceedings more regularly than the clients. Just as the application of the Commercial Arbitration Rules of the American Arbitration Association do, when the same organization's Rules specifically state that and require the Consumer Rules apply in consumer transactions:

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

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

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

CONCLUSION AND PRAYER FOR RELIEF

When taking all reasonable inferences in the Verified Complaint in favor of Plaintiffs, it is clear that, at a minimum, the disputes of material facts indicate the Motion to Compel Arbitration must be denied.

For the foregoing reasons, Plaintiffs respectfully request that this Honorable Court deny the Defendants’ Motion to Compel Arbitration and Stay Proceedings and order the Defendants to

answer Plaintiffs' discovery requests within thirty (30) days so as to comply with the Rules of Civil Procedure.

Respectfully submitted,

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2024-CP-10-2642
CHRISTOPHER SAWYER AND	)	
TERESA SAWYER,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER
	)	
VACATION INSPIRATIONS,	)	
DESTINATION TRAVEL, LLC, JOSEPH	)	
SHIRLEY, RANDY GARDNER, AND	)	
JEFFREY PUMILIA,	)	
	)	
Defendants.	)	
	)	

This matter came before the Honorable Thomas J. Rode for a hearing on October 7, 2025, on Defendants’ motion to compel arbitration and stay proceedings. 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 in May 2021 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 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.

On May 21, 2024, Plaintiffs filed a lawsuit against Defendants in the Charleston County Court of Common Pleas, alleging among other things, that the Purchase Agreement (including the arbitration provision) was unconscionable and seeking injunctive and equitable relief. Defendants answered, 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

I find the matters at issue have 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). Plaintiffs allege in their Complaint that they are residents of Pennsylvania and that Defendants are residents of Charleston or businesses operating here. The connection to interstate commerce 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.

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).

Here, the parties clearly and unmistakably 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 the arbitrator to decide questions about 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 "[w]hile 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.” I conclude as a matter of law that the parties agreed to delegate issues regarding the enforceability of the Purchase Agreement itself to the arbitrator. Therefore, the Court must refer this matter to arbitration for the arbitrator to decide all such issues.

It is ORDERED, ADJUDGED AND DECREED, as follows:

1. All issues including questions regarding arbitrability, the Plaintiffs’ claims, the defenses raised by the Defendants, Defendants’ counterclaim and other arbitration matters shall be determined and decided by the arbitrator appointed pursuant to the FAA and the arbitration provision in the Purchase Agreement; and
2. All proceedings in the within case are hereby stayed pending arbitration.

AND IT IS SO ORDERED.

The Honorable Thomas J. Rode

Charleston, South Carolina

This __day of _____, 2025.

DAVID W. WOLF, P.A.
BUSINESS & COMMERCIAL LAW

October 30, 2025

The Honorable Thomas J. Rode
100 Broad Street, Suite 439
Charleston, SC 29401

Re: Sawyer, et. al v. Vacation Inspirations, et. al., Case No. 2024-CP-10-02642

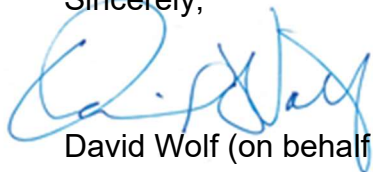
Dear Judge Rode:

Plaintiffs' counsel has received the proposed order submitted by Defendants' counsel as the Form 4, dated October 20, 2025 instructed. That order indicated it was a "Statement of Judgment by the Court" and instructed that "the Court is inclined to GRANT Defendant's Motion to Compel Arbitration and Stay Proceedings, and directs Defendant to submit a proposed order. Further therein, you stated that "[a] more formal order will follow after receipt to the proposed order from Defendants."

