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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 II

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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.	)	[PROPOSED] ORDER
	)	
VACATION INSPIRATIONS,	)	
DESTINATION TRAVEL, LLC,	)	
JOSEPH SHIRLEY, RANDY	)	
GARDNER, and JEFFREY PUMILIA,	)	
	)	
DEFENDANTS.	)	
_____	)	

This matter came before the Honorable Thomas J. Rode for oral argument 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.

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.

On September 11, 2025, the Motion to Compel Arbitration was scheduled for arguments on October 7, 2025. On September 26, 2025, Defendants filed their memorandum of law in support of their Motion. On October 3, 2025, Plaintiffs filed their memorandum of law in opposition to Defendants' Motion.

On October 20, 2025, the Court entered a Form 4 Order indicated “it is inclined to GRANT Defendant’s Motion to Compel Arbitration and Stay Proceedings, and directs the Defendant to submit a proposed order.” This Order constitutes the formal order on the Motion.

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 (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)...” To determine whether this language delegates questions of arbitrability and enforceability to the arbitrator, we must first look to the AAA rules. Plaintiffs contend that the AAA Consumer Arbitration Rules must apply because Rule R-1(a) states that:

The 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, Consumer Arbitration Rule 1(a) (emphasis added). According to the Consumer Rules, even if “a different set of AAA rules [are] named in the arbitration agreement, these [Consumer] Rules and any amendment of them shall apply.” Determining that the relationship between the parties is, without question, that of consumer and business, and no ambiguity in AAA rules, the Court determines that arbitration is compelled under the AAA Consumer Rules. See e.g., In the Matter of the Arbitration Between: [Claimant] v. [Respondent 1], [Respondent 2], 2016 WL 1061561 (AAA) at 2 (“Thus, despite the citation to the Commercial Rules in the agreement between the parties, I find that the Consumer Arbitration Rules must be applied in this case.”) Therefore, the inclusion of the AAA Consumer Rules in the agreement implicates Rule R-7(a) and (b), which provide as follows:

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).

Under the Federal Arbitration Act, a 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.

Plaintiffs also contend that even if the Court is to compel arbitration, it must modify several aspects of the arbitral process as unconscionable or against public policy to ensure it provides an "independent arbitral forum." See Flores v. New York Football Giants, Inc., 150 F.4th 172, 183 (2d Cir. 2025) ("[S]imply labeling something as "arbitration" does not automatically bring it within the ambit of the FAA's protection." (citation omitted). Plaintiffs contend that the arbitration provision is unconscionable for a multitude of reasons, including that arbitrator selection provision. Ultimately, the arbitration provision must be "geared towards achieving an unbiased decision by a neutral decision-maker." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 25 (2007)

The Court finds that the arbitrator selection provision that grants Defendants the unilateral power to the appoint the arbitrator must be stricken at this juncture. See Flores, 150 F.4th at 184 (“It would make little sense if the [FAA] required the courts to compel parties to arbitrate their claims in a forum that is indisputably partial.”). As a threshold matter, it is proper to address these structural issues at the outset. While it is true that there is a “general rule prohibiting pre-arbitration challenges to an allegedly biased arbitration panel,” it “*does not extend to an allegation that the arbitrator-selection process itself is fundamentally unfair.*” Walker v. Ryan’s Fam. Steak Houses, Inc., 400 F.3d 370, 385 (6th Cir. 2005) (citing McMullen v. Meijer, Inc., 355 F.3d 485, 494 n.7 (6th Cir. 2004)) (emphasis added); see also McMullen, 355 F.3d at 494 n.7 (“[P]rocedural unfairness inherent in an arbitration agreement may be challenged before the arbitration.”) Having determined that it is appropriate to look at the fundamental fairness of the arbitrator selection provision at this posture, the Court turns to determining whether the selection process is fundamentally fair.

“When the process used to select the arbitrator is fundamentally unfair . . . the arbitral forum is not an effective substitute for a judicial forum, and there is no need to present separate evidence of bias or corruption in the particular arbitrator selected.” McMullen, 355 F.3d at 494 n.7. There are a myriad of examples where courts have declined to enforce arbitration selection provisions even less egregious than at issue here.

In Hooters of America Inc. v. Phillips, 173 F. 3d 933 (4th Cir. 1999), the Fourth Circuit invalidated an arbitration agreement where “[t]he employee and [employer] each select an arbitrator, and the two arbitrators in turn select a third” with the arbitrators all “selected from a list of arbitrators created exclusively by [employer].” In invalidating the arbitration agreement, the Hooters court found it failed to provide a “system whereby disputes are fairly resolved by an

impartial third party.” *Id.* at 940 (“the promulgation of so many biased rules—especially the scheme whereby one party to the proceeding controls the arbitral panel—breaches the contract entered into by the parties”).

In McMullen v. Meijer, Inc., 355 F.3d 485 (6th Cir. 2004), the Sixth Circuit invalidated an arbitration agreement whereby the company would first select five candidate arbitrators subject to certain safeguards—each had to be “(1) an attorney, (2) unemployed by and unaffiliated with [employer], (3) generally recognized as a neutral and experienced labor and employment arbitrator, and (4) listed on the rosters of [certain arbitration administrators].” *Id.* at 488. Even still, the court held this was not “an effective substitute for a judicial forum” due to the “risk of bias inherent in [the arbitrator selection] procedure.”

Further, there is a persuasive precedent in this Court on this issue. In Huffman v. Sticky Fingers, Inc., No. 05-CP-10-47, 2005 WL 5168737 (S.C.Com.Pl. Dec. 05, 2005), the court found “that that the selection of arbitrators and the discovery provisions alone were so unfair as to render the agreement ‘utterly lacking in the rudiments of even-handedness’ and therefore require[d] the Court to deny the motion to compel arbitration.” The selection process in Huffman is even less egregious than here. In Huffman, “[t]he selection process allows Sticky Fingers and Huffman to each select an arbitrator, with those two arbitrators then selecting a third.” The list of potential arbitrators was “made from managers and employees of restaurants, for the most part” and thus came from “groups already skewed in favor of management.” Therefore, the arbitrator selection provision which grants Defendants the unilateral power to select an arbitrator, cannot stand.

In all, Plaintiffs’ have given up their right to trial by jury and the Court must convert the mode of trial to arbitration with the above modifications.

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 matters shall be determined and decided in accordance with the AAA Consumer Rules by an arbitrator appointed pursuant to the FAA and the AAA Consumer Rules; 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

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))).

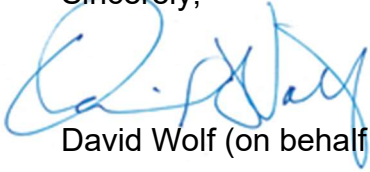
#7: The proposed order cites only one South Carolina decision (*Masters*) for an issue actually in dispute (the Munoz case is cited for the proposition that the FAA applies to the agreement, which is not in dispute). The *Masters* case deals with totally different issues and has, in any event, never 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,



David Wolf (on behalf of myself and Abigail Saunders)

Enc. Proposed Order; (8 pages)



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December 1, 2025

Direct Dial: (843) 793-6039

VIA E-MAIL ONLY

The Hon. Thomas J. Rode
Charleston County Circuit Court Judge
100 Broad Street, Ste. 439
Charleston, South Carolina 29401

Re: Sawyer v. Vacation Inspirations, et al.
Case No.: 2024-CP-10-2642
Our File No.: 2583-1

Dear Judge Rode:

We are in receipt of the letter and proposed order from Mr. Wolfe in the above matter. Based on the history of this matter and local practice, we did not plan to respond to Mr. Wolf's submissions. However, we will be happy to respond if the court would find that useful.

Sincerely,

WILLS MASSALON & ALLEN LLC

John Massalon

John A. Massalon
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cc: David W. Wolf, Esquire- david@wolflaw.com
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
CHRISTOPHER SAWYER and TERESE) Civil Action No. 2024-CP-10-2642
SAWYER,)
)
PLAINTIFFS,)
)
)
vs.)
)
VACATION INSPIRATIONS,)
DESTINATION TRAVEL, LLC,)
JOSEPH SHIRLEY, RANDY)
GARDNER, and JEFFREY PUMILIA,)
)
DEFENDANTS.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

**MOTION TO RECONSIDER THE
COURT’S ORDER COMPELLING
ARBITRATION AND STAYING
PROCEEDINGS UNDER RULES 52(b)
AND 59(e)**

Plaintiffs submit this Memorandum in Support of their Motion for Reconsideration of the Court's December 9, 2025 Order Compelling Arbitration and Staying the Proceedings.

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SUMMARY OF ARGUMENTS

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

First, the Court did not apply the correct legal standard. It is well-settled that motions to compel arbitration under the Federal Arbitration Act ("FAA") are decided under the same standard as motions for summary judgment pursuant to Rule 56, SCRPC. Under that standard, Plaintiff's Verified Complaint, which is treated as evidence at this stage, sets out detailed, sworn facts showing material disputes over contract formation, assent, and unconscionability. Defendants, by contrast, submitted no evidence at all to rebut Plaintiffs' sworn allegations or to create any evidentiary dispute. With no competing evidence and discovery requests gone unanswered by Defendants, the record was insufficient to compel arbitration.

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

STANDARD OF REVIEW

Plaintiffs respectfully submit this Motion pursuant to South Carolina Rules of Civil Procedure 52(b) and 59(e). The Supreme Court of South Carolina recognizes that Rule 59(e) serves “as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21–22 (2004) (acknowledging the South Carolina rule is “practically identical” with the federal rule) (citation omitted). Rule 59(e) is proper when a party “believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24. The motion “shall be served not later than 10 days after receipt of written notice of the entry of the order.” SCRCP 59(e). Rule 52(b) similarly allows a party to seek amendment or supplementation of the court’s findings. *See* SCRCP 59(b); *accord Doe v. Howe*, 367 S.C. 432, 440 n.4 (Ct. App. 2005).

PROCEDURAL BACKGROUND

Plaintiffs filed the Summons and Verified Complaint on May 21, 2024. Defendants were served on June 5, 2024. Defendants answered with counterclaims on July 3, 2024. Plaintiffs answered the counterclaims on August 1, 2024. Plaintiffs served discovery requests, including document requests and interrogatories on November 5, 2024. On November 12, 2024, Defendants filed the Motion to Compel Arbitration and Stay Proceedings with no accompanying brief in support or memorandum of law. On November 22, 2024, Defendants’ counsel notified Plaintiffs’ counsel that Defendants would not be responding to the discovery requests. By Notice dated September 11, 2025, the parties were informed that hearing on the Defendants’ motion was scheduled for oral arguments to take place on October 7, 2025. Defendants filed their moving brief on September 26, 2025; Plaintiffs filed their Opposition Brief on October 3, 2025. The Court held oral arguments on October 7, 2025.

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

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

FACTUAL SUMMARY

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

While visiting Charleston, Plaintiffs—elderly, out-of-state consumers—were drawn into Defendants’ inconspicuous sales facility. They were prohibited from using their phones, preventing them from discovering the extensive negative reviews and prior enforcement actions against Defendants’ principals for similar schemes.

In a controlled, high-pressure setting, Plaintiffs were steered into a take-it-or-leave-it form contract (with no ability to cancel), and rushed to sign without meaningful review or explanation. Buried in the document was an arbitration clause allowing Defendants alone to choose the arbitrator, set the venue, and impose fees on the non-prevailing party. These terms were never explained, and Plaintiffs did not understand that they were relinquishing their right to judicial forum, let alone a fundamentally unfair one.

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

ARGUMENT

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

A. THE COURT CANNOT IGNORE PERSUASIVE AUTHORITY

South Carolina appellate courts have long-emphasized the importance of considering authority from other jurisdictions, especially when there are no binding decisions on point. Indeed, a court’s “analysis would not be complete without reviewing cases from other jurisdictions.” *State*

v. Jones, 383 S.C. 535, 544 (2009); *see also Bass v. Isochem*, 365 S.C. 454, 478 (Ct. App. 2005) (“When there is no case on point in South Carolina, our courts may look to other states to determine if the issue has been decided and if the decision is persuasive authority.”). In deciding whether to adopt such authority, the Court must determine whether it finds its “reasoning persuasive.” *Brown v. Theos*, 345 S.C. 626, 632 (2001). What the Court may not do, however, is disregard persuasive authority wholesale without engaging its reasoning.

