THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2018-CP-22-01001
Appellate Case No. 2019-000451

Nicole Lampo ..... Respondent,

v.

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

FINAL BRIEF OF RESPONDENT

J. Paul Porter, Esquire (# 100723)
Cromer Babb Porter & Hicks, LLC
1418 Laurel Street, Suite A (29201)
Post Office Box 11675
Columbia, South Carolina 29211-11675
Phone 803-799-9530
Facsimile 803-799-9533
paul@cbphlaw.com

Attorney for Respondent Nicole Lampo

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II. AND AS ADDITIONAL SUSTAINING GROUNDS:

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STATEMENT OF THE CASE

In this case, Appellants are asking the Court of Appeals to enforce an electronic arbitration agreement that Respondent did not sign, does not remember receiving, and did not electronically, or otherwise, affirm. Respondent, Nicole Lampo, filed this lawsuit on December 7, 2018. She alleges: (1) wrongful termination against her former employer Appellant Amedisys Holding, LLC; (2) separate defamation claims against Amedisys and her former supervisor Leisa Neasbitt; and (3) tortious interference with prospective contractual relations against Amedisys. (R. pp. 10-24). The defamation and tortious interference claims concern acts and occurrences after Ms. Lampo's termination.

Appellants filed a Rule 12(b)(3), SCRCP Motion to Compel Arbitration on February 4, 2019. (R. pp. 25-26). That Motion was fully briefed. (R. pp. 27-146). Respondent Lampo opposed Appellants' motion arguing:

1) That Lampo did not receive actual notice of Appellant Amedisys' Arbitration agreement;
2) That the unsigned arbitration agreement was not premised on mutual assent;
3) That the agreement was unconscionable because it limited the parties to only one fact witness deposition;
4) That the scope of the arbitration agreement did not cover Respondent's post-employment tort claims;
5) That Appellant Neasbitt does not have standing to enforce Respondent Amedisys' arbitration agreement; and,
6) That Respondent, to the extent she was not entitled to the denial of Appellants' motion as a matter of law, was entitled to a jury trial and discovery on the fact issues underlying actual notice pursuant to 9 U.S.C. § 4 of the Federal Arbitration Act.

Oral argument was held before the Honorable Benjamin H. Culbertson on March 1, 2019. Judge Culbertson denied Appellants' Motion to Compel Arbitration. The Court acknowledged Respondent Lampo's several arguments and held, as a threshold matter, "that there is insufficient evidence of an acceptance to justify compelling arbitration." (R. pp. 5-9).

STATEMENT OF THE FACTS

Nicole Lampo was a Physical Therapist at Amedisys Holding, LLC. (R. p. 12 ¶ 12). Appellant Leisa Neasbit was her final supervisor. (R. pp. 13, 16 ¶¶ 20-22, 48). Ms. Lampo was terminated on March 26, 2018 after she made internal complaints about patient care and safety issues. (R. pp. 16-18 ¶¶ 48, 57-62). After she was fired, Ms. Lampo alleges that Appellant Neasbitt spread false and pretextual reasons for her termination to unprivileged former coworkers and Appellant Amedisys prevented Ms. Lampo's reemployment at a third-party facility that wanted to hire Ms. Lampo as Facility Director. (R. pp. 18-22 ¶¶ 63-92). Ms. Lampo's wrongful termination claim is based on her separation of employment from Amedisys, and her defamation and tortious interference with contract claims are based on acts and occurrences thereafter.

Ms. Lampo never signed an arbitration agreement, and she "had no clue the unsigned arbitration clause at issue even existed until presuit talks preceding this legal action." (R. p. 142 ¶ 5). Ms. Lampo was not given an arbitration agreement prior to her hire, upon her hire, or as a part of her onboarding. (R. p. 142 ¶ 8). Ms. Lampo regularly attended in-service meetings at Amedisys where Amedisys would circulate documentation to inform Ms. Lampo and other employees about important changes to policies and procedures. (R. p. 143 ¶ 11). Amedisys never discussed its arbitration agreement at those in-person meetings even though it had ample opportunity to do so. (R. p. 143 ¶ 12). Ms. Lampo has absolutely no recollection of ever receiving Amedisys' unsigned arbitration agreement in person or electronically. (R. pp. 142-143 ¶¶ 5, 10, 13-14). Furthermore, there is no record

evidence that Ms. Lampo reviewed, electronically signed, electronically affirmed, clicked on, or scrolled through the unsigned electronic arbitration agreement at issue in this case.

Ms. Lampo, by way of her affidavit, affirmed the following allegations about arbitration in the Complaint:

> **FURTHER ALLEGATIONS REGARDING JURISDICTION**
>
> 93. Plaintiff realleges the foregoing where consistent.
>
> 94. Plaintiff requests a jury trial on these claims and all incidents regarding the same including whether Plaintiff had actual notice of any arbitration provision that Defendant Amedisys Holding [claims exists] and any fact issues regarding the arbitrability of this action in general.
>
> 95. Plaintiff was not presented any sort of Arbitration Agreement upon her hire.
>
> 96. Defendant Amedisys Holding, LLC has expressed a belief that this action is subject to an arbitration agreement it claims was entered between Amedisys, Inc. and Plaintiff.
>
> 97. Defendant Amedisys Holding, LLC was not a party to that agreement.
>
> 98. The entity asserting to be a party to that agreement, Amedisys, Inc. is not registered entity licensed to practice business in South Carolina and did not employ the Plaintiff.
>
> 99. Defendant Amedisys Holding, LLC has not presented Plaintiff with an agreement signed by her or any official with the authority to bind Amedisys Holding, LLC or Amedisys, Inc. for that matter.
>
> 100. Plaintiff did not sign any arbitration agreement.
>
> 101. Plaintiff was never informed by Defendant Amedisys Holding, LLC that it desired to enter an arbitration agreement even though Defendant Amedisys Holding, LLC had ample opportunities to express a desire to enter into to such an agreement at weekly meetings and prior to her hire.
>
> 102. Defendant Amedisys Holding, LLC is expected to attempt to enforce an e-mailed, inconspicuous, click-wrap style arbitration agreement with an auto[opt-]in and manual opt-out provision.

