IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2018-CP-2201001
Appellate Case No.: 2019-000451

Nicole Lampo,..... Respondent,

v.

Amedisys Holding, LLC, and
Leisa Victoria Neasbitt .....Appellants.

REPLY BRIEF OF APPELLANTS

Jason D Keck, *Pro Hac Vice*
Fisher & Phillips, LLP
10 South Wacker Drive, Suite 3450
Chicago, Illinois 60606
jkeck@fisherphillips.com

-and-

George A. Reeves III, S.C. Bar No. 73659
Fisher & Phillips, LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
greeves@fisherphillips.com

ATTORNEYS FOR APPELLANTS AMEDISYS HOLDING, LLC AND LEISA VICTORIA NEASBITT

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I. INTRODUCTION

Conceding she cannot recall any of the pertinent events surrounding her agreement to arbitrate, Ms. Lampo's brief instead offers a myriad of hypothetical scenarios and suggestions as to how Amedisys could have—or, in Ms. Lampo's view, should have—transmitted the Company's arbitration program to the approximately 13,000 employees working for Amedisys. Ms. Lampo's creative hypotheticals and suggestions, while perhaps intellectually interesting, are intended to divert this Court's (and the Trial Court's) attention away from the undisputed record evidence establishing that Ms. Lampo agreed to arbitrate the claims in her lawsuit. Faced with the possibility that Ms. Lampo will be required to honor the agreement she made with Amedisys and adjudicate her claims in an arbitral forum, she conveniently disclaims any recollection of her actions and, instead, offers a handful of foreclosed defenses against enforcing the Arbitration Agreement. In doing so, Ms. Lampo argues this Court should invalidate her agreement to arbitrate by applying an overly-restrictive interpretation of the Arbitration Agreement inconsistent with the remedial purpose of the Federal Arbitration Act ("FAA"). Ms. Lampo's arguments are contrary to existing law and run afoul of well-established public policy compelling this Court to resolve any "doubts concerning the scope of arbitrable issues . . . in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, 23-24 (1983). Thus, for the reasons established in Appellants' opening brief, and expanded upon below, this Court should reverse the Circuit Court's March 11, 2019 Order and mandate Ms. Lampo adjudicate her claims in an arbitral forum pursuant to her agreement.

II. ARGUMENTS IN REPLY

A. The Arbitration Agreement is a Binding and Enforceable Contract.

In the first sentence of Ms. Lampo's brief, she reaffirms her sworn affidavit and concedes that she "does not remember receiving" Amedisys' Arbitration Agreement. *See* Resp. Brief, p. 2; *See* Lampo Aff., ¶¶ 10, 14; R *. But, importantly, she does not deny receiving it. Later on in her brief, Ms. Lampo further concedes that she has no recollection of receiving Amedisys' August 6, 2013 email or acknowledging that Amedisys provided her with the Arbitration Agreement. *See* Resp. Brief, p. 6. Critically, Ms. Lampo also concedes that she has no memory of reviewing the Arbitration Agreement, which unequivocally informed her that she would be bound by its provisions if she failed to opt out of it and continued to work for Amedisys. *See* Resp. Brief, pp. 3, 6. Ms. Lampo's inability to recall certain events, including whether she received or reviewed the Arbitration Agreement, renders her unable to question the undisputed evidence establishing she did receive and agree to the Arbitration Agreement. *See Hamlin v. Dollar Tree Stores, Inc.*, 2017 WL 6034325, at *1 (D.S.C. Dec. 6, 2017) (finding the "failure to recall signing the agreement is insufficient to create an issue of fact as to the validity of the arbitration agreement"); *Gadberry v. Rental Servs. Corp*, 2011 WL 766991, at *2 (D.S.C. Feb. 24, 2011).