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

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

The Court’s decision articulates no governing legal standard and is therefore premised on a fundamental legal error. While the motion-to-dismiss standard¹ could have been applied here, courts far more commonly apply the summary-judgment standard to motions to compel arbitration

¹ If a motion to compel arbitration “can be decided ‘based on the face of a complaint, and documents relied upon in the complaint,’ a motion-to-dismiss standard should be used; otherwise, the summary judgment standard should be applied.” *Adler v. Gruma Corp.*, 135 F.4th 55, 63 (3d Cir. 2025) (quoting *Guidotti v. Legal Helpers Debt Resol., LLC*, 716 F.3d 764, 776 (3d Cir. 2013)). In the first instance, Plaintiffs posit that the Court should have applied a motion-to-dismiss standard because the Court decided the motion without the benefit of *any* discovery. In fact, Plaintiffs sent formal discovery requests to Defendants in November 2024 but never received the discovery requested. Therefore, given the posture, the Court should have applied the motion-to-dismiss standard and taken all allegations in the Complaint as true for the purposes of deciding the motion to compel arbitration. *See Fabian v. Lindsay*, 410 S.C. 475, 481 (2014) (recognizing that the motion-to-dismiss standard “must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true”). Further, under this standard, all the alleged facts must be viewed “in the light most favorable to the [plaintiff] and presume those facts to be true.” *Id.* An application of the motion-to-dismiss standard would have certainly resulted in a denial of the motion to compel arbitration.

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

Without application of the correct legal standard, the remainder of the analysis cannot stand. The governing standard dictates how the Court evaluates the record, treats evidence, and resolves factual disputes. Where that standard is not identified or applied, the resulting analysis is necessarily incomplete. In failing to apply the appropriate standard, the Court (1) did not consider Plaintiffs’ verified complaint as evidence²; (2) did not account for Defendants’ failure to submit any evidence refuting the Plaintiffs’ verified-complaint evidence; (3) did not afford Plaintiffs the benefit of all reasonable inferences³; (4) improperly weighed evidence relating to disputed issues

² The Supreme Court of South Carolina recognizes that “a verified complaint is equivalent of an affidavit” for the purposes of a summary judgment standard under South Carolina law. *Dawkins v. Fields*, 354 S.C. 58, 67 (2003) (aligning with federal courts and “numerous state courts” and holding that a verified complaint is akin to an affidavit).

³ See *Estate of Clinkscales v. Fundamental Clinical and Operational Services, LLC*, No. 2018-CP-23-05088, 2019 WL 9573826, at *2 (S.C.Com.Pl. Feb. 05, 2019); *Acevedo v. Hunt Valley Holdings, LLC*, No. 2018-CP-42-03421, 2020 WL 12919238, at *1 (S.C.Com.Pl. July 10, 2020) (same); *Rowland*, 993 F.3d at 257 (“[I]n reviewing the district court’s denial of a motion to compel arbitration, we accept as true the allegations of the . . . Complaint that relate to the underlying dispute between the parties.”). “The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 15 (2006).

of material fact⁴; (5) did not address the disputed materials facts⁵; (6) did not consider whether the factual record was sufficiently developed⁶ or whether targeted discovery would have aided the Court's decision⁷. If needed, the Court should hold an evidentiary hearing if there are disputed material issues relating to the motion to compel arbitration that can reasonably be resolved in such a forum.

⁴ See *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 11 (Ct. App. 2019); see also *Hansen v. DHL Lab'ys, Inc.*, 316 S.C. 505, 513, (Ct. App. 1994), *cert. granted, decision aff'd*, 319 S.C. 79 (1995) (“[Q]uestions of credibility can make summary judgment inappropriate.”). See *John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 435 (Ct. App. 2024) (“At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact.” (citation omitted)).

⁵ Plaintiffs' Verified Complaint provides ample evidence precluding granting the motion. If “[g]enuine issues of material fact exist, [it] preclud[es] summary judgment.” *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 464 (2020). “Only when there is no genuine issue of fact concerning the formation of the agreement should the court decide as a matter of law that the parties did or did not enter into such an agreement” *Briody*, No. 2009-CP-23-6381, 2010 WL 9935409, at *4. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452 (2001). “A jury trial on the existence of an arbitration agreement is warranted when there are genuine issues of material fact regarding the parties' agreement.” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 38, 524 S.E.2d 839, 844 (Ct. App. 1999). Importantly, “[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362 (2002).

⁶ Where, as here, there are unresolved questions of fact, the South Carolina Supreme Court mandates that trial courts “must engage in a full inquiry” into the circumstances surrounding the purported formation of the arbitration agreement “prior to any attempt to enforce the Agreement.” See *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 388 n.13 (2014). Without discovery, the Court has not met its obligation, imposed by the FAA and envisioned by *Dean*, to conduct a full inquiry into the facts surrounding the formation of the agreement.

In cases, such as this, “with no factual record . . . summary judgment [i]s premature.” *Baxter v. Pilgrim's Pride Corp.*, 443 S.C. 463, 467 (Ct. App. 2024). Granting a motion on a summary judgment standard is a “drastic remedy” and necessitates that the motion “must not be granted until the opposing party has had a full and fair opportunity to complete discovery” on the contested issue.⁶ *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112 (1991) (collecting authorities). To grant a motion under a summary-judgment standard, “it must be shown that further inquiry into the facts is not needed to clarify the application of the law.” *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 478 (Ct. App. 1995); *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362 (2002) (“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.”).

⁷ Courts in South Carolina have long recognized the need to conduct limited discovery prior to deciding a motion to compel arbitration. See *Rich v. Walsh*, 357 S.C. 64, 67 (Ct. App. 2003) (“Limited discovery was conducted in the interval between the filing of the complaint and the motion to compel arbitration.”); see also *Casale v. Stivers Chrysler-Jeep, Inc.*, No. 2006-UP-074, 2006 WL 7285736, at *1 (Ct. App. Feb. 9, 2006) (“[T]he court permitted the parties to conduct further discovery on the limited issue of whether [Plaintiff] accepted the arbitration agreement.”).

C. THE COURT’S CONCLUSIONS OF LAW ARE ERRONEOUS

Notwithstanding the standard of the review error, the Court’s decision contains multiple other legal errors. Under South Carolina law, questions as to an arbitration provision’s validity are always for courts to decide. “Arbitration is a matter of contract law and general contract principles of state law apply to a court’s evaluation of the enforceability of an arbitration clause.” *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6 (2016). “[I]n South Carolina, if an arbitration provision is challenged on grounds of unconscionability, the question of the clause’s validity is for courts to decide, even if the clause delegates issues of validity by incorporating the AAA’s Commercial Arbitration Rules.” *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, 444 S.C. 521, 530 (Ct. App. 2024), *reh’g denied* (Nov. 13, 2024), *cert. granted* (June 25, 2025). The Court’s Order plainly ignores this decision. Likewise, when a consumer plaintiff “has challenged the validity of the entire arbitration clause on grounds of unconscionability, there can be no ‘clear and unmistakable’ evidence that the parties actually agreed to arbitrate the gateway matter of the arbitration clause’s validity.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24 (2007).

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

1. Henry Schein

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

2. Lack of Unconscionability Analysis

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

Plaintiffs here, in fact, contest the contract formation and related issues such as assent in invoking the purported agreement’s unconscionability. See *Meadows v. Cebridge Acquisition, LLC*, 132 F.4th 716, 730 (4th Cir. 2025) (“Procedural **unconscionability** is concerned with inequities, improprieties, or unfairness in the bargaining process and **formation of the contract**.” (emphasis added)). South Carolina law recognizes challenges to “the arbitration provision on grounds of unconscionability, bringing into question whether an arbitration agreement even existed

in the first place.” *Simpson*, 373 S.C. at 23. “[I]ssues of contract formation necessarily raise the question of whether an arbitration agreement was ever created, such issues are for the court to decide.” *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 388 (2023). By declining to conduct this analysis, the Order commits a clear error of law.

3. Masters Does not Support the Proposition in the Order

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

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

Properly understood, *Little* does not support the conclusion that the parties here clearly and unmistakably delegated arbitrability. To the contrary, *Little* emphasized that “[t]he **clear and unmistakable standard is exacting**, and the presence of an expansive Arbitration Clause, without more, will not suffice.” 610 B.R. at 565–66 (quoting *Peabody Holding Co. v. United Mine Workers of Am., Int’l Union*, 665 F.3d 96 (4th Cir. 2012)) (emphasis added). *Little* further explained that in the context of an unsophisticated consumer entering an adhesion contract, “[i]t strains credulity to

believe that the consumer knew—much less intended—that the cross-reference directed an arbitrator to decide arbitrability. To treat the Agreement as evidencing clear and unmistakable evidence of plaintiff’s intent would take a good joke too far.” *Id.* at 568. (internal quotation marks and citations omitted). The court therefore rejected delegation, holding that “in context of an unsophisticated party entering an adhesion contract that includes an arbitration agreement, the incorporation of a set of arbitration rules ***does not alone create clear and unmistakable evidence*** of an intent for an arbitrator to determine threshold arbitration issues.” *Id.* at 569 (emphasis added). In short, *Little* found a lack of “clear and unmistakable” evidence that the unsophisticated party’s intent to delegate arbitrability to an arbitrator. Applying *Little*’s reasoning, the Court should have determined there was a lack of “clear and unmistakable” evidence that parties delegated arbitrability to the arbitrator. This is especially true in light of the unilateral arbitration provision and the unconscionability infecting the entire contracting process.

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

The Court’s Order contained no discussion of procedural or substantive unconscionability in contravention of the well-established principle that alleged unconscionable arbitration clauses necessitate “a case-by-case analysis . . . to address the unique circumstances inherent in the various types of consumer transactions.” *One Belle Hall Prop. Owners Ass’n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 62 (Ct. App. 2016) (citation omitted). Plaintiffs reemphasize the need to engage in the unconscionability analysis under South Carolina contract law as discussed in *Damico v. Lennar Carolinas, LLC* and its progeny. 437 S.C. 596 (2022). In *Damico*, the Court

explained the “touchstone of the analysis begins with the presence or absence of meaningful choice.” *Id.* at 612. “Thus, in determining whether an absence of meaningful choice taints a contract term, such as an arbitration provision, courts must consider, among all facts and circumstances, the relative disparity in the parties’ bargaining power, the parties’ relative sophistication, and whether the plaintiffs are a substantial business concern of the defendant.” *Id.* at 613 (citing authorities). The Order’s failure to grapple with Little and its reasoning underscores the need for reconsideration.

D. ONE-PARTY ARBITRATOR SELECTION & INDEPENDENT FORUM

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

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

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

this court, in the interest of preserving unity, will give considerable weight to those courts' interpretations of federal law and find them to be highly persuasive.”).

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

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

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

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

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

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

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

CONCLUSION AND PRAYER FOR RELIEF

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

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

1. GRANT this Motion Under South Carolina Rules of Civil Procedure 52(b) and 59(e);
2. VACATE the Order Granting Motion to Compel Arbitration and Stay Proceedings;

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

3. DENY the Motion to Compel Arbitration;
4. LIFT the stay of proceedings;
5. ORDER the case to proceed;
6. AUTHORIZE Plaintiffs' Motion to Compel Discovery;
7. STRIKE the Agreement's Arbitrator Selection Procedure as void as a matter of law and against public policy;
8. GRANT such other and further relief as this Court deems just and proper.