> 103. Plaintiff has no recollection of receiving an optout arbitration agreement from the Defendant Amedisys Holding, LLC via email or otherwise.
>
> 104. Plaintiff did not receive actual notice of any arbitration agreement from Defendant Amedisys Holding, LLC.
>
> 105. Defendant Neasbitt is not a party to any agreement to arbitrate disputes with the Plaintiff.
>
> 106. The arbitration agreement Defendant Amedisys Holding, LLC is expected to attempt to enforce is not supported by consideration, deprives the Plaintiff of substantial legal rights in adhesive fashion absent notice, and is otherwise unenforceable under South Carolina Law.
>
> 107. Plaintiff's actions for defamation and tortious interference with prospective contractual relations are not reasonably read to be within the terms of the subject arbitration agreement since they are not directly related to a period within which Plaintiff was an "employee" of Defendant Amedisys Holding, LLC as she is referred to in the subject agreement.
>
> 108. Triable issues of fact underly the enforceability of the subject arbitration agreement and should the Defendants attempt to enforce the agreement Plaintiff requests a jury trial with respect to the same.

(R. p. 142 ¶ 4; R. pp. 22-23 ¶¶ 93-108).

An Amedisys employee sent a company-wide email to "Undisclosed Recipients" on August 6, 2013 that bore the subject line "Important Policy Change – Must Read." (R. p. 50). The email included an importance designation as "Normal." (R. p. 50). The text of the email read: "This email contains important time-sensitive materials that the Company requires that you read as they could affect your legal rights. Please click here to receive them." (*Id.*) The email did not mention the words "arbitration" or "agreement". (*Id.*). The email also did not describe a proposed bilateral arbitration agreement; instead, the email's subject line referenced a unilateral "policy change." (*Id.*) The email was not designated as "Important" or "Urgent"; but rather bore the designation "Normal". "Amedisys was an extremely fast-paced work environment." (R. p. 142 ¶ 7). The August 6 email looked like many other generic corporate-wide emails that Ms. Lampo received from Appellant Amedisys on a regular basis

throughout her tenure. (R. p. 142 ¶ 9). Ms. Lampo does not recall even receiving the email. (R. p. 143 ¶ 10).

Appellants' brief to the Trial Court stated that "upon clicking on the email to open it in [their inbox], each employee, including [Lampo], received a pop-up Acknowledgement form. (R. p. 28). The pop-up read:

THE AMEDISYS ARBITRATION PROGRAM

ACKNOWLEDGEMENT FORM

> By clicking "Acknowledge" below, you will be given access to Amedisys Arbitration program materials which includes a Cover Letter, the Dispute Resolution Agreement, and FAQs. You are required to review these materials. Please read the materials carefully. **Unless you opt out of the Dispute Resolution Agreement within 30 days of today's date, you will be bound by it, which will affect your legal rights.**
>
> By clicking the "Acknowledge" button on this screen I acknowledge and understand that I will be given access to the materials described in the above paragraph and that I am required to review these materials."

(R. p. 52) (Emphasis Original). The pop-up gave no option other than to click "Acknowledge." (R. p. 58). The pop-up did not describe what arbitration was, and it did not describe the sort of legal rights at issue. (*Id.*). According to a self-serving affidavit purporting to authenticate electronic records regarding Appellant Amedisys' arbitration program, Lampo, though she has no recollection of the experience, clicked the compulsory "Acknowledge" button shortly after the email was sent. (R. pp. 54-58); (*See also*, R. p. 143 ¶ 10). The pop-up required employees to click "Acknowledge" and then led them to a web page containing hyperlinks to the subject unsigned arbitration agreement, a cover letter, and FAQs. (R. pp. 50-52).

There is no record evidence of how long Lampo was on the web page, if she clicked any links, if the webpage even used the word "Arbitration", or if Lampo even scrolled through the purported

unsigned arbitration agreement. There is also no evidence that Lampo electronically signed or otherwise affirmed the unsigned arbitration agreement.

The agreement itself is inconspicuously termed a "Dispute Resolution Agreement" and the word "Arbitration" is not mentioned until the bottom of the first page. (R. pp. 60-67). The agreement restricts itself to disputes "arising out of or related to [an] Employee's employment with Amedisys or termination of employment." (R. p. 60). The agreement also severely narrows the scope of discovery providing "each party shall have the right to take the deposition of one individual and any expert witness designated by another party." (R. p. 63). Thus, in a case such as this, Appellants will be able to gather information from and prepare witness testimony and affidavits for its many active employees; meanwhile, Ms. Lampo, a terminated employee, can only depose one named witness to conduct discovery and prepare for arbitration. Appellants have already proffered affidavits from two witnesses in support of their memorandum to compel arbitration before the lower court. If this arbitration agreement were enforced, Lampo could only depose one of those affiants and would do so at the expense of deposing all other listed fact witnesses.

There is no place on the agreement to affirm or electronically sign the agreement. (R. pp. 60-67). The agreement contains an opt-out provision beginning at page 6 of the agreement which provides that an employee must print out an attachment to the agreement, sign it, and mail it to Appellant Amedisys' corporate headquarters in Louisiana within 30 days of their clicking the previously discussed compulsory pop-up. (R. p. 67). Appellant Amedisys, even though it used a nondescript e-mail to distribute the unsigned arbitration agreement to employees, did not allow employees to communicate a desire to opt-out of the agreement electronically. (*Id.*).