Plaintiffs respectfully request, that prior to entering a more formal order, Plaintiffs are provided with fourteen days to submit objections on the record to Defendants' proposed order, as well as, to submit their own proposed order consistent with the Court's October 20, 2025 Form 4 Order. This request is made as a matter of permitting Plaintiffs a fair opportunity for input into the process of creating the order, just as our Supreme Court of South Carolina has encouraged through its prior condemnation of "the judicial practice of merely signing an order prepared by counsel of one party." *Burgess v. Stern*, 311 S.C. 326, 330 (1990)(citing *Herring v. Retail Credit Co.*, 266 S.C. 455 (1976)). Plaintiffs submit the proposed order is lacking in multiple areas, including but not limited to, its utilization of the wrong legal standard for motions to compel arbitration.

We appreciate the Court's time in this case and do not wish to prolong that consideration any longer than necessary to reach a ruling consistent with the required legal standards applicable to the subject motion.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Wolf", is written over the word "Sincerely,".

David Wolf (on behalf of myself and Abigail Saunders)

DAVID W. WOLF, P.A.
BUSINESS & COMMERCIAL LAW

November 21, 2025

The Honorable Thomas J. Rode
100 Broad Street, Suite 439
Charleston, SC 29401

Re: Sawyer, et. al v. Vacation Inspirations, et. al., Case No. 2024-CP-10-02642

Dear Judge Rode:

Plaintiffs write in response to the Court's order, entered November 12, 2025, requesting that Plaintiffs provide "1. A list of Plaintiff's objections to the proposed order received from Defendants" and "2. A proposed order compelling arbitration that Plaintiff's counsel asserts is (other than the result) not objectionable (in MS Word format)." The first request is below and the second request is attached.

As an initial matter, as part of their Compliance with the Court's request, Plaintiffs do not waive any of their rights, including but not limited, to their reconsideration rights under South Carolina Rules of Civil Procedure 52 and 59, as well as their appellate right.

Further, Plaintiffs have, to the extent possible, proposed an order compelling arbitration that is less objectionable. However, Plaintiffs believe that an order compelling arbitration amounts to legal and factual error so it is impossible to come up with an order compelling arbitration that is "(other than the result) not objectionable."

To that end, for the purposes of the proposed order, Plaintiffs have included aspects that it finds objectionable (and counter to South Carolina law) but nevertheless includes them because otherwise it would be impossible to compel arbitration as to arbitrability (or any other issue). These two objectionable aspects that are in Plaintiffs' proposed order are: (1) the Court's analysis as to who determines questions as to validity of the contract and (2) whether there is clear and unmistakable intent to delegate questions as to the contract's validity to the arbitrator.

Plaintiffs posit that (1) questions as to whether a contract is validly formed are always questions for courts and (2) even if those questions could be delegated, there is not clear and unmistakable evidence to do so here. However, for the purposes of the Court's request as to a proposed order, Plaintiffs must include these foundational aspects, even though objectionable.

Further, below is a list of Plaintiff's objections to the proposed order received from Defendants.¹

#1: The proposed order does not apply the required legal standard for motions to compel arbitration under the FAA, which is a standard akin to a motion for summary judgment.

- **Legal Support:** See *Rowland v. Sandy Morris Fin. & Est. Plan. Servs., LLC*, 993 F.3d 253, 258 (4th Cir. 2021) (recognizing in “resolv[ing] the parties’ dispute over whether they agreed to arbitrate . . . the district court must employ the summary judgment standard”); e.g. *Briody v. THI of South Carolina at Magnolia Place at Greenville, LLC*, No. 2009-CP-23-6381, 2010 WL 9935409, at *4 (S.C.Com.Pl. July 13, 2010) (“When ruling on a motion to compel arbitration, the court uses a standard analogous to the summary judgment standard.”); *Floyd v. SSC Sumter East Operating Co., LLC*, No. 2022-CP-43-00355, 2022 WL 22592977, at *2 (S.C.Com.Pl. Oct. 4, 2022) (“A motion to compel arbitration pursuant to the FAA is ‘akin to the burden on summary judgment.’”); *Hackworth v. Bayview Manor, LLC*, No. 2019-001536, 2023 WL 2519244, at *3 (S.C. Ct. App. Mar. 15, 2023) (“When a court is deciding whether there is a bona fide dispute regarding the ‘making’ of the arbitration agreement, the court ‘is obliged to employ a standard such as the summary judgment test.’” (citation omitted)).