Respectfully submitted,

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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.	)	MEMORANDUM IN OPPOSITION
	)	TO PLAINTIFFS' MOTION
	)	TO RECONSIDER
VACATION INSPIRATIONS,	)	
DESTINATION TRAVEL, LLC, JOSEPH	)	
SHIRLEY, RANDY GARDNER, AND	)	
JEFFREY PUMILIA,	)	
	)	
Defendants.	)	
	)	

The Defendants above-named submit this memorandum in opposition to the Plaintiffs' motion for reconsideration of the order compelling arbitration and staying proceedings filed on December 18, 2025. For the reasons stated herein, the motion should be denied.

BRIEF FACTUAL BACKGROUND

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.

See Purchase Agreement and Terms and Conditions attached to Defendants' Motion to Compel Arbitration at Para. VIII.

On May 21, 2024, Plaintiffs filed the within 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 filed a counterclaim. Pursuant to the arbitration provision in the Purchase Agreement, Defendants filed a motion to compel arbitration on November 12, 2024. On December 9, 2025, the Court issued an order compelling arbitration and staying the proceedings in circuit court. The Plaintiffs then filed the present motion to reconsider.

ARGUMENT

I. ADOPTION AND INCORPORATION OF DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS FILED HEREIN ON NOVEMBER 12, 2024.

Defendants adopt and incorporate their Notice of Motion and Defendants' Motion to Compel Arbitration and Stay Proceedings in This Case Until Completion of Arbitration with exhibits filed herein on November 12, 2024 and Defendants' Memorandum in Support of Motion to Compel Arbitration and Stay Proceedings filed herein on September 26, 2025.

II. THE COURT PROPERLY RELIED ON THE FEDERAL ARBITRATION ACT AND THE AGREEMENT OF THE PARTIES IN ORDERING THESE PROCEEDINGS TO ARBITRATION.

The Court correctly relied on the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "FAA") to govern the issues herein. In addition, the terms of the Purchase (Membership) Agreement contain an explicit arbitration provision cited above and discussed in detail in Defendants' memorandum in support of compelling arbitration filed September 26, 2025, the

arguments of which are incorporated herein by reference. As demonstrated by this agreement, the parties clearly and unmistakably agreed to arbitrate. 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' arguments to the contrary must fail.

Now that the Court has ordered the case to arbitration, the Plaintiffs attempt to recast this motion to compel arbitration as a motion for summary judgement in an apparent effort to confuse the issues, but the Court should not be distracted by those arguments. The issue before the Court has been conclusively 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 stated that any dispute [with unrelated exceptions] **"shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association [AAA]. The place of arbitration shall be in Charlotte, North Carolina."** See Schein, Inc., 586 U.S. at 66, 139 S. Ct. at 528 (internal citations omitted) (emphasis added).

The United States Supreme Court held the requirement the arbitration be conducted in accordance with the Arbitration Rules of the American Arbitration Association means that only the arbitrator, and not the trial Court, could decide the arbitrability question. Specifically, the Schein decision states the following:

When the parties' contract delegates the arbitrability question to the arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. *Id* at 529. When the parties' contract delegates the arbitrability question to the arbitrator, the courts must respect the parties' decision as embodied in the contract.

Schein, Inc., 586 U.S. at 68, 139 S. Ct. at 529. Although not decided by the Fourth Circuit Court of Appeals, that Court noted in a recent decision that "other circuits have held that an arbitration provision's incorporation of the AAA commercial rules is a clear and unmistakable expression of

the parties' intent to reserve the question of arbitrability for the arbitrator and not the court.” Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd., 130 F.4th 396, 403 (4th Cir. 2025). That opinion cites several cases in which other federal appellate courts have included that by incorporating the AAA Commercial Rules into their agreement that delegate the issue of arbitrability to the arbitrator, the parties clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is valid. See, e.g., Fallo v. High-Tech Inst., 559 F.3d 874, 878 (8th Cir. 2009); Terminix Int'l Co. v. Palmer Ranch LP, 432 F.3d 1327, 1332 (11th Cir. 2005); Contec Corp. v. Remote Solution Co., 398 F.3d 205, 208 (2d Cir. 2005).

Plaintiffs’ arguments that the Court must consider persuasive authority from other jurisdictions and that the Court did not follow the correct legal standard ignore the fact that the parties explicitly agreed to arbitrate this matter and other controlling case law cited by Defendants in support of their position. In the motion itself, the Plaintiffs recognize that “[a]rbitration 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.” See Motion to Reconsider, p. 10 (citing Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc., 418 S.C. 1, 6 (2016)).

Plaintiffs also incorrectly argue that this Court failed to consider their Verified Complaint as evidence that an agreement to arbitrate was not formed. Plaintiffs’ argument about the Verified Complaint does not justify reconsideration or amendment of the Court’s order for several reasons. Plaintiffs acknowledge that they entered into a contract with Defendant Vacation Inspirations. Second, the arguments offered by the Plaintiffs as to why that contract should not be enforced are not facts alleged, but legal arguments which do not create any issue about whether Plaintiffs agreed that disputes would be decided by an arbitrator.

Additionally, Plaintiffs incorrectly argue that the Defendants did not submit “competing

evidence” in support of the motion to compel arbitration. That argument ignores the evidence that was submitted with the Motion to Compel Arbitration and Stay Proceedings in This Case Until Completion of Arbitration filed on November 12, 2024. Specifically, a copy of the Vacation Inspirations Membership Purchase Agreement signed by the Plaintiffs was attached to the pending Motion. Lastly, along with the Motion to Compel Arbitration the Defendants submitted a document signed by the Plaintiffs titled Vacation Inspirations Membership Acknowledgement which contains a list of questions answered at time of purchase. One of the questions is whether decision was based on high pressure sales tactics. The Plaintiffs answered “N.”

The arbitration paragraph in the Agreement signed by the Plaintiffs clearly and unequivocally delegates the decision about arbitrability to the arbitrator. Specifically, it includes the following provision:

Any controversy, claim or dispute arising out of or relating to this Purchase Agreement, shall be resolved and decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) (however, not under the auspices of AAA), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall be selected by [Vacation Inspirations].

See Agreement attached to Defendants’ Motion to Compel Arbitration at Para. VIII.

Pursuant to the FAA and the Commercial Arbitration Rules of the AAA and agreed to by Plaintiffs, and the citations below, the question of arbitrability is to be determined and decided by the arbitrator, and respectfully, not the Court. Rule R-7(a) and (b) of the Commercial Rules provide as follows:

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, Rule R-7(a) and (b). In the arbitration provision herein, the Purchase Agreement clearly and unequivocally invoked the Commercial Arbitration Rules of the AAA. As noted below, the AAA Commercial Rules specifically provide for such delegation to the arbitrator. Therefore, the Court properly decided to follow the clear and unmistakable agreement of the parties and send all issues to the arbitrator.

Moreover, the Plaintiffs' motion ignores the affidavit of Mr. Randy Gardner filed along with the Motion to Compel Arbitration which proved, without contradiction, that the Purchase Agreement and the arbitration clause have the required nexus to interstate commerce sufficient 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 properly determined that it could not decide whether an arbitration agreement applies to the instant dispute since the parties clearly and unmistakably delegated the question to an arbitrator. There are no disputed facts to be decided on that issue. See also Masters v. KOL, Inc., 431 S.C. 28, 846 S.E.2d 893, 894 (Ct. App. 2020). The Court's reliance on the FAA and the agreement of the parties in compelling arbitration in this matter is correct, and the motion to reconsider should be denied.

III. THE REMAINING ARGUMENTS IN PLAINTIFFS' MOTION TO RECONSIDER ARE WITHOUT MERIT.

Plaintiffs also take issue with the one-party arbitrator selection and forum selection. This argument fails for similar reasons as those above – primarily that it fails to consider basic contract principles and that the parties agreed to be bound by the terms of the Commercial Arbitration Rules. 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. Specifically, 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 to Defendants' Motion to Compel Arbitration previously filed).

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 in accordance with the foregoing Rules and provides a forum for resolving this dispute by an unbiased arbitrator. In the motion to reconsider, Plaintiffs again ask the Court to ignore the plain fact that the parties agreed to follow these rules and are bound by contract to do so.

IV. DISCOVERY

Plaintiffs also miss the mark in making the argument that the motion should not have been

decided because Defendants had not answered discovery. Plaintiffs raised this issue in their Memorandum opposing the motion to compel arbitration. Defendants addressed the issue in their Memorandum; the Court did not accept Plaintiffs' argument. Plaintiffs have not set forth any new arguments and there is really nothing for the Court to consider anew.

For the record, Defendants did not ignore the Plaintiffs' discovery requests. Instead, Defendants set forth an appropriate stated reason for not responding to the discovery. *See e.g. Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 521 S.E.2d 749 (S.C. App. 1999). The Defendants' motion to compel arbitration included a request to stay all discovery. If Plaintiffs were not satisfied with the stated reason, Plaintiffs could have moved at any time to compel Defendants to respond. Plaintiffs chose not to file any such motion

V. THE COURT PROPERLY DECLINED TO REWRITE THE AGREEMENT

Finally, Plaintiffs failed to cite any cases in support of their argument that the Court should basically re-write the arbitration provision. Plaintiffs should not be heard to complain when they failed to support their argument. On a motion for reconsideration, a party is required to support a position with case law or statutory law to justify relief.

CONCLUSION

For the reasons stated herein, and argument of counsel at a hearing on this matter, the motion to reconsider should be denied.

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ATTORNEYS FOR DEFENDANTS

CHARLESTON, SC

January 9, 2026

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

January 14, 2026

The Honorable Thomas J. Rode
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Charleston, SC 29401

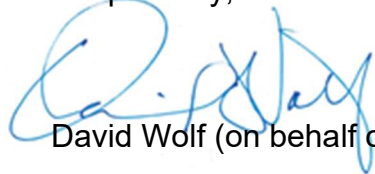
Re: Sawyer, et. al v. Vacation Inspirations, et. al., Case No. 2024-CP-10-02642

Dear Judge Rode:

Plaintiffs respectfully request authorization to file a Reply to Defendants' Opposition to Reconsideration. On December 9, 2025, the Court granted Defendants' Motion to Compel Arbitration. On December 19, 2025, Plaintiffs filed a Motion for Reconsideration. On January 9, 2026, Defendants filed their Opposition to Reconsideration following an extension consented to by Plaintiffs.

Plaintiffs request seven (7) days to file a reply memorandum in support of reconsideration. We can limit our submission to 8 pages of argumentation if the Court would like. A reply is necessary to respond to the arguments raised in the Opposition.

Respectfully,



David Wolf (on behalf of myself and Abigail Saunders)

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-10-2642
	)	
PLAINTIFFS,	)	
	)	
vs.	)	REPLY MEMORANDUM IN SUPPORT OF
	)	PLAINTIFFS' MOTION TO RECONSIDER
VACATION INSPIRATIONS,	)	ORDER COMPELLING ARBITRATION
DESTINATION TRAVEL, LLC,	)	AND STAYING PROCEEDINGS UNDER
JOSEPH SHIRLEY, RANDY	)	RULES 52(b) AND 59(e)
GARDNER, and JEFFREY PUMILIA,	)	
	)	
DEFENDANTS.	)	
	)	

Plaintiffs submit this Reply Memorandum in Support of their Motion for Reconsideration of the Court's December 9, 2025 Order Compelling Arbitration and Staying the Proceedings.¹

SUMMARY OF ARGUMENTS

Plaintiffs respectfully submit that this Court's Order should be reconsidered on four primary grounds²:

First, the Motion to Compel Arbitration Must Be Reconsidered Under the Legal Standard Required by the Federal Arbitration Act: one akin to summary judgment. The threshold issue on any motion is the legal standard a court is to apply. *See Dorman v. Dep't of Health & Env't Control*, 350 S.C. 159, 164, 565 S.E.2d 119, 122 (Ct. App. 2002) ("[T]he crucial and perhaps dispositive issue in this [reconsideration] revolves around applying the correct

¹ Plaintiffs filed a letter with the Court on January 14, 2026 requesting permission to file a Reply Memorandum in Support of their Motion to Reconsider. Your Honor's Law Clerk later authorized this "limited response" for the Court.