STANDARD OF REVIEW

Rule 12(b)(3), SCRCP allows a party to move for dismissal on the basis of "improper venue." "A motion for a change of venue is addressed to the sound discretion of the trial judge and will not

be disturbed absent an abuse of discretion." *Holroyd v. Requa*, 361 S.C. 43, 65, 603 S.E.2d 417, 428 (Ct. App. 2004). Furthermore, while the Court may view evidence outside of the pleadings on a 12(b)(3) motion, the evidence before the Court must be viewed most favorably toward the non-moving plaintiff. *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 366 (4th Cir. 2012) ("In assessing whether there has been a prima facie venue showing, we view the facts in the light most favorable to the plaintiff."). "Arbitrability determinations are subject to de novo review." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007); *citing, Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 67, 620 S.E.2d 86, 89 (Ct.App.2005). "Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings." *Thornton v. Trident Med. Ctr.*, L.L.C., 357 S.C. 91, 94, 592 S.E.2d 50, 51 (Ct.App.2003).

ARGUMENT

"Everyone knows the Federal Arbitration Act favors arbitration. But before the Act's heavy hand in favor of arbitration swings into play, the parties themselves must agree to have their disputes arbitrated." *Howard v. Ferrellgas Partners, L.P.*, 748 F.3d 975, 977 (10th Cir. 2014); *see also, Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019) ("Although arbitration is viewed favorably by the courts, it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts."). "[T]he court can only compel arbitration if the parties have agreed to arbitrate." *Reese v. Commercial Credit Corp.*, 955 F.Supp. 567, 569 (D.S.C. 1997). The "[g]eneral contract principles of state law apply to arbitration clauses governed by the FAA." Munoz v. Green Tree Financial Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 364 (S.C. 2001). That is, an arbitration agreement, in order to be enforceable, must satisfy the basic elements of an enforceable contract in the first instance. *See*, 9 U.S.C. § 2 (Arbitration agreements are generally valid "save upon such grounds as exist at law or in equity for the revocation of any contract.").

The Circuit Court held that Appellant Amedisys' unsinged arbitration agreement was not an enforceable contract under South Carolina law because there was "insufficient evidence of a valid acceptance." (R. p. 5). The Court analogized Amedisys' arbitration agreement to a hypothetical wherein a homeowner might send another a letter that purports to be an agreement to sell the homeowner's property to the other stating only "if you do not opt out of this agreement within 30 days you have agreed to buy my home." (R. pp-147-178, *Specifically* 154:3-13; 175-176:23-1; 177:1-13). The Court reasoned that the same might amount to an offer; but that failure to opt-out of a proposed agreement, without more, would not equate to "an adequate acceptance." (*Id.*).

The Circuit Court reached its conclusion that there was no acceptance after discussing the "pop-up" nature of the "acknowledgement"; the lack of record evidence that Ms. Lampo even accessed the arbitration agreement; the lack of record evidence that Ms. Lampo signed (electronically or otherwise) the arbitration agreement; and Ms. Lampo's affidavit affirming that she had no notice or recollection of the unsigned arbitration agreement. (R. pp. 5-6). The Circuit Court acknowledged Ms. Lampo's several arguments against the arbitration agreement and its enforceability. (R. p. 7) ("Plaintiff counter argues that she did not have requisite actual notice of the agreement, that there is no evidence of mutual assent or a meeting of the minds, that the agreement is unconscionable, and that the agreement does not encompass the entire scope of this dispute."). The Court then "question[ed] whether enough evidence of actual notice is in the record to create a fact issue in favor of arbitrability." (*Id.*) (*See also*, R. p. 175:20-21). The Court, however determined that it "d[id] not need to delve into that issue or the myriad of other arguments raised by [Lampo' because [] there is no competent record evidence of acceptance, mutual assent, or a meeting of the minds to warrant declaring the arbitration agreement enforceable." (R. pp. 7-8).

The Circuit Court's order should be affirmed and the Court's threshold determination that Amedisys' unsigned arbitration agreement did not qualify as an enforceable contract was correct. Ms.

Lampo additionally raises four additional sustaining grounds pursuant to Rule 220(c), SCACR. Those grounds are: (1) lack of actual notice; (2) unconscionability; (3) that the scope of the agreement does not cover post-employment torts; and (4) that Appellant Neasbit is not a party to the agreement. Last, assuming arguendo the Court were to reverse without regard to the additional sustaining grounds, Ms. Lampo requests that the Court issue instructions pursuant to 9 U.S.C. § 4 ordering a jury trial on the fact issues underlying arbitrability and limited jurisdictional discovery. Ms. Lampo, as set forth below, respectfully asks this Court to affirm the reasoned decision of the Circuit Court that Appellants' unsigned arbitration agreement is unenforceable.

I. APPELLANTS' PROPOSED ARBITRATION AGREEMENT IS NOT ENFORCEABLE BECAUSE THERE IS NO EVIDENCE OF A VALID ACCEPTANCE.[1]

"It [i]s for the court, not the arbitrator, to decide in the first instance whether the dispute [i]s to be resolved through arbitration." *AT & T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 651, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986). "General contract principles of state law apply to arbitration clauses governed by the FAA." *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 364 (S.C. 2001). In deciding a motion regarding arbitration, the court must use a limited, two-part test to ensure that the dispute is arbitrable. *See, Hooters of America, Inc. v. Phillips*, 173 F.3d 933, 937-38 (4th Cir. 1999). The two-part inquiry consists of: (1) whether a valid agreement to arbitrate exists between the parties, and (2) whether the specific dispute is within the scope of the agreement. *Id.* at 938. The court may look for contractual defects and may investigate any grounds that may exist to revoke a contract in law or equity. *Id.* (noting the defect of lack of mutual assent and the availability

[1] Appellants, after acknowledging that Appellant has not contested the applicability of the FAA to this case, discuss the FAA's general presumption in favor of arbitrability at pp. 8-10 of their brief. This is largely irrelevant to the instant appeal. The FAA's presumption in favor of arbitrability does not "kick in" unless and until there is an actual enforceable contract to arbitrate. *See, Howard v. Ferrellgas Partners, L.P.*, 748 F.3d 975, 977 (10th Cir. 2014). ("Everyone knows the Federal Arbitration Act favors arbitration. But before the Act's heavy hand in favor of arbitration swings into play, the parties themselves must agree to have their disputes arbitrated.").

of other equitable grounds to revoke arbitration contracts pursuant to 9 U.S.C. § 2). The Circuit Court properly held Appellant Amedisys' unsigned agreement is not valid under state contract law due to a lack of mutual assent.

"Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute that the party has not agreed to submit." *Chassereau v. Glob.-Sun Pools, Inc.*, 363 S.C. 628, 632, 611 S.E.2d 305, 307 (Ct. App. 2005), *aff'd sub nom. Chassereau v. Glob. Sun Pools, Inc.*, 373 S.C. 168, 644 S.E.2d 718 (2007). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). *See also, Vessell v. DPS Associates of Charleston, Inc.*, 148 F.3d 407, 410 (4th Cir. 1998). (The formation of a binding contract requires "the parties [to] have a meeting of the minds with regard 'to all essential and material terms of the agreement.'"). "A valid offer 'identifies the bargained for exchange and creates a power of acceptance in the offeree.'" *Sauner*, 581 S.E.2d at 166; *quoting, Carolina Amusement Co. v. Connecticut Nat'l Life Ins. Co.*, 313 S.C. 215, 437 S.E.2d 122 (Ct.App.1993).

There is no meeting of the minds when terms are left for future agreement since parties must mutually understand "all essential and material terms of the agreement." *Stevens and Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (S.C. 2014). A meeting of the minds is "an objective manifestation of the parties' mutual assent to the essential and material terms of the contract." *Sadighi v. Daghighfekr*, 66 F.Supp.2d 752, 760 (D.S.C. 1999). "A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997); *Gaskins v. Blue Cross–Blue Shield of South Carolina*, 271 S.C. 101, 245 S.E.2d 598 (1978).

The Appellants' argument that Ms. Lampo accepted its unsigned arbitration agreement hinges on the compulsory pop-up acknowledgement that Lampo does not remember and a handful of distinguishable and non-governing cases. (Appellants' Brief pp. 10-18). Inherently, there is an obvious

distinction between affirming "I agree" regarding the terms of an agreement and clicking "I acknowledge." Furthermore, the compulsory pop-up *acknowledgement* Appellant's rely on did not contain the terms of the arbitration agreement at issue but merely led to another webpage where Appellant could supposedly access the agreement. There is no record evidence that Ms. Lampo accessed the arbitration agreement, scrolled through it, electronically signed it, or otherwise affirmed it. The Circuit Court appropriately held that this absence of cogent evidence of an acceptance was fatal to the arbitration agreement at issue. At bottom, the only manifestation of assent that the Appellants can point to is that Ms. Lampo continued working (which she was already doing) and that she did not opt out of an agreement that she did not know existed. This is not enough to establish an enforceable contract. *See, Chassereau v. Glob.–Sun Pools, Inc.*, 363 S.C. 628, 632, 611 S.E.2d 305, 307 (S.C. Ct. App. 2005) ("A party cannot be required to submit to arbitration any dispute that the party has not agreed to submit.").

Appellants first cite to two District Court opinions in other states where this particular agreement was enforced. (Appellants Brief pp. 10-11); *citing, Knight v. Amedisys Holding, LLC*, No. 3:16-CV-39-DJH, 2016 WL 5661227 (W.D. Ky. 2016), *and, Langlois v. Amedisys Holding, LLC*, No. CV 15-835-SDD-RLB 2016 WL 4059670 (M.D. La. 2016). Appellants overstate the application of these cases. As a threshold matter, neither case involved the application of South Carolina contract law, but, even more importantly, neither case involved the exact same arguments at issue here. The *Langlois* case involved wholly different arguments that did not touch on state contract law principals but were premised on a state forum selection statute that was preempted by the FAA. *Langlois*, 2016 WL 4059670, at *4 ("Accordingly, the Court finds that the FAA preempts La. R.S. 23:921 and the Court shall grant Amedisys' *Motion to Compel Arbitration.*"). That is, the issues and decision in *Langlois* have nothing to do with this case. The *Knight* case, cited by Appellants, is more superficially applicable, but does not ultimately translate to the entirety of Ms. Lampo's argument on acceptance. The employee

in *Knight* primarily challenged arbitrability based on the Whistleblower/False Claims Act exception within the arbitration agreement which the Court held did not apply to her case. *Knight*, 2016 WL 5661227, at *4. On acceptance, the employee appears to have only argued that not signing the arbitration agreement rendered it unenforceable; the Court, in response summarily recognized that a party can assent to a contract by conduct and determined that the employee's acknowledgement and failure to opt-out manifested assent. *Knight*, 2016 WL 5661227, at *3. The record here evidences a more full-throated challenge to both the agreement and the acknowledgement as the record shows: (1) the acknowledgement was compulsory; (2) Ms. Lampo has certified she does not remember receiving the pop-up acknowledgement; (3) Ms. Lampo has homed in on the distinction between an "acknowledgement" and an "agreement;" (4) Ms. Lampo has pointed out that the pop-up acknowledgement does not describe arbitration or the terms of the proposed arbitration agreement; and (5) Ms. Lampo has pointed to the lack of record evidence that she scrolled through or even clicked the link to the actual arbitration agreement at issue. The failure of the employee in the *Knight* case to challenge Amedisys' arbitration agreement and acknowledgement with more specificity and breadth does not bind this Court or affect Ms. Lampo's challenges to arbitrability.