In light of Ms. Lampo's admissions, it is undisputed—and, simply cannot be disputed because Ms. Lampo has "no recollection"—that: (1) Amedisys assigned Ms. Lampo a unique username and password and a unique email account to which only she had access; (2) Ms. Lampo received—using her unique user name and password and email—the August 6, 2013 email advising employees they "must read" the email's contents; (3) Ms. Lampo clicked the hyperlink contained in the August 6, 2013 email; (4) Ms. Lampo received and reviewed the "Acknowledgment Form" after clicking the hyperlink; (5) Ms. Lampo clicked "Acknowledge"

after being presented with the "Acknowledgment Form," confirming her understanding that she was being provided access to and required to review the Arbitration Agreement and would be bound by its terms if she continued to work and did not opt out of it; (6) Ms. Lampo chose to not opt out of the Arbitration Agreement, despite having an unfettered ability to do so; and (7) Ms. Lampo continued to work for Amedisys until March 26, 2018. *See* Motion,[1] pp. 2-3; *see also* West Aff., ¶¶ 4-6, 8-9; Email; Acknowledgment Form; Bracey Aff., ¶¶ 2-4; R *. These undisputed facts render Ms. Lampo unable to challenge that she received the Arbitration Agreement and failed to opt out of its provisions, which as Appellants cited in their opening brief, constitutes valid acceptance.

For a valid contract to exist under South Carolina law the three elements of offer, acceptance, and consideration must be present, and none of the recognized defenses to contract formation, such as fraud, duress, or unconscionability, should apply. *See, e.g., Sauner v. Pub. Serv. Auth. of S.C.,* 354 S.C. 397, 406, 581 S.E.2d 161, 166 (S.C. 2003). Importantly, most employment contracts are unilateral.[2] *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 516 S.E.2d 923 (1999). "A unilateral contract has the following three elements: (1) a specific offer; (2) communication of the offer to the employee; and (3) performance of job duties in reliance on the offer." *Id.* at 336, 516 S.E.2d at 926. Thus, an employee who receives actual notice of an arbitration policy and continues to work is bound by the agreement. *See Reese v. Commercial Credit Corp.,* 955 F. Supp. 567, 570 (D.S.C. 1997) (citing *Small v. Springs Industries, Inc.,* 292 S.C. 481, 357 S.E.2d 452, 454 (S.C. 1987)).

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[1] Appellants cite to the record using the same defined terms as their initial brief.

[2] During oral argument before the Trial Court, Judge Culbertson offered a hypothetical scenario relied on by Ms. Lampo, *see* Resp. Brief, pp. 16-17, to question whether she truly agreed to the Arbitration Agreement. Judge Culbertson's example, however, involved a bilateral real estate contract, which is inapplicable to this case because the Arbitration Agreement is a unilateral contract accepted by Ms. Lampo through her actions. Thus, the Trial Court's hypothetical and Ms. Lampo's reliance on it is of limited applicability here.

Ms. Lampo does not challenge that Amedisys made a specific offer to Ms. Lampo to participate in the Arbitration Agreement or that the agreement is supported by adequate consideration. Consequently, Ms. Lampo has waived any argument as to those elements. *See Herron v. Century BMW,* 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (finding arguments not made are waived). Stripping away Ms. Lampo's hyperbole and self-serving hypothetical beliefs as to how Amedisys should have provided the Arbitration Agreement at issue to her, what remains is Ms. Lampo's after-the-fact contention that she did not "accept" the Arbitration Agreement. *See* Resp. Brief, pp. 10-17. Ms. Lampo's admitted inability to contest the record evidence, however, leads to the opposite conclusion.[3]

In this case, after being prompted, Ms. Lampo—on her own volition—clicked "Acknowledge," affirming: (1) Amedisys provided her access to the Arbitration Agreement; (2) she understood that Amedisys "required" her to review, *inter alia,* the Arbitration Agreement; (3) she understood—from both the Acknowledgment and Arbitration Agreement to which she had access—that she would be bound by the Arbitration Agreement if she did not opt out of it "within 30 days." *See* West Aff. ¶¶ 3-6; *see also* Acknowledgment Form; Bracey Aff. ¶¶ 2-4; Arbitration Agreement, ¶ 9; R *. By virtue of her memory lapse, Ms. Lampo has not challenged any of these undisputed facts. Furthermore, the Arbitration Agreement, which Ms. Lampo acknowledged—

[3] Throughout Ms. Lampo's Brief and within an entire subsection (Section II(A)), Ms. Lampo denies receiving "actual" notice of the Arbitration Agreement. *See* Resp. Brief, pp. 10-19. Ms. Lampo's affirmative denial defies logic because she has made clear that she has no recollection one way or another of having received or reviewed the Arbitration Agreement. *See* Lampo Aff. ¶¶ 9-10, 13; R *. It goes without saying that denying "notice" of the Arbitration Agreement and being unable to recall receiving "notice" of the Arbitration Agreement are two vastly different things. And this Court should not allow Ms. Lampo to create a dispute of the facts by making inconsistent statements. *See, e.g., Hoard ex. rel Hoard v. Roper Hosp, Inc.,* 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010) (noting a party cannot create a genuine issue of material fact by simply asserting that a jury may disbelieve uncontradicted evidence."); *see also Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc.,* 53 F.3d 55, 62 (4th Cir. 1995) (finding the non-moving party cannot create a genuine issue of material fact by presenting his or her own conflicting versions of events.)