² Plaintiffs do not waive any other arguments as to grounds for reconsideration in the Court's Order Compelling Arbitration. However, for the purposes of this reply, Plaintiffs have focused on the most critical issues and the arguments made in Defendants' Brief in Opposition to Reconsideration.

standard of review.”) Where a court employs an incorrect legal standard, its analysis cannot stand, because every conclusion that follows is necessarily premised on that initial error. *See State v. Miller*, 404 S.C. 29, 33, 744 S.E.2d 532, 535 (2013) (“An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, such as application of the wrong legal principle.”). For the sake of judicial economy and avoiding an appeal, the Court should reconsider the motion under the proper legal standard.

Second, Binding South Carolina Case Law Holds There Cannot be Clear and Unmistakable Delegation when Unconscionability is Alleged. This Court has no discretion to disregard binding authority of the State. *Meritage Asset Mgmt., Inc. v. Freeland Constr. Co., Inc.*, 433 S.C. 293, 299, 857 S.E.2d 792, 795 (Ct. App. 2021) (indicating Article V, Section 9 explicitly holds that the Supreme Court binds lower courts in South Carolina). The Court has no discretion to depart from *Simpson* and *315 Corley CW*, which directly and unequivocally hold there can be no clear and unmistakable delegation when unconscionability is alleged.

Third, the Court must Consider the Allegations in the Verified Complaint. It is a fundamental proposition of law that a complaint pleads facts, not legal conclusions. Defendants nevertheless contend that Plaintiffs’ Verified Complaint contains only legal argument and therefore may be disregarded. That position is untenable. On a motion to compel arbitration, the Court must consider the factual allegations in a complaint—particularly where, as here, the required unconscionability analysis is fact-intensive. Defendants’ position would effectively nullify South Carolina’s unconscionability jurisprudence by foreclosing judicial consideration of the very facts that doctrine requires courts to evaluate.

Fourth, Unilateral Arbitrator Selection Provisions are Categorically Invalid and the FAA does not Allow Them to be Enforced. Plaintiffs have cited multiple federal appellate courts

considering motions to compel arbitration under the Federal Arbitration Act and leading treatises that all unanimously agree that unilateral selection provisions lead to a “sham” process which cannot be enforced. Defendants have cited no authority indicating they are at all viable but instead argue that the arbitrator selected by them must still be “impartial and independent.” (Opp. Recon. Mtn. at 7.). The cases cited by Plaintiffs squarely reject this argument: “When the process used to select the arbitrator is fundamentally unfair, as in this case, the arbitral forum is not an effective substitute for a judicial forum, and there is *no need to present separate evidence of bias or corruption in the particular arbitrator selected.*” *McMullen v. Meijer, Inc.*, 355 F.3d 485, 494 n.7 (6th Cir. 2004) (emphasis added). Thus, the Court may not wait to assess whether the arbitrator is impartial instead must recognize that “[a]t a structural level, [the unilateral selection provision] lacks the requisite independence between parties and arbitrator that is fundamental to the FAA’s conception of arbitration.” *Flores v. New York Football Giants, Inc.*, 150 F.4th 172, 183 (2d Cir. 2025).

ARGUMENT

A. THE COURT MUST APPLY THE PROPER STANDARD ON THE MOTION TO COMPEL ARBITRATION “AKIN TO SUMMARY JUDGMENT”

The proper standard to review a motion to compel arbitration under the Federal Arbitration Act is akin to summary judgment. *See, 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.’”)

This issue is ordinarily not contested, as the overwhelming authority Plaintiffs cite in their Opposition to the Motion to Compel Arbitration demonstrates that the governing legal standard is settled. (*See* Opp. Arb. Mtn. at 5–7.) Nevertheless, Defendants remark in their Opposition to Reconsideration, “Plaintiffs attempt to recast this motion to compel arbitration as a motion for summary judgement in an apparent effort to confuse the issues, but the Court should not be distracted by those arguments.”

First, this is just conjecture without any legal support. *Second*, and most critically Defendants’ lead counsel has repeatedly taken—and successfully advanced—the ordinarily noncontroversial position that courts considering motions to compel arbitration must apply a standard akin to summary judgment.³

For example, in *Berkeley County School District v. HUB International Ltd.*, a case Defendants themselves cite in their Opposition to Reconsideration, Defendants’ Counsel argued—and the Fourth Circuit agreed—that when a party challenges “‘the existence of an agreement to arbitrate,’” courts must apply a standard “‘akin to . . . summary judgment.’” No. 19-1158, ECF No. 25 at 47, 49 (4th Cir.) (quoting *Chorley Enterprises, Inc. v. Dickey’s Barbecue Restaurants, Inc.*, 807 F.3d 553, 564 (4th Cir. 2015)); 2019 WL 1472738, at *32, *33.

Defendants’ Counsel took the same position in *Charleston Advancement Academy High School v. Acceleration Academies, LLC*, asserting that “‘[m]otions to compel arbitration in which the parties dispute the validity of the arbitration agreement are treated as motions for summary judgment.’” 2020 WL 5985341, at *3 (D.S.C.) (citation omitted).

³ While it is true that zealous advocacy may result in variations in argument across cases, it does not justify inconsistency on fundamental threshold issues—particularly the governing legal standard applicable to motions to compel arbitration under the Federal Arbitration Act.

Although Defendants have chosen to contest such a basic and widely accepted legal standard, the Court must nevertheless apply the correct standard, particularly because all subsequent issues necessarily flow from that threshold determination.⁴ Should the Court find it helpful, Plaintiffs would be happy to provide further briefing on this issue.

B. THE COURT MUST FOLLOW BINDING PRECEDENT IN SOUTH CAROLINA HOLDING THAT THERE CANNOT BE “CLEAR AND UNMISTAKABLE” DELEGATION WHEN UNCONSCIONABILITY IS ALLEGED

Two binding South Carolina decisions—one in the Supreme Court of South Carolina and the other in the South Carolina Court of Appeals—govern this precise situation and leave the Court no discretion to disregard them. *First*, in *Simpson*, the Supreme Court of South Carolina held that where a consumer “has challenged the validity of the entire arbitration clause on grounds of unconscionability, there can be *no ‘clear and unmistakable’* evidence that the parties actually agreed to arbitrate the gateway matter of the arbitration clause’s validity.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (emphasis added). The Court’s conclusion that arbitrability was delegated here cannot be reconciled with that holding.

Second—and even more directly—the South Carolian Court of Appeals recently reaffirmed that “in 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, 908 S.E.2d 892, 896 (Ct. App. 2024).⁵ These

⁴ To the extent Defendants suggest that the *Federal* Arbitration Act imposes a different legal standard in state court than in federal court, that contention would contravene a basic tenet of our federalist system. The Supreme Court of the United States is clear: “The Federal Arbitration Act is a law of the United States . . . [c]onsequently, the judges of every State must follow it.” *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 53 (2015).

⁵ These decisions control irrespective of whether the motion to compel arbitration is brought under the FAA or the SCUAA. See “General contract principles of state law apply to arbitration clauses governed by the FAA.” *One Belle Hall Prop. Owners Ass’n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 60, 791 S.E.2d 286, 291 (Ct. App. 2016).

decisions cannot be more clear: the Court must itself decide whether the Arbitration Provision is unconscionable under South Carolina law.

C. THE COURT MUST CONSIDER THE ALLEGATIONS IN THE VERIFIED COMPLAINT

Defendants assert that “the arguments offered by the Plaintiffs as to why that contract should not be enforced are not facts alleged, but legal arguments which do not create any issue about whether Plaintiffs agreed that disputes would be decided by an arbitrator.” (Opp. Rec. Mtn. at 4.)

First, this is once again conjecture unsupported by any argument or authority in support. *Second*, the Verified Complaint—like all complaints in any court—contain factual allegations. S.C.R.C.P. 8; *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) (“Pleadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties.”). *Third*, to the extent Defendants contend that the Verified Complaint improperly contains argumentation, that objection has been waived as the proper avenue to raise such an objection is in their Answer. *Fourth*, even now, Defendants fail to identify a single paragraph in the Verified Complaint that purportedly does not allege facts. *Fifth*, courts ruling on motions to compel arbitration always consider the allegations in a complaint. *See, e.g., Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554–55, 606 S.E.2d 752, 757–58 (2004) (considering whether a party “**allege[s]** any facts that would show the clause was unconscionable” (emphasis added)); *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016) (“a party must **allege** that the arbitration agreement is unconscionable” (emphasis added)); *Dixon v. Pattee*, 442 S.C. 233, 261, 898 S.E.2d 158, 173 (Ct. App. 2023) (“A party seeking to prove an arbitration agreement is unconscionable must **allege** he lacked a meaningful choice as to the arbitration clause specifically.” (internal quotation marks and

citation omitted) (emphasis added). Accordingly, the Court must consider the allegations in the Verified Complaint—particularly those concerning the unconscionability of the Arbitration Provision—when ruling on the motion to compel arbitration.

D. A ONE-SIDED ARBITRATOR SELECTION PROVISION IS NEVER PERMISSIBLE

A unilateral arbitrator selection provision is categorically invalid. An arbitrator unilaterally selected by one party cannot be permitted to decide whether the appointment mechanism itself is unconscionable or otherwise invalid. The conflict is self-evident.

Defendants have not identified a single case permitting a unilateral arbitrator selection provision while Plaintiffs have raised multiple cases and treatises that have explicitly recognized their total ban. (*See* Opp. Com. Mtn; *See* Rec. Mtn.) Defendants’ failure to respond to this authority constitutes waiver.

Even if arbitration were ordered, the Court may only enforce valid aspects of an Arbitration Provision. The law is settled: “[w]hen it comes to arbitrator appointment, the ***rule is clearly*** that a ***party may not reserve unto itself the power to name the sole arbitrator***, a majority of a panel of arbitrators, or all of the panel members. Such an arbitration scheme is fundamentally unfair and ***void***.” 97 Am. Jur. Trials 319 (Originally published in 2005) (emphasis added). An arbitration conducted before an arbitrator unilaterally selected by one party results in a “sham system unworthy even of the name of arbitration,” *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 940 (4th Cir. 1999). This concern is especially acute where, as here, the arbitration provision purports to operate outside the governance of any reputable arbitral organization, eliminating any possible assurance of neutrality or fairness.

CONCLUSION AND PRAYER FOR RELIEF

At a minimum, the Court must redecide the Motion under the proper standard and invalidate the arbitrator selection provision. To the extent the Court finds it helpful and to avoid a subsequent appeal, Plaintiffs would gladly provide additional briefing on any of the issues.

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

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

Respectfully submitted,

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

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

PARTIES, JURISDICTION AND VENUE

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. A ban on cellphone usage which prevented Plaintiffs' from researching VI and perusing online reviews;
- b. Rushed contracting in order to create anxiety through the fear of missing out on Defendant VI's travel membership and travel related services, which was described as a "Once in a lifetime opportunity";
- c. Rushed contracting in order to create anxiety through the representation that the discounted Memberships were only available on the day of the presentation and would not be available afterwards;

- d. Presented deceptive claims regarding customer satisfaction reviews provided by other members relating to the services provided to consumers through the Membership;
- e. Utilized coercive sales tactics that prevented Plaintiffs from making a free and informed choice;
- f. Fostered an environment that created the impression that the Defendants' business was a City of Charleston operated location, like a visitor's bureau;
- g. Created the appearance of scarcity of discounted Memberships in order incentivize purchases;
- h. Coerced participants into purchasing a Membership as a means to escape the undue influence that Defendants' sales tactics generated;
- i. Upon information and belief, planted imposter presentation participants to announce they desire to purchase a Membership in order to encourage the other attendees to purchase a Membership as well;

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

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

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

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

41. The Agreement provided that:

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

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

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

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

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

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

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

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

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

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

- a. Five Thousand Five Hundred Ninety-Three and 00/100 Dollars (\$5,593.00) in actual damages, and,
- b. The costs of bringing this action, including court costs, expenses and legal fees;

FOR A SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

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

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

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

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

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

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

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

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

- a. Five Thousand Five Hundred Ninety-Three and 00/100 Dollars (\$5,593.00) from the purchase of the Membership, and,
- b. The costs of bringing this action, including court costs, expenses and legal fees;

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

- (1) declaring that the arbitration clause contained in the Agreement is invalid and unenforceable;
- (2) ruling that Defendants have willfully violated the South Carolina Unfair Trade Practices Act and Plaintiffs are entitled to trebled damages, based upon their actual damages of Five Thousand Five Hundred Ninety-Three and 00/100 Dollars

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

- (3) ruling that Defendants are committing ongoing violations or attempted violations of the Chapter 5 of Title 39, the South Carolina Unfair Trade Practices Act and issue an injunction against Defendants from acting in violation of the Act;
- (4) ruling that Defendants' induced Plaintiffs to enter into the Agreement by way of fraudulent representations which they did not intend to perform and that Plaintiffs are entitled to rescind the Agreement;
- (5) ruling that Defendants fraudulently misrepresented their program and services to be provided under the Agreement and award Five Thousand Five Hundred Ninety-Three and 00/100 Dollars (\$5,593.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiffs;
- (6) ruling that Defendants negligently misrepresented their program and services to be provided under the Agreement and award Five Thousand Five Hundred Ninety-Three and 00/100 Dollars (\$5,593.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiffs;
- (7) such other and further relief as the Court may deem appropriate.