Appellants next cite to two South Carolina District Court opinions on employee arbitration agreements which are similarly distinguishable based on those cases' record and the arguments at issue. (Appellant Brief pp. 11-13); *citing*, *Willard v. Dollar Gen. Corp.*, No. 3:17-CV-00675-JMC, 2017 WL 4551500, at *1 (D.S.C. Oct. 12, 2017); *and*, *Brown v. Five Star Quality Care, Inc.*, No. 2:15-CV-4105-RMG, 2016 WL 8710474, at *1 (D.S.C. Jan. 8, 2016). The employee in *Willard*, the first South Carolina District Court case cited by Appellants', did not challenge her acceptance of the agreement and the record established that the plaintiff/employee had reviewed the opt-out agreement at issue. *Willard*, No. 32017 WL 4551500, at *1 (D.S.C. Oct. 12, 2017) ("Plaintiff logged into her employee account and viewed the Agreement."); ("Plaintiff does not dispute the fact that all of her claims are subject to

arbitration. [] Indeed, in her Response, Plaintiff now concedes that arbitration of all her claims is proper.").[2] The second South Carolina District Court case cited by Appellants, *Brown v. Five Star Quality Care, Inc.*, involved an opt-out agreement that was physically presented, in person, to the employee/plaintiffs and the employee/plaintiffs hand-signed an acknowledgement of receipt. *Brown v. Five Star Quality Care, Inc.*, No. 2:15-CV-4105-RMG, 2016 WL 8710474, at *2 (D.S.C. Jan. 8, 2016). ("Five Star distributed the Arbitration Agreement to Ashley River Plantation employees at the end of a staff meeting on May 30, 2012, immediately after introducing a new paid time off policy. Employees signed a 'receipt and acknowledgement form' with operative language: 'I acknowledge receipt of the Mutual Agreement to Resolve Disputes and Arbitrate Claims.'"). Moreover, in *Brown* the employee/plaintiffs did not challenge the contractual sufficiency of their opt-out arbitration agreement. ("[T]hey do not dispute the fact that the parties entered into the Arbitration Agreement."). *Brown*, 2016 WL 8710474, at *5. There were no contract formation arguments raised in *Willard* or *Brown*. More compellingly, the record evidence present in *Willard* and *Brown* that the employees were given and actually reviewed their opt-out arbitration agreements is strikingly absent in this case. If anything, *Willard* and *Brown* hurt, rather than help, Appellants' cause.

The *Brown* case and Appellants both also cite to this Court's decision in *Towles v. United Health Corp.* (Appellants' Brief pp. 12-14) (*citing, Brown*, 2016 WL 8710474 at *4); (*citing, Towles*, 338 S.C. 29, 524 S.E.2d 839 (1999). *Towles* is the only substantive governing authority cited by the Appellants on the issue of acceptance. The difference between *Towles* and this case is straight-forward. In *Towles*, the record established that the employee had received and signed a handbook and arbitration

[2] Coincidentally, Exhibit 2 to Ms. Lampo's Memorandum in Opposition to Arbitration was an unpublished order by Judge Joseph F. Anderson, after *Willard*, that held that a jury trial on the issue of actual notice was necessary to determine arbitrability under the same arbitration agreement at issue in *Willard*. (R. pp. 145-146) (*Mazone v. Dolgencorp, LLC*, No. 3:17-1088-JFA-PJG (D.S.C. Nov. 29, 2017))

acknowledgement that actually described the arbitration process the employee was agreeing to. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 39, 524 S.E.2d 839, 845 (Ct. App. 1999) ("After receiving and signing the Acknowledgment, Towles cannot legitimately claim United failed to provide actual notice of the arbitration provisions because the law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents from simply reading the document."). Here, in addition to the actual notice questions discussed below, the record is absent evidence that Ms. Lampo reviewed, was given, or signed off on the arbitration agreement at issue or even an acknowledgment that actually described the nature of the arbitration agreement between the parties. Thus, *Towles* is not comparable to this case.

Instead, Ms. Lampo testified that when Appellant Amedisys had something important to share with is employees it did so in-person at regularly scheduled in-service meetings. (R. p. 143). Nevertheless, Appellant Amedisys, in attempting to form an arbitration agreement with its employees, chose to use a non-descript compulsory pop-up acknowledgment, delivered via an inconspicuous and misleading email[3], which purportedly led to a webpage where an employee could access its optout arbitration agreement. (R. pp. 50-58). Furthermore, the agreement did not require or allow for the Respondent to electronically sign, acknowledge, or agree to its terms within the body of the agreement itself; meanwhile, it required employees to print, fill out, and mail in a form within 30 days in order to opt-out of the agreement. (R. pp. 60-67). Appellants cannot establish that Ms. Lampo reviewed or even accessed the arbitration agreement itself. Where Ms. Lampo has no recollection of even receiving

[3] The email's subject line, as pointed out in the Statement of Facts, described the subject matter as an "Important Policy Change." A unilateral policy change by an employer is legally distinct from a proposed bilateral agreement. *See, Adams v. Square D. Co.*, 775 F. Supp. 869, 873 (D.S.C. 1991) ("We hold that for ... [an amendment] to become legally effective, reasonable notice must be uniformly given to affected employees.").

the pop-up acknowledgment much less the arbitration agreement, Appellants are hard-pressed to establish adequate acceptance as a prerequisite to a properly formed contract.

At base, Appellants must rely on a strained connection in the record between its compulsory pop-up acknowledgement and the fact that Ms. Lampo continued working thereafter in order to establish acceptance. This is not enough. Although Appellants claim that the several cases discussed above satisfy acceptance on this record, the existence of hard evidence of acceptance and assent in those cases which is not present here has the opposite effect. Continued employment, by itself, cannot substantiate reasonable evidence of assent to an arbitration agreement when there is not enough evidence that Ms. Lampo ever knew about the arbitration agreement in the first place. (*See*, R. p. 143 ¶¶ 10, 13-14). The problem with Appellants' position on this point was explored by the Court at oral argument in the following exchange:

> THE COURT: So you're saying by not opting out she accepted.
>
> MR. REEVES: That is exactly what I was leading into is that by, by acknowledging it, and which we can show through the system that she acknowledged, and –
>
> THE COURT: But I mean, is that contract law? If I offer you to sell my house and you tell – and I say, "You don't contact me back and tell me you don't want to do it." Then we've got a contract and you got to buy my house?
>
> MR. REEVES: Continued employment, Your Honor as well.
>
> THE COURT: Okay.
>
> MR. REEVES: That, that from that point on her not accepting it did not lead to her termination. This was not a take it or leave it.
>
> THE COURT: Well, I thought I read in here where it was not a condition of employment.
>
> MR. REEVES: It was not a condition of employment, but she, but she continued – she, she had the right to opt out. She didn't opt out and then continued to work for the company.