and has not disputed—she had been provided access to and was required to review, explicitly stated, in relevant part:

> "Should Employee fail to opt out of this Agreement within the 30-day period in the manner provided above, Employee's continuation of his or her employment with Company shall constitute Employee's and Company's mutual acceptance of the terms of this Agreement."

See Arbitration Agreement, ¶ 9; R *. It is irrelevant whether Ms. Lampo chose to ignore her acknowledged obligation to review the Arbitration Agreement or did not "scroll[] through or . . . click[] the link to the actual arbitration agreement" as she cannot recall doing one way or another. *See* Resp. Brief, pp. 6-7; *see also* Lampo Aff. ¶¶ 9-10, 13; *Mid-Continent Refrigerator Co., v. Dean,* 256 S.C. 99, 180 S.E.892 (1971) (holding that decision not to read written contract no excuse for enforcement of contracts provisions); *Regions Bank v. Schmauch,* 354 S.C. 648, 662-63, 582 S.E.2d 432, 440 (Ct. App. 2003) (finding a person who agrees to a contract or other written document cannot avoid the effect of the document by claiming he did not read it). Rather, what matters is that the record evidence establishes—and Ms. Lampo cannot deny—that she received actual notice of the Arbitration Agreement, did not opt out of the agreement, and continued to work for Amedisys for almost five years. *See* West Aff. ¶¶ 3-6; *see also* Acknowledgment Form; Bracey Aff. ¶¶ 2-4; Arbitration Agreement, ¶ 9; R *. Thus, Ms. Lampo's actions established she agreed to the Arbitration Agreement and should be bound by her agreement. *Towles v. United HealthCare Corp.,* 338 S.C. 29, 40, 524 S.E.2d 839, 845 (Ct. App. 1999).

In a strained attempt to overcome her inability to recall—and, therefore, contest—that she received and agreed to the Arbitration Agreement, Ms. Lampo argues that because she was required to click "Acknowledge," she did not voluntarily "agree" to the Arbitration Agreement. *See* Resp. Brief, p. 13. Other than concluding the "acknowledgement" was "compulsory," Ms.

Lampo makes no effort to explain why or how such a fact supports her conclusion that she did not agree to arbitrate. *See id.* Tellingly, Ms. Lampo cites no authority suggesting it is improper for an employer to require its employee acknowledge receipt of important company documents. Nor did Appellants' research yield any support for Ms. Lampo's novel position. Yet, even if Amedisys did require Ms. Lampo "acknowledge" receipt of the Arbitration Agreement, among other things, *see* Acknowledgment Form; R *, Ms. Lampo still had the ability to opt out of the Arbitration Agreement or quit working if she did not wish to be bound by its terms. *See* Arbitration Agreement; R *. Ms. Lampo chose to do neither. Thus, the alleged "compulsory" nature of the Acknowledgment Form is simply a fabrication and, in any event, of no legal consequence and does not invalidate the undisputed evidence establishing Ms. Lampo's receipt and acceptance of the Arbitration Agreement.

Next, while failing to cite any factual authority supporting her conclusions, Ms. Lampo instead attempts to distinguish certain of the cases relied on by Appellants in their opening brief. *See* Resp. Brief, pp. 10-14. First, Ms. Lampo downplays the significance of *Knight v. Amedisys Holding, LLC* and *Langlois v. Amedisys Holding, LLC,* in which two separate federal district courts upheld and enforced the exact same arbitration agreement at issue in this case. 2016 WL 5661227 (W.D. Ky. 2016); 2016 WL 4059670 (M.D. La. 2016). Observing that neither *Knight,* nor *Langlois* involved "application of South Carolina contract law," Ms. Lampo argues that Appellants "overstate the application" of *Knight* and *Langlois* because neither case involved the issue of "acceptance." *See* Resp. Brief, pp. 12-13. Ms. Lampo's contention is misleading. While the plaintiffs in *Knight* and *Langlois* aptly decided against directly challenging whether they "accepted" the Arbitration Agreement, the respective District Courts both upheld the Arbitration Agreement, and did so without questioning whether a valid contract existed. And, contrary to Ms.