Respectfully submitted,

s/David W. Wolf

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s/ Abby Edwards Saunders

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Email: abigail@abbysaunderslaw.com
Attorney for Plaintiffs

May 21, 2024
Charleston, South Carolina

VERIFICATION OF COMPLAINT

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



Peter Skoler

Sworn to before me this 2ndth day of May, 2024.



Notary Public for the State of Massachusetts
My Commission Expires:

August 30, 2024



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



Patricia Skoler

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



Notary Public for the State of Massachusetts
My Commission Expires:

August 30, 2024



Vacation Inspirations Membership**PURCHASE AGREEMENT**MEMBER # [REDACTED]

Distributed by Destination Travel, LLC

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

Name: Last SKOLER First PATRICIA (RHY) Spouse PETER

E-Mail: [REDACTED]

Address: [REDACTED]

City: MILTON, State: MA Zip Code 02186

Phone: (C): [REDACTED] (C): [REDACTED]

hereinafter referred to as Client.

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

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

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

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

Membership Purchase Price is \$ 4995, Documentation Fee is \$399, first year dues is \$199, for a total of \$ 5593

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

FEDERAL TRUTH-IN-LENDING ACT DISCLOSURE

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

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

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

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

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

Patricia R Skoler
Client/Purchaser

[Signature]
Client/Purchaser

Janet Stewart
Sales Representative

G. Pali
Manager

MEMBERSHIP TERMS AND CONDITIONS

These Terms and Conditions are part of the Membership Agreement

I. ANNUAL MEMBERSHIP FEE (AMF) and Term of the Contract:

Additional to the contract with Vacation Inspirations, the client will pay VI an Annual Membership Fee of \$199.00. Payment of the AMF will be due and payable each year according to the annual draft acknowledgment. Failure to pay AMF will result in loss of privileges.

II. VS RESERVATION SYSTEM:

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

III. USE AND OCCUPANCY:

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

IV. CANCELLATION OF ACCOMMODATION:

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

V. DELAY OR IMPOSSIBILITY OF PERFORMANCE:

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

VI. RIGHT OF ASSIGNMENT:

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

VII. BINDING NATURE AND MODIFICATION:

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

VIII. DISPUTE RESOLUTION

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

VACATION INSPIRATIONS

ADDENDUM/EXCEPTION TO CONTRACT

THIS ADDENDUM/EXCEPTION IS PART OF THE MEMBERSHIP AGREEMENT

MEMBER NUMBER

[REDACTED]

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

Annual dues frozen \$99 forever
 4 Friend/family plans w/no dues & 5% back on cruises
 Primary members 10% back on cruises
 Members may choose to upgrade condo
 weeks @ \$1000- for each week.

Patricia R Skalen
 Client

[Signature]
 Client

Date

Date

3/21/22

Janet Stewart
 Sales Representative

G. Vali
 Manager

Date

Date

3-21-22

3-21-22

ELECTRONICALLY FILED - 2024 Nov 12 3:36 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1002646

Vacation Inspirations Membership Acknowledgment

This Acknowledgement is part of the Membership Agreement

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

1. Do you understand this is a purchase of a travel membership and travel related services, and that this agreement does not convey any interest in real estate or timeshare? 1) Y
2. Do you understand Vacation Inspirations may add new benefits at any time, and may replace current suppliers, or benefits as needed? 2) Y
3. Do you understand the membership you are purchasing may be sold or transferred by the member with prior written consent of Vacation Inspirations? Such consent will not be unreasonably withheld. If a transfer is made, the new member must pay annual membership fees. 3)
4. Do you understand the membership fee is \$199.00 per year? I/We understand this membership is a one year membership that may be renewed each year for the lifetime of the membership on the draft date. 4) Y
5. Do you understand when requesting condo reservations you must allow a minimum 90 day notice for prime season and a 180 day notice for holiday/special event weeks? All reservations are made on a wholesale, space available, first come basis and Vacation Inspirations makes no guarantees as to space availability in any particular resort or area. 5) Y
6. Do you understand this agreement will be in full force and in effect from the date of its execution and this agreement is not subject to any "right of rescission" under the laws of South Carolina? 6) Y
7. Do you understand all bookings made by Vacation Inspirations are booked at the lowest available rate and there are no discounts and/or rewards on individual airfare? 7) Y
8. Do you understand Vacation Inspirations website is a search engine only? As a member you must call, email or fax to receive your special member rates? 8) Y
9. Do you understand your savings on Cruises, All-Inclusives, Land/Air Packages, Tours, and Hotel stays come from direct discounts and/or rewards? 9) Y
10. Was your decision to make this purchase based on any type of high pressure sales tactics? 10) N
11. Do you feel a monthly payment of \$ 0 will cause any financial hardship for you as the purchaser for the duration of the financing? 11) N/A
12. Do you understand all representations, either oral or written, that are not contained in the original written contract documents will not be upheld by Vacation Inspirations? (see addendum, if applicable) 12) Y
13. Do you understand only members are eligible for rewards, and do not apply to family, friends or guests of Vacation Inspirations members? All members have unlimited access to Hot Weeks (condo vacations booked 60 days or less), but do not receive rewards (see addendum, if applicable) 13) Y

Signed in South Carolina this 21 day of MARCH 2022

Pamela R. Stel
Purchaser

[Signature]
Purchaser

Janet Stewart
Sales Representative

G. Pal
Manager

AUTHORIZATION TO DRAFT DUES

THIS AUTHORIZATION IS PART OF THE MEMBERSHIP AGREEMENT

Date of Purchase

3-21-2022

MEMBER NUMBER

[REDACTED]

METHOD OF PAYMENT

☐

VISA

CARD NUMBER:

☐

MASTERCARD

EXPIRATION DATE:

☐

AMERICAN EXPRESS

☐

DISCOVER

SECURITY CODE:

BILLING ADDRESS

NAME AS IT APPEARS ON CARD:

BILLING ADDRESS:

CITY:

STATE

ZIP CODE:

phone #

By signing below, I authorize Vacation Inspirations or its assigns, to collect payment of annual dues by means of a preauthorized debit in the amount of \$199 per year. The first payment will be drafted on or about the 1st of ~~May~~ Jun, 20 23 and will continue annually on or about the same date me

[REDACTED]

- Peter

[REDACTED]

- Patty *

Patricia R Skoler Date

Name as it appears on Card (Printed)

PATRICIA R SKOLER

* PETER M. SKOLER Date

Signature

FROM OUR BOARD OF DIRECTORS**HELP US KEEP OUR PROMISE TO HELP YOU**

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

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

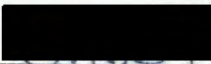
Please be assured that we have the experience, resources, and the team to provide you with the benefits of Membership that you have purchased. If you ever have any concerns or questions about your Membership, call us at the number below and give us the opportunity to work with you to answer your questions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

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

Thank you.

Telephone Number to call: (843) 708-8416

Or email to: membersliaison@vacationinspirations.com

	Member Number
x <u>Patricia R. Stalen</u>	Member
x <u>[Signature]</u>	Member

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

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

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident and citizen of the State of Connecticut;
2. Defendant VI is, upon information and belief, an unincorporated business association operating in Charleston County, South Carolina;
3. Defendant DT is a South Carolina limited liability company operating in Charleston County, South Carolina;
4. Defendant Shirley is, upon information and belief, the President of VI and a resident and citizen of Charleston County, South Carolina;

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. A ban on cellphone usage which prevented Plaintiff from researching Defendants and reviewing online reviews prior to purchasing a Membership;
- b. Rushed contracting in order to create anxiety through the fear of missing out on Defendant VI's travel membership and travel related services, which was described as a "Once in a lifetime opportunity;"

- c. Rushed contracting in order to create anxiety through the representation that the discounted Memberships were only available on the day of the presentation and would not be available afterwards;
- d. Presented deceptive claims regarding awards presented to Defendant VI by cruise lines with regard to the services provided to consumers through the Membership;
- e. Utilized coercive sales tactics that prevented Plaintiff from making a free and informed choice;
- f. Ingratiating themselves with attendees by telling an attendee who purchased a Membership "Welcome to the family;"
- g. Creating an incentive for participants to purchase a Membership in order to escape the undue influence that Defendants' sales tactics generated;

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

51. The Agreement provided that:

- a. Plaintiff was entitled "to request up to a week of condominium accommodations per year provided by VI."
- b. "THE UNDERSIGNED MEMBER ACKNOWLEDGES **THIS IS A NON-CANCELABLE CONTRACT**. THIS IS NOT A TIMESHARE, HEALTH CLUB, BUYERS CLUB, NOR DOOR TO DOOR SALES CONTRACT AGREEMENT. PLEASE MAKE YOUR DECISION ACCORDINGLY."
- c. "Client acknowledges that this agreement is not subject to any "right of 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."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (6) ruling that Defendants negligently misrepresented their program and services to be provided under the Agreement and award Five Thousand Nine Hundred Ninety-Five and 00/100 Dollars (\$5,995.00) actual damages from the purchase of the Membership, plus punitive damages and attorneys' fees to Plaintiff;
- (7) such other and further relief as the Court may deem appropriate.

Respectfully submitted,

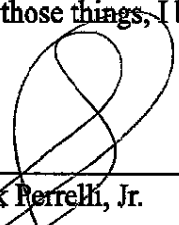
s/David W. Wolf
David W. Wolf (S.C. Bar No.: 17041)
David W. Wolf, P.A.
748-D St. Andrews Boulevard
Charleston, South Carolina 29407
Telephone: (843) 853-9000
Facsimile: (843) 853-9002
E-mail: david@wolflaw.com
Attorney for Plaintiff

September 5, 2024
Charleston, South Carolina

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

VERIFICATION OF COMPLAINT

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



Frank Perrelli, Jr.

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



Notary Public for the State of Connecticut
My Commission Expires:



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

Vacation Inspirations Membership

PURCHASE AGREEMENT

MEMBER #

Distributed by Destination Travel, LLC

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

Name: Last Perelli First Frank Jr Spouse _____

E-Mail: _____

Address: _____

City: Gulfport State: CT Zip Code 06437

Phone: (C): (_____) (C): (_____) hereinafter referred to as Client.

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

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

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

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

Membership Purchase Price is \$ 5995, Documentation Fee is ~~\$399~~, first year dues is ~~\$199~~, for a total of \$ 5995
1ST YR WAIVED
In the event that VI extends credit to the client for the purchase price, the terms of credit are set forth in the "Federal Truth in Lending Act Disclosure" printed below.

FEDERAL TRUTH-IN-LENDING ACT DISCLOSURE

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

Your payment schedule will consist of, and Client agrees to pay VI a total of N/A payments, in the amount of \$ N/A per month (P&I) with the first payment to be made on the 1st day of N/A, 2022 and succeeding payments to be made on the same day of each month thereafter. Client shall have the option of the direct draft option offered by VI.