#1.A: Resulting from the legal standard error, the proposed order does not treat the evidence consistent with the required legal standard (e.g., viewing in the light most favorable to plaintiffs, holding an evidentiary hearing or allowing limited discovery for disputes of material fact, does not describe how fact finding was undertaken).

- **Legal Support:** “When faced with a motion to compel arbitration that is opposed based on whether an agreement to arbitrate has been made between the parties, the court must give to the opposing party the benefit of all reasonable doubts and inferences that may arise.” *Estate of Clinkscales v. Fundamental Clinical and Operational Services, LLC*, No. 2018-CP-23-05088, 2019 WL 9573826, at *2 (S.C.Com.Pl. Feb. 05, 2019); *Acevedo v. Hunt Valley Holdings, LLC*, No. 2018-CP-42-03421, 2020 WL 12919238, at *1 (S.C.Com.Pl. July 10, 2020) (same); *Rowland*, 993 F.3d at 257 (“[I]n reviewing the district court’s denial of a motion to compel arbitration, we accept as true the allegations of the . . . Complaint that relate to the underlying dispute between the parties.”); *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 15 (2006) (“The evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party.”)

#1.B: The proposed order does not appropriately treat the verified complaint as evidence.

- **Legal Support:** The Supreme Court of South Carolina recognizes that “a verified complaint is equivalent of an affidavit” for the purposes of a summary judgment standard under South Carolina law. *Dawkins v. Fields*, 354 S.C. 58, 67 (2003) (aligning with federal courts and “numerous state courts” and holding that a verified complaint is akin to an affidavit).

¹ Again, this list does not serve as a waiver of any other objections or arguments for a motion to reconsider, an appeal, or any other purpose.

#1.C: The decision does not comply with the trial provision of the FAA.

- **Legal Support:** Where there are unresolved questions of fact, the South Carolina Supreme Court mandates that trial courts “must engage in a full inquiry” into the circumstances surrounding the purported formation of the arbitration agreement “prior to any attempt to enforce the Agreement.” *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 388 n.13 (2014); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 38 (Ct. App. 1999) (“A jury trial on the existence of an arbitration agreement is warranted when there are genuine issues of material fact regarding the parties’ agreement” (citation omitted)); *The Hous. Auth. Of City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 335 (Ct. App. 2003) (“The determination of whether an arbitration agreement exists is ‘a matter to be forthwith and summarily tried by the Court.’”) (citation omitted); *Rowland*, 993 F.3d at 257–58 (The FAA “mandates that ‘if the making of the arbitration agreement . . . be in issue, the court shall proceed summarily to the trial thereof.’” (citing 9 U.S.C. § 4)).

#2: The proposed order misapplies *Henry Schein, Inc. v. Archer & White Sales, Inc.* by not first determining whether: 1) a valid arbitration agreement exists; and 2) whether a clear and unmistakable delegation of the issue of arbitrability to the arbitrator was made.

- **Legal Support:** “[B]efore referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists.” 586 U.S. at 69; and “[u]nder our cases, courts ‘should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so.’” *Id.* at 72.

#3: Under South Carolina law, questions as to an arbitration provision’s validity are always for courts to decide:

- **Legal Support:** “Arbitration is a matter of contract law and general contract principles of state law apply to a court’s evaluation of the enforceability of an arbitration clause” *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6 (2016). “[I]n South Carolina, if an arbitration provision is challenged on grounds of unconscionability, the question of the clause’s validity is for courts to decide, even if the clause delegates issues of validity by incorporating the AAA’s Commercial Arbitration Rules.” *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, 444 S.C. 521, 530 (Ct. App. 2024), *reh’g denied* (Nov. 13, 2024), *cert. granted* (June 25, 2025).

#4: The proposed order does not strike the unilateral arbitrator-selection provision.