> THE COURT: But I mean, how is continuing to work for the company acceptance?
>
> MR. REEVES: Well, or the -
>
> THE COURT: She was - I mean, even if she opted out she was going to continue to work for the company.
>
> MR. REEVES: Correct, but I believe, Your Honor, the fact that she, she acknowledged - she received and acknowledged this arbitration agreement and did not opt out that would be the acceptance, but not opting out of it.
>
> THE COURT: So the legal question is whether or not rejection of an offer or failure to reject an offer is acceptance[?]
>
> MR. REEVES: Correct, Your Honor.

(R. pp. 153:23-155:4). Indeed, the ultimate question on this issue is not only whether failure to reject an offer amounts to acceptance, but also, especially in light of the below argument on actual notice, the question in this case more precisely is whether failure to reject an offer an offeree did not know was even made amounts to an acceptance.

Ultimately, "a party cannot be required to submit to arbitration any dispute that the party has not agreed to submit." *Chassereau v. Glob.-Sun Pools, Inc.*, 363 S.C. 628, 632, 611 S.E.2d 305, 307 (Ct. App. 2005), *aff'd sub nom. Chassereau v. Glob. Sun Pools, Inc.*, 373 S.C. 168, 644 S.E.2d 718 (2007). The record before the Court does not demonstrate that the Respondent agreed to submit this dispute to arbitration and, therefore, the Circuit Court's ruling denying arbitration because there was no acceptance should be affirmed.

II. ADDITIONAL SUSTAINING GROUNDS EXIST FOR THE COURT TO AFFIRM THE LOWER COURT'S RULING.

Respondent, pursuant to Rule 220(c), SCACR raises four additional sustaining grounds upon which this Court can affirm the Lower' Court's decision. Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on

Appeal.). Each of the following arguments were specifically made to the Circuit Court and were acknowledged by the Circuit Court in its Order. (R. pp. 122-146); (R. pp. 5-9).

A. Respondent never received actual notice of the proposed arbitration agreement.

"It is not too much to ask an employer to provide actual notice to its employees before significantly restricting rights created by decades of state and federal legislation." *Reese v. Commercial Credit Corp.*, 955 F. Supp. 567, 570 (D.S.C. 1997). The record reflects that Ms. Lampo did not receive actual notice of the unsigned arbitration agreement at issue; therefore, she cannot be made to arbitrate this dispute. *Id.*, 955 F. Supp. 567, 570 (D.S.C. 1997); ("The court believes that the South Carolina Supreme Court would apply the same actual notice requirement to an employer's implementation of an arbitration agreement."); *see also, Chassereau v. Global–Sun Pools, Inc.*, 363 S.C. 628, 632, 611 S.E.2d 305, 307 (S.C. Ct. App. 2005). The law, to modify even a unilateral employment contract, imposes a "reasonable notice requirement for modification [that] requires actual notice to the employee." *Fleming v. Borden, Inc.*, 316 S.C. 452, 463, 450 S.E.2d 589, 596 (1994). "Whether the employer has provided actual notice of a modification of the employment contract created by an employee handbook in most cases will be for the jury to determine." *Fleming*, 316 S.C. 452, 463, 450 S.E.2d at 596.

Actual notice can be express or implied. *Strother v. Lexington County Recreation Com'n*, 332 S.C. 54, 63, 504 S.E.2d 117, 122 (S.C. 1998). Express actual notice has been found in employment cases when plaintiffs have received, read, understood, and signed new agreements. *See, Shelton v. Oscar Mayer Foods Corp.*, 319 S.C. 81, 89-90, 459 S.E.2d 851, 856-57 (S.C. Ct. App. 1995). However, the South Carolina Supreme Court has declined to find actual notice where "there [wa]s no evidence that [the plaintiff] had read and understood" an updated handbook. *Id.* 319 S.C. at 90. Actual notice can also be implied through act, such as attending a meeting, personally disseminating information to others, or filing a claim through mediation. *Hightower v. GMRI, Inc.*, 272 F.3d 239, 242 (4th Cir. 2001) (applying North Carolina law).

Here, the Appellants rely on a generic, company-wide email and a compulsory electronic pop-up to establish notice. (R. pp. 50-58). Lampo has no recollection of receiving the arbitration agreement or acknowledgement pop-up at issue, there is no signed arbitration agreement, and the Appellants have produced no record evidence that Lampo even reviewed the subject unsigned agreement. (See, R. pp. 142-143 ¶¶ 5, 9-10, 13-14). This Court has recognized actual notice of an arbitration agreement within a handbook where an employee physically received and signed a handbook acknowledgement that included the arbitration clause at issue. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999). This Court has also required evidence that an employee received, read, understood, and signed a new agreement to establish express actual notice in other employment contexts. *See Shelton*, 459 S.E.2d at 857. Last, persuasively, the Fourth Circuit has recognized implied actual notice through meetings and evidence that information was personally disseminated to others. *See, Hightower*, 272 F.3d at 242 (4th Cir. 2001) (applying North Carolina law). The record here, however, is devoid of ample evidence as delineated above to even create a fact issue for the Appellants on arbitrability where all Appellants can point to is an abbreviated pop-up that Ms. Lampo does not even remember receiving.