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

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

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

X _____
Client/Purchaser

Client/Purchaser

Laney STEWART
Sales Representative

[Signature]
Manager

MEMBERSHIP TERMS AND CONDITIONS

These Terms and Conditions are part of the Membership Agreement

I. ANNUAL MEMBERSHIP FEE (AMF) and Term of the Contract:

Additional to the contract with Vacation Inspirations, the client will pay VI an Annual Membership Fee of \$199.00. Payment of the AMF will be due and payable each year according to the annual draft acknowledgment. Failure to pay AMF will result in loss of privileges.

II. VS RESERVATION SYSTEM:

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

III. USE AND OCCUPANCY:

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

IV. CANCELLATION OF ACCOMMODATION:

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

V. DELAY OR IMPOSSIBILITY OF PERFORMANCE:

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

VI. RIGHT OF ASSIGNMENT:

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

VII. BINDING NATURE AND MODIFICATION:

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

VIII. DISPUTE RESOLUTION

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

ADDENDUM/EXCEPTION TO CONTRACT

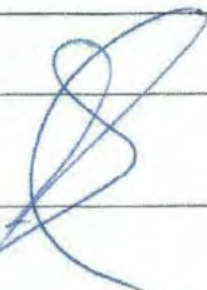
THIS ADDENDUM/EXCEPTION IS PART OF THE MEMBERSHIP AGREEMENT

MEMBER NUMBER

[REDACTED]

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

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

X 

Client

Date

10/8/22

Sales Representative

LARRY STEWART

Date

10/8/22

Date

Manager



Date

10/8/22

Client

Vacation Inspirations Membership Acknowledgment

This Acknowledgement is part of the Membership Agreement

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

1. Do you understand this is a purchase of a travel membership and travel related services, and that this agreement does not convey any interest in real estate or timeshare? 1) YES
2. Do you understand Vacation Inspirations may add new benefits at any time, and may replace current suppliers, or benefits as needed? 2) YES
3. Do you understand the membership you are purchasing may be sold or transferred by the member with prior written consent of Vacation Inspirations? Such consent will not be unreasonably withheld. If a transfer is made, the new member must pay annual membership fees. 3) YES
4. Do you understand the membership fee is \$199.00 per year? I/We understand this membership is a one year membership that may be renewed each year for the lifetime of the membership on the draft date. 4) YES
5. Do you understand when requesting condo reservations you must allow a minimum 90 day notice for prime season and a 180 day notice for holiday/special event weeks? All reservations are made on a wholesale, space available, first come basis and Vacation Inspirations makes no guarantees as to space availability in any particular resort or area. 5) YES
6. Do you understand this agreement will be in full force and in effect from the date of its execution and this agreement is not subject to any "right of rescission" under the laws of South Carolina? 6) YES
7. Do you understand all bookings made by Vacation Inspirations are booked at the lowest available rate and there are no discounts and/or rewards on individual airfare? 7) YES
8. Do you understand Vacation Inspirations website is a search engine only? As a member you must call, email or fax to receive your special member rates? 8) YES
9. Do you understand your savings on Cruises, All-Inclusives, Land/Air Packages, Tours, and Hotel stays come from direct discounts and/or rewards? 9) YES
10. Was your decision to make this purchase based on any type of high pressure sales tactics? 10) NO
11. Do you feel a monthly payment of \$ N/A will cause any financial hardship for you as the purchaser for the duration of the financing? 11) N/A
12. Do you understand all representations, either oral or written, that are not contained in the original written contract documents will not be upheld by Vacation Inspirations? (see addendum, if applicable) 12) YES
13. Do you understand only members are eligible for rewards, and do not apply to family, friends or guests of Vacation Inspirations members? All members have unlimited access to Hot Weeks (condo vacations booked 60 days or less), but do not receive rewards (see addendum, if applicable) 13) YES

Signed in South Carolina this 8 day of Oct 2022

Purchaser

Purchaser

Larry Stewart
Sales Representative

[Signature]
Manager

AUTHORIZATION TO DRAFT DUES

THIS AUTHORIZATION IS PART OF THE MEMBERSHIP AGREEMENT

Date of Purchase

10/8/2022

MEMBER NUMBER

[REDACTED]

METHOD OF PAYMENT

☐

VISA

CARD NUMBER:

[REDACTED]

☐

MASTERCARD

EXPIRATION DATE:

[REDACTED]

☐

AMERICAN EXPRESS

SECURITY CODE:

[REDACTED]

☐

DISCOVER

BILLING ADDRESS

NAME AS IT APPEARS ON CARD:

[REDACTED]

BILLING ADDRESS:

[REDACTED]

CITY:

[REDACTED]

STATE

[REDACTED]

ZIP CODE:

[REDACTED]

By signing below, I authorize Vacation Inspirations or its assigns, to collect payment of annual dues by means of a preauthorized debit in the amount of \$199 per year. The first payment will be drafted on or about the 1st of ~~November~~ 2023 and will continue annually on or about the same date

DECEMBER

Date

Name as it appears on Card (Printed)

Signature

Date

FROM OUR BOARD OF DIRECTORS

HELP US KEEP OUR PROMISE TO HELP YOU

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

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

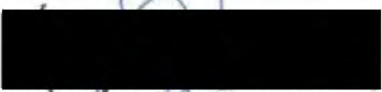
Please be assured that we have the experience, resources, and the team to provide you with the benefits of Membership that you have purchased. If you ever have any concerns or questions about your Membership, call us at the number below and give us the opportunity to work with you to answer your questions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

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

Thank you.

Telephone Number to call: (843) 708-8416

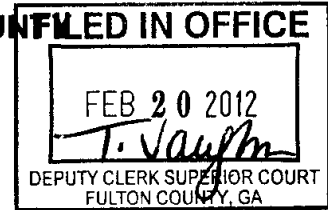
Or email to: membersliaison@vacationinspirations.com

 _____ Member Number
 _____ Member
 _____ Member

2

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA



JOHN D. SOURS, ADMINISTRATOR
FAIR BUSINESS PRACTICES ACT,

COMPLAINANT,

v.

THE VACATION STATION, LLC,
D/B/A C.T.A VACATIONS,
RANDY GARDNER, INDIVIDUALLY
AND
JOSEPH SHIRLEY, INDIVIDUALLY

RESPONDENTS.

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CIVIL ACTION FILE

NO. 2012CV211716

ASSURANCE OF VOLUNTARY COMPLIANCE

Pursuant to O.C.G.A. § 10-1-390 *et seq.*, the Fair Business Practices Act ("FBPA"), John D. Sours, Administrator of the FBPA ("Administrator"), has initiated an investigation and examination of certain acts or practices of the Vacation Station, LLC, d/b/a C.T.A Vacations (hereinafter "the Company" or "Vacation Station"), Randy Gardner ("Gardner") individually and Joseph Shirley ("Shirley") individually (herein "Respondents"). Respondents are willing to enter into an Assurance of Voluntary Compliance, pursuant to O.C.G.A. § 10-1-402. It is therefore stipulated and agreed as follows:

I.

Respondents are now and have been for a period of time engaged in consumer transactions or consumer acts or practices in the conduct of trade or commerce in part or wholly within the State of Georgia, as defined in O.C.G.A. § 10-1-392.

II.

Respondent Vacation Station is a South Carolina corporation that sells travel club memberships in Georgia as C.T.A. Vacations. Its current Georgia place of business is at 425 E. River Street in Savannah, Georgia. Vacation Station also sold travel club memberships between December 2010 and August 2011 in Brunswick, Georgia and Atlanta, Georgia. Respondents Gardner and Shirley, along with their wives, Laura Gardner and Linda Shirley, are the owners of the two entities which own Vacation Station. Respondents Gardner and Shirley manage and direct the business activities of Respondent Vacation Station. Respondents may be served through their attorney, David Levine, Esq. at 6400 Powers Ferry Road, Suite 220, Atlanta, Georgia 30339.

III.

The parties acknowledge that jurisdiction is proper in the Superior Court of Fulton County.

IV.

The parties acknowledge that venue is proper in this Honorable Court.

V.

The Administrator alleges that the Respondents have used, are using, or are about to use unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce as declared unlawful by O.C.G.A. § 10-1-390 *et seq.* Specifically, the Administrator alleges that Respondents have committed the following acts or practices:

- A. You operated an unlicensed buying service or club in violation of the FBPA's general prohibition on unfair and deceptive practices, O.C.G.A. § 10-1-393(a) and

O.C.G.A. § 10-1-593, which requires buying services or buying clubs in the State of Georgia to be licensed with the Governor's Office of Consumer Protection ("OCP").

- B. You failed to maintain the bond required of a buying service or club in the State of Georgia in violation of O.C.G.A. §§ 10-1-393(a) and 10-1-593 which require a buying service or club in the State of Georgia to maintain a \$25,000 bond on each location it operates within the State of Georgia.
- C. Your promotional materials failed to contain your name and address in violation of O.C.G.A. §§ 10-1-393(a) and 10-1-393(b)(16)(B), which require that a promotion notice shall contain the name and address of the promoter and/or of the sponsor.
- D. You required consumers to pay money in order to receive their prizes in violation of O.C.G.A. §§ 10-1-393(a) and 10-1-393(b)(16)(C), which prohibits consumers paying any money to receive any prize, including, but not limited to, payments for service fees, mailing fees, or handling fees payable to the sponsor or seller to receive any prize.
- E. You failed to disclose to consumers that they will be required to attend a sales presentation on your written notice in violation of O.C.G.A. §§ 10-1-393(a) and 10-1-393(b)(16)(F), which requires that any requirement or invitation to attend a sales presentation must be conspicuously disclosed to consumers in the written notice.
- F. You failed to notify consumers of the additional fees associated with your prizes, in violation of O.C.G.A. §§ 10-1-393(a) and 10-1-393(b)(16)(G), which require

that prize promotions must disclose in writing any additional fees necessary to receive the prize, in each place the prize is listed.

- G. Your promotional notice failed to conspicuously identify on its face that it is a commercial solicitation in violation of §§ 10-1-393(a) and 10-1-393(b)(27) which requires that any notice mailed to consumers regarding winning or receiving any prize in a promotion must conspicuously identify on its face that it is a commercial solicitation.
- H. You failed to allow consumers to cancel their contracts and/or refuse to honor consumers' refund requests in, violation of O.C.G.A. §§ 10-1-393(a) and 10-1-393(b)(16)(P), which provides that consumers may void within the ten day period following the receipt of their prize any promotion contracts that violate the FBPA. This is also a violation of O.C.G.A. § 10-1-597, which provide that consumers who join a buying service or club may cancel their membership by giving written notice of cancellation any time before midnight of the third business day following the date on which membership was purchased.

VI.

Respondents deny these allegations. However, pursuant to O.C.G.A. § 10-1-402, which provides that an assurance of voluntary compliance shall not be considered an admission of violation of the FBPA and the Georgia's Buying Club Services Act ("BSA") O.C.G.A. § 10-1-590 *et seq.* for any purpose, Respondents hereby enter into this Assurance of Voluntary Compliance ("Assurance") in order to resolve this matter without the necessity of formal legal action.

VII.

By accepting this Assurance, the Administrator agrees not to request the initiation of legal action against Respondents concerning the matters covered herein, subject, however, to the provisions of O.C.G.A. § 10-1-402.

VIII.

Upon breach of any of the provisions of this Assurance by the Respondents, the Administrator reserves the right to pursue formal legal action against the Respondents concerning the subject matter of this Assurance.

IX.

Respondents hereby acknowledge the receipt of a copy of the FBPA and the BSA. Respondents further acknowledge that they have knowledge of these laws and their provisions.

X.