Lampo's contention, the District Court in *Knight* did make a factual finding, specifically holding that: "[b]ecause Knight clicked the acknowledgment form to indicate that she received and understood the materials, and she did not opt out of the Agreement, [*Knight*] manifested her assent to the Agreement, including the agreement to arbitrate." 2016 WL 5661227 at *3.

Ms. Lampo also misses the point in her attempt to distinguish *Willard v. Dollar Gen. Corp.*, and *Brown v. Five Star Quality Care, Inc.* *See* Resp. Brief, pp. 13-15. Appellants cited both *Willard* and *Brown* for the legal proposition that failing to opt out of an agreement and continue working, such as the case here, can be evidence of assent. *See Willard,* 2017 WL 4551500, *1-2 (D.S.C. Oct. 12, 2017) (finding that, following the expiration of the 30 day opt out period, the "parties became bound by [the agreement's] terms," thereby establishing a valid contract); *Brown v. Five Star Quality Care, Inc.,* 2016 WL 8710474, *4 (D.S.C. Jan. 8, 2016) (finding the plaintiffs each continued to work for Five Star after allegedly receiving the arbitration agreement—evidenced by virtue of their "acknowledgment"—and, thus, because "continuing in employment suffices to accept an arbitration agreement," the plaintiffs were bound by the agreement). Ms. Lampo, on the other hand, maintains that *Willard* and *Brown* "hurt" Appellants' case because the plaintiffs in those cases received the arbitration agreement at issue before executing an acknowledgment. *See* Resp. Brief, p. 14. Ms. Lampo's distinction of *Willard* and *Brown* is illusory.

In this case, just like *Willard* and *Brown,* Ms. Lampo acknowledged being provided access to, among other documents, the Arbitration Agreement. *See* Acknowledgment Form; West Aff. ¶¶ 4-5; R *. Ms. Lampo has not and cannot deny that she received or reviewed the Arbitration Agreement. *See* Lampo Aff. ¶¶ 9-10, 13. The Arbitration Agreement here, like the arbitration agreements in *Willard* and *Brown,* made clear that if Ms. Lampo continued working and elected

to not opt out of the Arbitration Agreement within 30-days, she will be deemed to have accepted the of the Arbitration Agreement. *See* Arbitration Agreement, ¶ 9; R *. It is undisputed that Ms. Lampo continued working for Amedisys and never opted out of the Arbitration Agreement. *See id; see also* West Aff. ¶¶ 8-9; R *. Thus, her conduct is squarely in line with the plaintiffs in *Willard* and *Brown. See, e.g., Hightower v. GMRI, Inc.* 272 F.2d 239, 242 (4th Cir. 2001) (finding employee's continued employment bound him to accept employer's arbitration procedure); *Small,* 292 S.C. at 483-84, 357 S.E.2d at 454 (finding an employee accepted employer's offer by "performing the act on which the promise was impliedly or expressly based.").

In sum, the undisputed record evidence establishes that Ms. Lampo is bound by the Arbitration Agreement, which is a valid and enforceable contract under South Carolina law. Accordingly, this Court should reverse the Trial Court's Order denying Appellants' motion to compel arbitration and order Ms. Lampo to arbitrate her claims pursuant to her agreement.

B. The Arbitration Agreement Is Not Unconscionable.

Ms. Lampo alternatively argues that even if the Arbitration Agreement is an enforceable contract, which it is, this Court should nonetheless invalidate the agreement because it is "unconscionable."[4] *See* Resp. Brief, pp. 19-20. Specifically, Ms. Lampo argues that the Arbitration Agreement is "unconscionable" because it purportedly limits the nature and scope of available discovery to Ms. Lampo and Amedisys.[5] *See id.* Ms. Lampo bears the burden of establishing that the Arbitration Agreement is unconscionable. *See Green Tree Fin. Corp., v.*

[4] Ms. Lampo fails to articulate what is required to establish "unconscionability" under South Carolina law. To do so, Ms. Lampo must establish an absence of meaningful choice as well as oppressive, ***one-sided terms*** such that no reasonable person would make them and no fair and honest person would accept them. *See Simpson v. MSA of Myrtle Beach, Inc.,* 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007).