The record before this Court lacks the sort of evidence required to establish actual notice of a bilateral agreement under South Carolina law. Therefore, Amedisys' proposed arbitration agreement is unenforceable for want of actual notice as a matter of law and the Court, if necessary, should affirm the Circuit Court's ruling based on this additional sustaining ground.

B. Severe restrictions on discovery cause a one-sided disadvantage to the Respondent and render Appellant Amedisys' proposed arbitration agreement unconscionable.

Even if Lampo had notice or assented to the unsigned arbitration agreement at issue, South Carolina has invalidated arbitration agreements where terms are one-sided or oppressive. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 32, 644 S.E.2d 663, 672 (2007) ("However, we find that the provision in the arbitration clause dictating that the dealer's judicial remedies supersede the

consumer's arbitral remedies is one-sided and oppressive and does not promote a neutral and unbiased arbitral forum.") (clause carved out certain remedies for car dealer from arbitration clause). Here, the unsigned agreement incorporates American Arbitration Association Rules "except as provided in [the] Agreement."

The AAA rules have been found to be fair in response to unconscionability challenges; however, here, Appellant Amedisys makes one major deviation from those rules by providing: "each party shall have the right to take the deposition of one individual and any expert witness designated by another party." (R. p. 63). Restricting an employee/plaintiff in an employment case to deposing one fact witness, where the defendant/employer employs many of the conceivable fact witnesses is one-sided and oppressive. *See, Fitz v. NCR Corp.,* 118 Cal. App. 4th 702, 718, 13 Cal. Rptr. 3d 88, 98 (2004) ("Certainly, a dramatic disparity of information between employer and employee may constitute a 'compelling' reason to exceed the discovery limit in the [Employer] policy, but when employees are only allowed to depose two witnesses in an attempt to establish that need, they are not given sufficient opportunity to vindicate their statutory claims."); *Ferguson v. Countrywide Credit Indus., Inc.*, 298 F.3d 778, 787 (9th Cir. 2002) ("We follow *Mercuro* in holding that the discovery provisions alone are not unconscionable, but in the context of an arbitration agreement which unduly favors [the Employer] at every turn, we find that their inclusion reaffirms our belief that the arbitration agreement as a whole is substantively unconscionable.").

Here, the limitation on fact witness depositions contained in Amedisys' agreement is one-sided against Respondent, a former employee, where the majority of her witnesses conceivably remain employed by Amedisys. Therefore, in addition to the contract formation grounds above, unconscionability is an additional ground upon which this Court can and should affirm the Circuit Court's ruling.

C. Respondent's post-termination tort claims are not covered by Amedisys' unsigned arbitration agreement.

The following narrow language is contained on the first page of Appellant Amedisys' arbitration agreement:

> This agreement applies to any dispute arising out of or related to Employee's employment with Amedisys or termination of employment regardless of its date of accrual and survives after the employment relationship terminates.

(R. p. 60). Respondent's discharge claim is the only claim encompassed by the scope of the arbitration agreement. Lampo's tortious interference with contract and defamation claims are post-termination torts which are not covered by the unsigned agreement. Specifically, Lampo's defamation claim refers to defamatory publications of the pretextual reason for Lampo's termination to unprivileged coworkers and a former customer, and Lampo's tortious interference claim refers to interference with her ability to gain post-termination employment. (R. pp. 18-19, 21 ¶¶ 64-67, 89-90). None of these claims involve conduct that was incidental or necessary to the parties' former employment relationship; therefore, they are not implicated by Appellant Amedisys' unsigned arbitration agreement. Furthermore, contract interpretation principles dictate that the scope of the above provision be limited to its word's ordinary meaning.

Appellants, apparently predicting that this argument would be re-raised on appeal, argue in a conclusory fashion that because these claims "arise directly out of decisions made by Amedisys and Ms. Neasbitt [] regarding Ms. Lampo's former work relationship" they fall within the scope of the arbitration agreement. (Appellants' Brief pp. 18-19). However, Appellants provide no explanation of how making defamatory statements about a former employee or intentionally interfering with a former

employee's ability to acquire new employment is incidental to an ordinary employer-employee relationship. That is, the post-termination torts alleged do not arise out of or relate to employment.[4]

"It is well settled that ambiguities arising within a contract must be construed against the drafter." *S. Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 84, 562 S.E.2d 482, 486 (Ct. App. 2002), *aff'd as modified*, 356 S.C. 444, 590 S.E.2d 27 (2003). "This rule applies with particular force in cases involving a contract of adhesion." *Id*; *See also*, *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 394, 498 S.E.2d 898, 901 (Ct. App. 1998); *citing*, 1 *Corbin on Contracts* § 1.4 (rev. ed. 1993) ("recognizing adhesion contracts as agreements in which one party has virtually no voice in the formulation of their terms and language"). Here, Appellant Amedisys' unsigned arbitration agreement only applies to disputes arising out of or related to employment. Ms. Lampo's defamation and tortious interference claims are not the natural result of an employment relationship. The stated scope of the unsigned arbitration clause must be construed against the Appellants. When the scope is appropriately construed, the lion-share of Ms. Lampo's complaint is not subject to arbitration.

Therefore, as an additional sustaining ground, the Lower Court should be affirmed as to Lampo's claims of defamation and tortious interference with contract because they are not covered by the unsigned arbitration agreement at issue.

D. Appellant Neasbitt, who is not a party to the proposed arbitration agreement, cannot enforce the arbitration agreement as to the claims personally alleged against her.

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[4] Earlier, before the lower Court, Appellants cited to Fourth Circuit opinion for the suggested premise that the language "arising out of or related to" suggests a broadly applied arbitration clause, but the case cited was wholly distinguishable *American Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 93 (4th Cir. 1996). The *American Recovery Corp.* case considered whether claims that involved the breach of a consulting agreement which contained an arbitration clause were arbitrable. *American Recovery Corp.*, 96 F.3d at 92. There, the Fourth Circuit held that the district court erred in finding the claims alleged were not within the scope of the consulting agreement's arbitration clause because each claim concerned the consulting agreement itself. *Id. American Recovery Corp.* is inapplicable to this argument because this argument is premised on the plain language of the unsigned arbitration clause which limits its scope to "any dispute arising out of or related to the Employee's employment with Amedisys or termination of employment." (R. p. 60).