Respondents further agree that, effective with the date of execution of this Assurance, Respondents, its officers, agents, employees or representatives, servants, and all persons acting in concert with the Respondents shall:

- A. Make every reasonable effort to act in full compliance with the FBPA;
- B. Bring Vacation Station in full compliance with the BSA, including but not limited to, by;
 - 1. Applying, within thirty (30) days from the execution of this Assurance, for a license for all Vacation Station's Georgia locations from the Administrator of the Governor's Office of Consumer Protection ("OCP") in compliance with O.C.G.A. §§ 10-1-592, 10-1-593 and 10-1-594;

2. Obtaining a \$25,000 bond with a surety company authorized to do business in this state payable to the Governor of Georgia for all Vacation Station's Georgia locations in compliance with O.C.G.A. § 10-1-593;
3. Submitting, within three (3) days of the date the execution of this Assurance, all contracts of membership to be used by Respondents to the Administrator of OCP for their approval prior to use by Respondents in compliance with O.C.G.A. §§ 10-1-596 ~~et seq~~;
4. Ensuring that all Vacation Station's contracts of membership contain notices of cancellation which clearly and conspicuously disclose in boldface type of a minimum size of fourteen (14) points the consumer's right to cancel the contract by the midnight of the third business after the consumer signs the contract in compliance with O.C.G.A. § 10-1-598;
5. Providing to all consumers who cancel their contracts under the provisions of O.C.G.A. § 10-1-598 a total refund of their monies within ten (10) days of the date of the consumer's cancellation in compliance with O.C.G.A. § 10-1-598;
6. Ensuring that all Vacation Station's contracts of membership are valid for a term of eighteen (18) months or less from the date upon which the contract is signed and disclose the duration of the contract clearly and conspicuously in boldface type of a minimum size of fourteen (14) points in compliance with O.C.G.A. § 10-1-599;
7. Maintaining all consumer records in compliance with O.C.G.A. § 10-1-600;

C. Refrain from misrepresenting any aspect of the cost and nature of Vacation Station's

services including but not limited to:

1. Misrepresenting that your services and/or contracts are “lifetime” and/or “inheritable” or may be “willed” to your children at any sales presentations or promotional materials; and
2. Misrepresenting your cancellation and/or refund policy in violation of O.C.G.A. §10-1-393(a).

- D. Refrain from misrepresenting and/or causing confusion or actual misunderstanding as to the source, sponsorship, approval or certification of your services by using the name, trademark, service mark and/or logo of any airline company, travel company, cruise company and/or hotel company in any advertisements, sales materials, promotion notices and sales presentations.
- E. Respondents further represent that no Georgia Vacation Station location currently utilizes promotion or prize notice or engages in promotions as defined by O.C.G.A. §§ 10-1-393(b)16. Respondents further agree that in the event that Vacation Station elects to use any promotions in the future, it will notify the Administrator of OCP and submit and obtain the Administrator’s approval of any promotion or prize notices as defined by the FBPA sixty (60) days prior to mailing of any promotion or prize notices.

XI.

As evidence of good faith efforts to comply with and carry out the terms of this Assurance, and in consideration of acceptance by the Administrator of this Assurance, Respondents further acknowledge and agree that each will observe the following policies and procedures:

- A. Simultaneous with the execution of this Assurance Respondents shall comply with the

following provisions:

1. Respondents shall provide a copy of this Order to Laura Gardner and Linda Shirley. Respondents shall further, within thirty (30) days from the execution of this Order, provide to OCP a notice of acknowledgement of receipt of this Order from Laura Gardner and Linda Shirley and containing their signatures. All notices required by this subparagraph shall be sent by mail to Shibani Bakshi, Staff Attorney, Georgia Governor's Office of Consumer Affairs, 2 Martin Luther King, Jr. Drive, SE, Suite 356, Atlanta, Georgia 30334.
2. Respondents, and their successors and assigns, shall notify the Administrator at least thirty (30) days prior to any change that may affect compliance obligations arising under this Assurance, including but not limited to any change in ownership interest of Respondent Vacation Station, the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company or corporation; the proposed filing of a bankruptcy petition; or a change in the name(s) or alias(es) of Respondent Vacation Station. Provided, however, that, with respect to any proposed change about which the Respondents learn less than thirty (30) days prior to the date such action is to take place, Respondents shall notify the Administrator as soon as is practicable after obtaining such knowledge. All notices required by this subparagraph shall be sent by mail to Shibani Bakshi, Staff Attorney, Georgia Governor's Office of Consumer

Affairs, 2 Martin Luther King, Jr. Drive, SE, Suite 356, Atlanta, Georgia
30334.

3. Consumer complaints

a) Within thirty (30) days of the execution date of this Assurance, Respondents shall establish policies that are designed to ensure timely responses to consumer complaints, in compliance with this Assurance; and;

b) For a period of twelve (12) months following the date of execution of this Assurance, Respondents shall create and retain records of all requests for refunds. The records shall be in the form of a log and must identify each consumer by name, address (including state), and telephone number; state the date on which the consumer's refund request was received by the Respondents; state the date of the refund request; and state the dates and details of responses to each refund request by either of the Respondents, or the Respondents' employees and/or agents; and the results of those responses. Respondents shall produce this log to the OCP at the quarterly intervals outlined below. Respondents understand and agree that OCP may, in the interim and any time thereafter, require that this log be produced for inspection and review by the Administrator or his designees; upon such a request by OCP, Respondents must produce the log to this Office no later than five (5) business days after Respondents receive the request. Failure to keep these records, or to timely produce them to OCP, will place

Respondents in default of this Assurance. The reports must be provided to OCP on a quarterly basis as follows:

January 2012 -March 2012	May 1, 2012
April 2012- June 2012	August 1, 2012
July 2012 – September 2012	November 1, 2012
October 2012- December 2012	February 1, 2013

4. Sales practices and materials

a) Following the execution date of this Assurance, Respondents will update language in sales receipts, brochures and training manuals and/or policies as necessary to reflect any alterations made as a result of the execution of this Assurance. Copies of these updated materials are to be delivered to OCP within sixty (60) days of the execution of this Assurance.

b) In connection with the training manual and/or policies instituted, established and/or used by Vacation Station, Respondents will ensure that all future employees, agents, and/or independent contractors who may engage in the solicitation and/or sale of goods and/or services to consumers receive a copy of the training manual and/or policies, which shall contain a statement of the applicable laws and regulations, as well as the requirement that all sales presentations comply with all aspects of those applicable laws and regulations

c) Ensure that all current and future employees, agents, and/or independent contractors sign a receipt acknowledging that they have

read the training manual and/or policies and will abide by them as a condition of their continued performance of services for the Company. Copies of these acknowledgements shall be maintained by the Company and will be made available for inspection by the Administrator or his designee upon request.

5. Monitoring

- a) For a period of twelve (12) months after the execution of this Assurance, OCP reserves the right to test shop Respondents' travel services sales presentations for the purpose of confirming compliance with this Assurance and state law and the test shoppers are not required to disclose that they are representatives of OCP when making contact with Respondents or their representatives;
- b) OCP may record any and all aspects of such solicitations or visits in audio or video form without notice to Respondents, and any sale that is commenced by a test shopper shall be voided by Respondents at the conclusion of the sale upon notification that said transaction was test shopping operation conducted by OCP; and
- c) Respondents will respond in a reasonably timely manner, but in no case to exceed five (5) business days to all inquiries made by OCP regarding the monitoring of Respondents' compliance with the applicable laws and advertising guidelines.

XII.

Respondents shall pay the following, simultaneous with the execution of this Assurance:

- A. A filing fee in the amount of **ONE HUNDRED FOUR AND 50/100 DOLLARS (\$104.50)** which shall be paid by certified check or money order made payable to “Clerk, Superior Court of Fulton County” and which shall be delivered to OCP.
- B. A civil penalty in the amount of **ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,00.00)**. The civil penalty shall be paid as following:
1. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before February 15, 2012;
 2. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before March 15, 2012;
 3. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before April 15, 2012;
 4. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before May 15, 2012;
 5. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before June 15, 2012;
 6. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before July 15, 2012;
 7. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before August 15, 2012;
 8. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before September 15, 2012;
 9. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before October 15, 2012;

10. Ten Thousand and 00/100 dollars (\$10,000) to be paid on or before November 15, 2012;

Each payment shall be made by cashier's check or certified money order made payable to the "Governor's Office of Consumer Protection." In the event, Respondents fail to make any of the payments by their due date, any and all remaining payments of the civil penalty as shall become immediately due and owing to the Administrator

- C. Restitution in the amount of **EIGHTY SEVEN THOUSAND TWO HUNDRED SIXTY FIVE AND 29/100 DOLLARS (\$87,265.29):**

1. Payment shall be made directly to the consumers identified in Exhibit "A", within thirty (30) days of execution of this Order, attached hereto and in the amounts set forth therein. Respondents shall send such payments in any manner that can be traced, including but not limited to, by certified mail or with delivery confirmation. . For consumers in Exhibit "A" who have received restitution from Respondent Vacation Station prior to the execution of this Order, Respondents will provide proof of restitution to these consumers to OCP within thirty (30) days of execution of this Order.
2. Respondents shall send or cause to be sent a letter to each consumer listed in Exhibit "A" notifying that consumer of the restitution (s)he will receive and that their contract with Vacation Station has been cancelled. A copy of each letter shall be sent to OCP by no later than thirty (30) days after mailing.
3. Copies of each cancelled check showing payment to each consumer identified in Exhibit "A" shall be sent to OCP by no later than April 30,

2012. If a given restitution check is not cancelled on or before April 30, 2012, then a copy of the document(s) that reflect the traceable mailing method outlined in Paragraph XII(C)(1), accompanying a copy of the restitution check may be sent to OCP in lieu of a copy of a cancelled check. For consumers listed in Exhibit "A" who received credit card chargebacks from their credit card company or whose credit cards payments to Vacation Station were reversed, Respondents shall provide a copy of the undisputed or uncontested reversal of all credit cards to OCP by no later than April 30, 2012.

4. If any payment to an affected consumer is returned as undeliverable, Respondents shall take or cause reasonable steps to be taken to locate that affected consumer. If, thereafter, the affected consumer still is not located by June 1, 2012, any funds payable under this Paragraph or due to such affected consumer whose last known address is in the State of Georgia but not deliverable, pursuant to this Assurance, shall be delivered to the Georgia Commissioner of Revenue pursuant to the provisions of the "Disposition of Unclaimed Property Act," O.C.G.A. § 44-12-190, *et seq.*, to be processed as set forth in that Act. Respondents shall provide whatever available information is requested by the Commissioner to handle the funds as unclaimed property. Respondents shall deliver a report to OCP by July 1, 2012, which details the amount that was delivered to the Commissioner for treatment as unclaimed property under the above referenced statute.

5. In the event, Respondents fail to make any payments as described herein or fail to timely provide proof of any such payments to OCP, all unpaid amounts shall become immediately due and owing to the Administrator to be distributed to those consumers who have not yet received the restitution called for herein. If the Administrator receives payment of less than the total that remains due hereunder, the payment shall be distributed to the remainder of consumers in the order and amount solely within the Administrator's discretion.

XIII.

Respondents shall provide compensatory relief to all consumers, excluding those identified in Exhibit "A" and those who cancelled their membership contracts with Vacation Station and/or accepted refunds from Company prior to the date of execution of this Assurance, according to the terms set forth in this Paragraph:

- A. Respondents will cancel the membership contracts and provide a full refund of all monies paid by consumers to Vacation Station to any consumers:
 1. Who entered into a membership contract within the state of Georgia with Vacation Station in the time period between December 1, 2010 and the date of execution of this Assurance,
 2. Who did not purchase from Vacation Station any travel services, including, but limited to airline tickets, cruises, hotel rooms and vacation packages in the time period between the date the consumers entered a membership contract with Vacation Services and the date of execution of this Assurance;

3. Who request a refund or cancellation of their membership contract with Vacation Station during the six (6) month time period after the execution date of this Assurance; and

4. Who submit their refund or cancellation requests in writing to Vacation Station or OCP.

B. Respondents will cancel the membership contracts of any consumers and provide a 50% refund of the full membership contract price to any consumers:

1. Who entered into a membership contract within the state of Georgia with Vacation Station in the time period between December 1, 2010 and the date of execution of this Assurance,

2. Who purchased from Vacation Services any travel services, including, but limited to airline tickets, cruises, hotel rooms and vacation packages in the time period between the date the consumers entered a membership contract with Vacation Services and the date of execution of this Assurance; and

3. Who request a refund or cancellation of their membership contract with Vacation Station or OCP during the six (6) month time period after the execution date of this Assurance; and

4. Who submit their refund or cancellation requests in writing to Vacation Station or OCP.

XIV.