[5] Amedisys notes that the Arbitration Agreement plainly states that "additional discovery may be had by mutual agreement of the parties or where the Arbitrator selected so orders pursuant to a request by either party." *See* Arbitration Agreement, ¶ 5; R *. Because Ms. Lampo has not yet made a request for "additional discovery" in arbitration from Amedisys or an arbitrator, her contention that the Arbitration Agreement is "unconscionable" is not yet ripe.

Randolph, 531 U.S. 79, 92 (2000); *Rock v. Solar Rating & Cert. Corp.,* 2018 WL 3750617, *6 (D.S.C. 2018). This burden is a "substantial one" and cannot be satisfied by a mere listing of ways that the arbitration will differ from a court proceeding, or by speculation about difficulties that might arise in arbitration. *See Green Tree,* 531 U.S. at 92; *In re Cotton Yarn Antitrust Litig.* 505 F.3d 274, 286 (4th Cir. 2007).

Appellants need not belabor the point that the United States Supreme Court has already considered and rejected Ms. Lampo's unconscionability argument. *See AT&T Mobility, LLC v. Concepcion,* 131 S. Ct. 1740, 1747 (2011). The Supreme Court decided *Concepcion* well after both of the California cases relied on by Ms. Lampo and, thus, they have no persuasive value to the case at bar. *See* Resp. Brief, p. 20. Thus, the mere fact that the Arbitration Agreement provides for—unless otherwise agreed to by the parties or ordered by the arbitrator—limited mutual discovery, is insufficient as a matter of law to invalidate the Arbitration Agreement on unconscionability grounds.

Moreover, Ms. Lampo's failure to cite *Lucey v. Meyer* is peculiar. 401 S.C. 122, 142, 736 S.E.2d 274. In *Lucey,* this Court upheld an arbitration agreement that permitted the parties to be the only two witnesses who could be called in person as witnesses at the arbitration hearing. *Id.* Citing *In re Cotton Yarn,* this Court observed that the limited discovery provisions applied equally to both parties and did not restrict the introduction of depositions of witnesses into the arbitration proceedings. *Id.* Thus, this Court reversed the trial court finding that the arbitration clause was neither one-sided nor oppressive such that it was unconscionable. *Id.*

In this case, the limited discovery provisions contained in the Arbitration Agreement also apply to Appellants. *See* Arbitration Agreement; R *. While the Arbitration Agreement does purport to limit discovery absent agreement or leave from the arbitrator, there is no limitation

restricting the evidence or witnesses Ms. Lampo may present at any hearing, where credibility is often of critical importance. Put simply, because Ms. Lampo lacks any evidentiary or legal support establishing an absence of meaningful choice and oppressive, one-sided terms, she has not met her "substantial" burden establishing unconscionability. *See Prosper v. American Credit Acceptance, LLC,* 2015 WL 13310148, at *4 (D.S.C. Aug. 17, 2015) (rejecting contention that because both sides to the arbitration agreed to limited discovery, the plaintiffs allegations of being unable to effectively vindicate her claims are too speculative to satisfy her burden of establishing "unconscionable discovery limitations."); *see also Gilmer v. Interstate/Johnson Lane Corp*, 500 U.S. 20, 31 (1991) (rejecting argument that the arbitration agreement at issue was invalid because it did not permit the same discovery as permitted in federal courts, which the Supreme Court noted: "by agreeing to arbitrate, a party trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration").

C. The Arbitration Agreement Covers the Dispute.

Ms. Lampo next argues that the Arbitration Agreement does not apply to her defamation or tortious interference claim because those claims, according to Ms. Lampo, are "post-termination" torts. *See* Resp. Brief, pp. 20-22. Ms. Lampo's "post-termination" torts exception is undermined by the plain language of the Arbitration Agreement. But, even if there were a question as to whether Ms. Lampo's post-termination torts exception factually or legally existed, this Court "must decide the question in favor of arbitration." *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 583 (1960); *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013); *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989). To determine whether an arbitration clause applies to a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the

arbitration clause. *Hinson v. Jusco Co.*, 868 F. Supp. 145 (D.S.C. 1994); *S.C. Pub. Serv. Auth. v. Great W. Coal,* 312 S.C. 559, 437 S.E.2d 22 (1993)).