- **Legal Support:** See, e.g., *Flores v. New York Football Giants, Inc.*, 150 F.4th 172, 185 (2d Cir. 2025) (“[W]e additionally find persuasive some of the reasoning of the Fourth and Sixth Circuits, respectively, which refused to enforce arbitration provisions because of the unilateral selection of arbitrators. (citing *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 939–40 (4th Cir. 1999) & *McMullen v. Meijer, Inc.*, 355 F.3d 485, 493–94 (6th Cir. 2004))).

#5: The proposed order conclusorily and without analysis concludes the Purchase Agreement “clearly and unmistakably” delegated certain questions to the arbitrator. An

agreement involving an unsophisticated consumer referencing the AAA rules does not “clearly and unmistakably” delegate arbitrability to the arbitrator.

- **Legal Support:** See, e.g., *Stone v. Wells Fargo Bank, N.A.*, 361 F. Supp. 3d 539, 555 (D. Md. 2019) (“I am not persuaded that a single cross-reference to the AAA Rules provides ‘clear and unmistakable’ evidence of plaintiff’s intent to arbitrate arbitrability.”); *In re Little*, 610 B.R. 558, 569 (Bankr. D.S.C. 2020) (“This Court agrees with *Stone* that in context of an unsophisticated party entering an adhesion contract that includes an arbitration agreement, the incorporation of a set of arbitration rules does not alone create clear and unmistakable evidence of an intent for an arbitrator to determine threshold arbitration issues.”); *Ashworth v. Five Guys Operations, LLC*, No. CV 3:16-06646, 2016 WL 7422679, at *3 (S.D.W. Va. Dec. 22, 2016) (“Incorporation by reference of an obscure body of rules to show a clear and unmistakable intent to adhere to one rule specifically is preposterous. It is so unlikely as to be bordering on the absurd that an unsophisticated party . . . would know what the AAA is, much less the contents of its governing rules.” “How this could be considered clear and unmistakable can only be explained if the true meanings of ‘clear’ and ‘unmistakable’ are ignored.”)

#6: The proposed order never reaches the fact-intensive analysis required for issues of unconscionability.

- **Legal Support:** *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611 (2022) (“A determination of whether a contract is unconscionable depends upon all the facts and circumstances of the case”); *Holler v. Holler*, 364 S.C. 256, 269 (Ct. App. 2005) (“The determination of unconscionability is fact specific, and the totality of the circumstances must be assessed.” (citation omitted)); *One Belle Hall Prop. Owners Ass’n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 62 (Ct. App. 2016) (“[T]he importance of a case-by-case analysis . . . to address the unique circumstances inherent in the various types of consumer transactions.” (citation omitted)); *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 630 (Ct. App. 2008) (“The supreme court emphasized the importance of a case-by-case analysis to address unique circumstances surrounding the evaluation of an arbitration clause for unconscionability” (citing *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 36 (2007))).

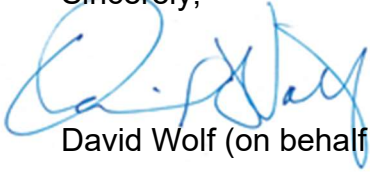
#7: The proposed order cites only one South Carolina decision (*Masters*) for an issue actually in dispute (the Munoz case is cited for the proposition that the FAA applies to the agreement, which is not in dispute). The *Masters* case deals with totally different issues and has, in any event, never been cited by the Court of Appeals or the Supreme Court of South Carolina in a published decision. *Masters* does not deal with questions of mutual assent and unconscionability, rather it deals with the question of whether “execution of subsequent contracts . . . renders the original agreement and its Arbitration agreement moot and unenforceable.” The present case has nothing to do with subsequent contracts.

#8: Otherwise, the proposed order wholly fails to engage with any of the legal analysis in light of the Plaintiffs’ status as consumers.

- **Legal Support:** The *Simpson* decision affirms that under South Carolina law,

courts must analyze consumer arbitration agreements “with considerable skepticism” due to “the disparity in bargaining positions of the parties.” 373 S.C. at 26 (citation omitted).

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Wolf', is written over the typed name.

David Wolf (on behalf of myself and Abigail Saunders)

Enc. Proposed Order; (8 pages)