The parties agree that the obligations imposed in Paragraph XII represent an administrative resolution and the agreed upon obligation of Respondents. Therefore, the

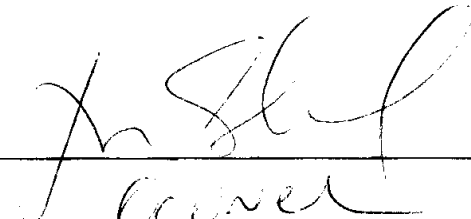
obligations are not subject to be discharged or set aside in any proceeding filed or held pursuant to Title 11 of the United States Code.

XV.

This Assurance, when accepted by the Administrator, will bind the Respondents and Respondents successors and/or assigns who take with notice of the terms and provisions of this Assurance. Respondents hereby agree to give notice of this Assurance to Respondents successors and/or assigns.

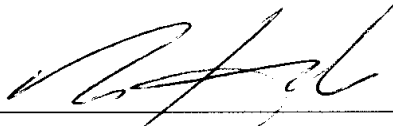
This Assurance, made and entered into by and between the undersigned parties, is effective upon the date of acceptance by the Administrator.

Proposed, consented and agreed to by:

By: 

Title

SIGNATURES CONTINUED ON FOLLOWING PAGE

By: 
owner
Title
INDIVIDUALLY AND ON BEHALF OF
THE VACATION STATION, LLC.

Sworn to and subscribed before me, this
30th day of January, 2012.


NOTARY PUBLIC
My commission expires: _____

My Commission Expires August 28, 2016

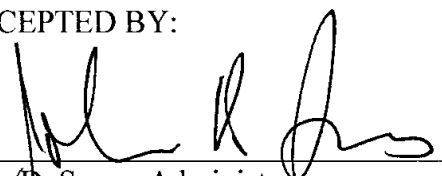
ACCEPTED BY:

John D. Sours, Administrator
Date: 15 February 2012

Exhibit A

	Consumer	Member number or contact information	Refund
1.	Alan and Christine Reddick	51736	\$4394.00
2.	Arthur and Jeannie Feinstein	80797-A	\$5593.00
3.	Coleman and Annette Green	51754	\$2995.00
4.	Gary and Shawndra Russell	51569	\$3500.00
5.	Hederick and Princess Barlay	80887A	\$600.00
6.	Hussian and Valerie Kareem	80973A	\$2995.00
7.	James and Edith Houg	51747	\$1124.79
8.	James and Patricia Mitchell	90176LR	\$6593.00
9.	Joseph and Linda Dotter	51552	\$3495.00
10.	Maarif and Reema Husgrin	80,936-A	\$1688.50
11.	Neil and Yvette Sperry	51571	\$2000.00
12.	Norman and Ruby Zanders	90207LR	\$5593.00
13.	Ntungwa and Arnetia Maasha	51676	\$2495.00
14.	Ronald and Janice Stover	51737-LR	\$3500.00
15.	Russell and Paula Denton	90165LR	\$3995.00
16.	Russell and Sharon Clostio	90206LR	\$5593.00
17.	Stephen and Judy Davis	51526	\$2500.00
18.	Thomas and Jackie Horton	51659	\$2995.00
19.	Tom and Anne Peckerd	51646	\$6394.00
20.	Wade and Dana Taylor	51602	\$1675.00
21.	Robert Junko	43551	\$625.00
22.	Angelia Hills	77 Perry Drive Midway, Georgia 31320 angiehills@live.com	\$4994.00
23.	Robert Fuller	(912)312-2393 185 Reese Drive Richmond Hill, Georgia 31324 Macarter85@bellsouth.net	\$1000.00
24.	Cindy Vodila	274 Kirk Lake Road Little Mountain, South Carolina 29075 vodilaharley@yahoo.	\$1141.00
25.	Jimmy Rice	90331LR	\$5593.00
26.	Gloria Harracksingh	80796A	\$3694.00

Total: \$87,265.29



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AG PAXTON REACHES \$74K AGREEMENT WITH SAN ANTONIO-BASED BUSINESS

June 22, 2017 | Press Release

AG Paxton Reaches \$74K Agreement with San Antonio-Based Business

SHARE THIS:

Texas Attorney General Ken Paxton today reached an agreement with Joseph Brandon Shirley and Randy Lee Gardner over allegations that their travel service operations violated the Texas Deceptive Trade Practices Act and other Texas statutes. The State alleged that Respondents offered travel promotions that were unavailable in order to get consumers to purchase memberships, misrepresented the savings promised to consumers for services, and refused requests to cancel memberships, among several other complaints.

Businesses named in the agreement are Exciting Travel Destinations LLC, Alamo Guest Services, and Vacation Inspirations, LLC. All three entities operated from offices in San Antonio. Respondents have agreed to pay \$74,995 in consumer restitution, civil penalties, and attorneys' fees in favor of the State of Texas.

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Vacation club connected to prior settlements over consumer complaints



Downtown Charleston attracts millions of tourists every year, but some say that their vacations were ruined after their experience with one local business.

By [Blair Sabol](#) and [Ainslie Lycans](#)
Published: Nov. 4, 2022 at 1:12 PM EDT | Updated: Nov. 7, 2022 at 11:39 PM EST



CHARLESTON, S.C. (WCSC) - Downtown Charleston attracts millions of tourists every year, but some say that their vacations were ruined after their experience with one local business.

"I don't know that I would voluntarily go back to Charleston to be honest," Christopher Sawyer said. "Knowing that the city can't even crack down on something like this."

Sawyer and his wife traveled to South Carolina in May of 2021. He's not alone in his experience.

"It left a bad taste in my mouth for Charleston," Merle Teeling said.

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Jeffrey Pumilia, director of member services at Vacation Inspirations, says this is to avoid distractions.

Though, customers hypothesize that it was to rope them into a contract they couldn't get out of.

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"Well when we left, of course, I bring up my cell phone and start googling Vacation Inspiration[s] and oh my gosh, it was bad review after bad review," Teeling said. "I felt sick to my stomach."

"It was a very well-polished scheme and all this we didn't know who the company was prior to stepping foot in the presentation," Sawyer said. " It really is for lack of a better term scurvy."

The business sells memberships for \$2,000 to \$8,000 upfront, where customers sign a “non-cancellable” agreement immediately following the presentation.

Customers' complaints with the South Carolina Department of Consumer Affairs accuse the business of a high-pressure sales situation where they were told how to fill out forms, including checking "no" when asked on the forms if they were pressured into the deal.

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Pumilia denies these claims.

"We don't force anybody to do anything. It's all their choice," he said.

Sawyer never used the services and was unable to cancel the transaction on his credit card.

Teeling did, however.

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Though receiving rebates, she found that the deals never ended up being as good as a deal as promised.

"It wasn't any cheaper at all, it was more," she said.

The complaints

The complaints against Vacation Inspirations, now run by Destination Travel LLC, have continued to pile on since 2014. So far, there are 95 on the South Carolina Department of Consumer Affairs (SCADCA) [website](#) with 72 since a prior Live 5 investigation into the business in 2015.

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[READ MORE: Dozens of complaints filed against local vacation clubs](#)

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"They're experiencing buyer's remorse. We do everything in our power, our entire team works, you know with each member on any issue, problem or concern," Pumilia said.

In South Carolina, customers have 3-5 days to back out of a contract deal, but only in [specific](#) cases. This includes door-to-door sales, gym memberships and vacation timeshares.

"It's a minuscule number [of complaints]. We have tens of thousands of existing members in the same period that you provided us with for these 18 complaints, we had over 3,800 new members join," he said. "You're looking at less than one-half of one percent of individuals... that doesn't even include our existing member base."

Pumilia says 12,000 members use the service every year.

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The business has existed for 16 years, but only became accredited with the [Better Business Bureau in February 2022](#). It has an A+ rating.

In SCADA's database, out of the 18 most recent complaints reviewed, ten had a "business adequate response."

This means the business responded, but the customer may not have necessarily gotten what they had asked for.

The remaining eight closed with a "consumer satisfied" label. Four received a partial refund, only two appeared to get a full refund.

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"If it's an area that we don't have legal authority over or any sort of regulation, we can't force a business to do something," Bailey Parker, the director of communications at SCDCA, said.

Parker says SCADA often serves only as a mediator in these types of cases.

History of Consumer Complaints

The founding members of Vacation Inspirations have settled consumer complaints in two other states.

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Joseph Shirley and Randy Gardner, listed as managers under Destination Travel LLC which operates Vacation Inspirations, have also paid customer restitution, fines and attorneys' fees in Georgia and Texas.

In 2012, under Vacation Station LLC, the pair agreed to pay at least [\\$190,000 in civil penalties and customer restitutions to the Georgia Office of Consumer Protection](#).

The state's investigation revealed the business promised free airline tickets in exchange for attending a presentation, but attendees found out

[READ MORE: Refunds to be issued in Vacation Station settlement](#)

Five years later in Texas, Shirley and Gardner agreed to pay out another nearly \$75,000 for violating the Texas Deceptive Trade Practices Act and other statutes, [according to the Texas Attorney General's Office](#).

Pumilia refused to answer any questions regarding either’s involvement in the business or the settlements.

David Levine, the business’ lawyer, over the phone confirmed that they have signed consent orders in both states.

The orders did not include an admission of guilt in either case.

Levine said that mistakes were made in the past, but the company continues to move forward.

“Vacation Inspirations has served tens of thousands of satisfied members over the past decade. We pride ourselves on our ability to create wonderful vacation experiences for the families and individuals we work with. We also pride ourselves in our responsiveness to member concerns and making sure those concerns are addressed quickly and fairly,” Randy Gardner said in a statement.

Connecting with other Customers

The business offered Sawyer a partial refund, but he refused it.

“I didn’t want to sign the documentation that they had sent over because it suggested that I would be held legally liable if I said anything negative about the company,” he said. “To me, it’s more important to speak about this rather than to recoup \$2,000 and not say my peace about the experience,” he said.

Sawyer has started a Facebook page [Tales of Vacation Inspirations LLC Charleston South Carolina](#) and an email vacationinspirationscamera@gmail.com to connect with other customers.

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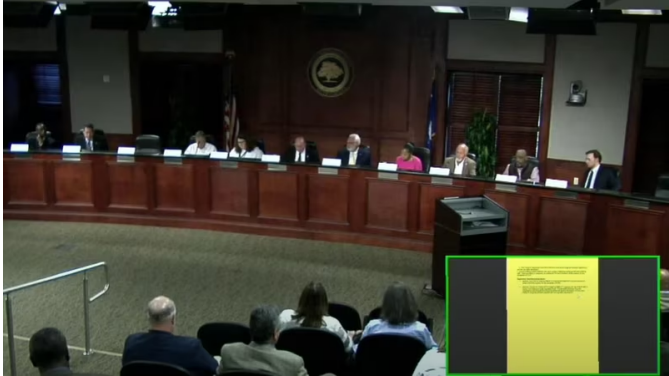


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Business Name: vacation inspiration

Results

Name	Address	Phone	Complaints
Vacation Inspirations	229 Meeting Street Charleston, SC 29401	8776428747	121
Vacation Inspirations (Destination Trave	1662 Savannah Hwy., Suite 150 Charleston, SC 29407	7706718500	9

Total Complaints: 130

Oct 27 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas J. Rode, Circuit Court Judge

Appellate Case No. 2026-000910

Christopher Sawyer and Terese Sawyer, Appellant,

v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/David W. Wolf

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

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Fax (843) 853-9002

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s/Abby Edwards Saunders

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Email: abigail@abbysaunderslaw.com

Attorneys for Appellants