Here, Ms. Lampo's Arbitration Agreement makes clear that it applies to "any dispute arising out of or related to [her] employment with Amedisys or termination or employment regardless of its date of accrual and survives after the employment relationship terminates." *See* Arbitration Agreement, p. 1; R *. The Arbitration Agreement then goes on to state that it encompasses, without limitation, all disputes relating to [Ms. Lampo's] "termination," and "all other state statutory and common law claims." *See id.* Thus, the plain language of the Arbitration Agreement make clear that it has no temporal restriction and applies to all "statutory and common law claims," which indisputably encompass Ms. Lampo's post-termination torts. Thus, Ms. Lampo's argument should be rejected for this simple reason alone.

Moreover, Ms. Lampo's own brief implicitly concedes her post-termination torts are "related to [her] employment with Amedisys . . ." and, thus, relegated to arbitration. For example, Ms. Lampo characterizes her defamation claims as "refer[ing] to defamatory publications of the pretextual reason for Lampo's ***termination to unprivileged coworkers and a former customer.***" *See* Resp. Brief, p. 21 (emphasis added). Clearly, such alleged publications are "related to" her termination from Amedisys. Furthermore, Ms. Lampo's tortious interference claim alleges, in wholly conclusory fashion, that some unknown person from Amedisys told some unknown prospective employer that Ms. Lampo was "ineligible for rehire," which allegedly prevented Ms. Lampo from obtaining "prospective" employment. *See* Comp., ¶¶ 52-56, 87-92; R *. Whether Ms. Lampo was eligible or "ineligible for rehire" is a fact incumbent on and interdependent with the reasons Amedisys terminated Ms. Lampo's employment in the first place. Put simply, Ms. Lampo's claims are grounded in factual assertions that arise from and out of her former

employment with Amedisys (and her relationship with her former supervisor, Ms. Neasbitt). In any event, if there were any doubts, it is for the arbitrator to decide those claims arbitrability.

Ms. Lampo also argues that Ms. Neasbitt is precluded from enforcing the Arbitration Agreement because she was not a party to the agreement. *See* Resp. Brief, pp. 22-24. Ms. Lampo's opportunistic argument is not only contrary to the law, but it would also flip the FAA and its remedial purpose on its head, incentivizing plaintiffs to name individuals as defendants for the sole purpose of carving out otherwise arbitrable claims. *See Arnold v. Arnold Corp.*, 920 F. 2d 1269, 1281 (6th Cir. 1990) (noting if a plaintiff "can avoid the practical consequences of an agreement to arbitrate by naming non-signatory parties as defendants in his complaint . . . the effect of the rule requiring arbitration would, in effect, be nullified."). Such is not the law.

A non-signatory can compel arbitration if the claims against her are "intertwined" with an arbitration agreement. *See Carter v. MasTec Services Co., Inc.,* 2010 WL 500421, *4 (D.S.C. 2010); *Brantley v. Republic Mortg. Ins. Co.,* 424 F.3d 392, 396 (4th Cir. 2005). Under the "intertwined test," Ms. Lampo is estopped from avoiding arbitration against a non-party if the issues [Ms. Neasbitt] is seeking to resolve in arbitration are interdependent or intertwined with the claims against Amedisys. *See Wike v. Holiday Kamper Company of Columbia, LLC,* 2014 WL 1234311, *2-3 (D.S.C. 2014) (granting motion to compel arbitration with an alleged non-party to the arbitration agreement at issue finding that the plaintiff's claims against the alleged non-party were "interdependent" of the claims with a party to the arbitration agreement).

In this case, the only claim brought against Ms. Neasbitt is for defamation. *See* Comp., Count III, ¶¶ 76-86; R *. Each and every allegation lodged against Ms. Neasbitt derives from her employment relationship with Amedisys and her role as Ms. Lampo's former supervisor. *See, e.g.,* Comp., ¶¶ 76-86; R *. Furthermore, Ms. Lampo's defamation claim against Amedisys, *see* Comp.

Count II, ¶¶ 63-75; R *, seeks to hold Amedisys vicariously liable for Ms. Neasbitt's alleged defamatory statements—the same statements comprising Ms. Lampo's individual claim against Ms. Neasbitt. Clearly, Ms. Lampo's claims against Ms. Neasbitt in this case are intertwined with her claims against Amedisys. Moreover, the clear intent of the language in the Arbitration Agreement is to provide a single arbitral forum to resolve all disputes. *See* Arbitration Agreement, pp. 1-2; R *. Because "any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration, Ms. Lampo's claims brought individually against Ms. Neasbitt should be relegated to an arbitral forum. *Moses H. Cone Hosp.*, 460 U.S. at 24-25; *see also Gadberry,* 2011 WL 766991 (granting non-signatory's motion to compel arbitration and forcing former employee to arbitrate based upon the "intertwined claims doctrine").

D. No Genuine Issues of Fact Exist Requiring a Jury Trial.

In a last ditch effort to stave off arbitration, Ms. Lampo argues that this Court should remand and order the Circuit Court to impanel a jury to determine whether Ms. Lampo agreed to arbitrate her claims. *See* Resp. Brief, pp. 24-26. While Section 4 of the FAA permits a court to convene a jury trial, "[n]ot just any factual dispute will do." *See Chorley Enterprises, Inc., v. Dickey's BBQ Rest., Inc.,* 807 F.3d 553, 564 (4th Cir. 2015). Rather, the party requesting a jury trial under Section 4 must provide "sufficient evidence in support of its claims such that a reasonable jury could return a favorable verdict under applicable law." *Id.*

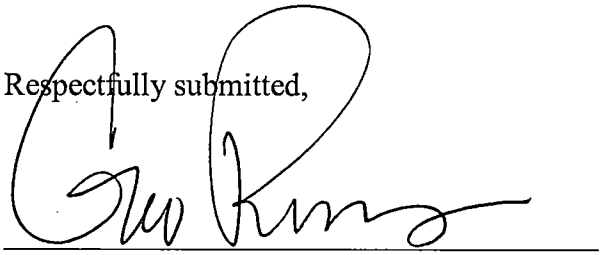
In this case, and as repeatedly established above, Ms. Lampo has no recollection of any pertinent events and is unable to deny that she received, or reviewed, the Arbitration Agreement. *See* Lampo Aff. ¶¶ 9-10, 13; R *. Because Ms. Lampo lacks any memory of the relevant issues, the facts are not in dispute and, thus, whether Ms. Lampo agreed to arbitrate her claims, which she did, is precisely the type of issue that can—and should—be decided by this Court as a matter of

law. *See Hamlin,* 2017 WL 6034325, at *1 (finding the "failure to recall signing the agreement is insufficient to create an issue of fact as to the validity of the arbitration agreement"). Furthermore, none of Ms. Lampo's proposed inquiries, Resp. Brief, p. 25, into the Arbitration Agreement speak to whether Ms. Lampo agreed to arbitrate her employment disputes with Amedisys. Indeed, whether 386 or 1,211 employees opted out of the Arbitration Agreement is of no significance when compared to Ms. Lampo's failure to do so. Thus, because Amedisys has met its burden establishing that Ms. Lampo agreed to arbitrate her claims, a jury trial on the issue is superfluous and should be denied by this Court.[6]

CONCLUSION

For the reasons established in Appellant's initial brief and above, Ms. Lampo's claims should be heard and adjudicated exclusively in an arbitral forum pursuant to her agreement to do so. Thus, Amedisys and Ms. Neasbitt respectfully request that this Court reverse the Circuit Court's Order denying their motion to compel arbitration and to grant any other relief deemed fair and just.

Respectfully submitted,



Jason D Keck, *Pro Hac Vice*
Fisher & Phillips, LLP
10 South Wacker Drive, Suite 3450
Chicago, Illinois 60606
jkeck@fisherphillips.com

-and-

[6] If parties could request and receive jury trial merely by advancing disputes based upon not remembering whether they agreed to a contract without any supporting extrinsic evidence, it would frustrate the very policies that the FAA is meant to promote—the swift and inexpensive alternative resolution of disputes outside of the judicial forum.

George A. Reeves III, S.C. Bar No. 73659
Fisher & Phillips, LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
greeves@fisherphillips.com

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Dated this 24th day of June 2019

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **Reply Brief of Appellants** in the above-captioned case has been served upon Appellant's counsel via electronic mail and First Class U.S. Mail, postage prepaid, as follows:

J. Paul Porter
Cromer, Babb, Porter & Hicks, LLC
1418 Laurel Street, Ste. A
Post Office Box 11675
Columbia, South Carolina 29211
paul@cbphlaw.com

Roshel Tuska-Butler
Paralegal

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