Ms. Lampo maintains that neither her tortious interference with contract nor her defamation claim is covered by the proposed arbitration agreement. However, even if these claims were within the scope of the proposed agreement, Appellant Neasbitt, Lampo's former supervisor, is not a party to the arbitration agreement at issue, and she cannot enforce it against Lampo for post-termination conduct. Appellants argue that Appellant Neasbitt may compel arbitration of the defamation claim against her as a non-signatory under an "intertwined claims" test. (Appellants' Brief pp. 20-21). Appellants primarily cite to a district court opinion for its discussion of this test. *Carter v. MasTec Services Co., Inc.*, C.A. 2:09-2721-PMD 2010 WL 500421, at *4 (D.S.C. 2010).

Applying the "intertwined claims" test discussed in *Carter* to the facts in the instant case makes clear that the claim against Appellant Neasbitt is not "intertwined" with the proposed arbitration agreement. The "intertwined claims" test is based on the doctrine of equitable estoppel and allows a non-signatory to compel arbitration in two instances: (1) where the plaintiff/signatory to a written agreement must rely on the terms of that agreement for its claims against the non-signatory or (2) where the plaintiff/signatory "raises allegations of substantially interdependent and concerted misconduct by both the non-signatory and one or more of the signatories to the contract." *Carter*, 2010 WL 500421, at *5. The first scenario is inapplicable because there is no agreement between Lampo and Appellant Amedisys which substantiates the basis for Lampo's defamation claim against Appellant Neasbitt. *Wilson*, 827 S.E.2d 167, 177 (2019) ("Petitioners have not attempted to procure any direct benefit from the Agency Agreement itself while attempting to avoid its arbitration provision."). The second scenario is also inapplicable because Lampo's defamation claim is not dependent on her other claims against Appellant Amedisys. Therefore, neither avenue under the "intertwined claims" test is applicable in this case, and Appellant Neasbitt is precluded from compelling arbitration.

"Equitable estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly." *Wilson*, 827 S.E.2d at 177 (2019) (Rejecting use of equitable estoppel to compel arbitration against a non-signatory.) Here, there is neither sufficient record evidence nor an indication from the claims and procedural posture of this case to justify the use of equitable estoppel to allow non-signatory Neasbitt to enforce Amedisys' arbitration agreement against Ms. Lampo.

III. ALTERNATIVELY, SHOULD THE COURT REVERSE, THE APPROPRIATE REMEDY UNDER THE FEDERAL ARBITRATION ACT WOULD BE INSTRUCTIONS REQUIRING A JURY TRIAL ON ARBITRABILITY AND LIMITED JURISDICTIONAL PRE-TRIAL DISCOVERY.

Respondent maintains that the Circuit Court was correct on the issue of acceptance and that the additional sustaining grounds cited above also counsel conclusively in favor of affirming the Lower Court's ruling. Ms. Lampo properly preserved and requested below, in the alternative to her legal arguments, a jury trial on the issue of actual notice. (R. pp. 128-129, 138-139). Respondent believes she is entitled to denial of Appellants' motion as a matter of law, but, assuming arguendo that dispositive issues of fact exist, Section 4 of the Arbitration Act is explicit that fact issues on arbitrability must be tried before arbitration is compelled. 9 U.S.C. § 4.

"What happens when it's just not clear whether the parties opted for or against arbitration? The FAA tells district courts to 'proceed summarily to the trial' of the relevant facts." *Howard*, 748 F.3d at 977 (citing 9 U.S.C. § 4). Respondent requested a jury trial regarding the fact issues underlying the enforcement of the instant, unsigned arbitration clause. (R. p. 22). Under the FAA, if the party opposing arbitration does not demand a jury trial "then court shall hear and determine" arbitrability. 9 U.S.C. § 4. However, where a party opposing arbitration does make a jury demand, as Respondent Lampo has, then "the court shall make an order referring the issue or issues to a jury." *Id.* Here, fact issues abound particularly with respect to the concept of actual notice and those fact issues, if the Circuit Court is not affirmed, must be heard by a jury. *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co.*, 636

F.2d 51, 54 (3d Cir. 1980) ("Moreover, the party who is contesting the making of the agreement has the right to have the issue presented to a jury.") *El Hoss Eng'g & Transp. Co. v. Am. Indep. Oil Co.*, 289 F.2d 346, 351 (2d Cir. 1961) ("These issues should not be determined on affidavits, but rather a full trial should be had.").

Notice is a fact-controlled concept. *Fleming v. Borden, Inc.*, 316 S.C. 452, 463, 450 S.E.2d 589, 596 (1994). "Whether the employer has provided actual notice of a modification of the employment contract created by an employee handbook in most cases will be for the jury to determine." *Fleming*, 450 S.E.2d at 596. Here there are, at worst, issues of fact concerning whether Ms. Lampo received actual notice of the subject unsigned arbitration agreement and assented to it. Those issues, if Respondent is not entitled to judgment as a matter of law, must be heard by a jury.

In conjunction with Respondent Lampo's request for a jury trial, should the Court find fact issues on arbitrability exist, Respondent Lampo also asked for pre-trial jurisdictional discovery to discern the following:

1. How many, if any, employees actually went through the process of opting-out of the so-called agreement?
2. If any, what proportion of employees opted out?
3. Why Amedisys emailed out a link to the arbitration agreement, but required employees to mail opt-out forms back?
4. Why Amedisys did not include a place to sign, e-sign, or opt-out of the arbitration agreement?
5. Why Amedisys did not send the arbitration agreement within or as an attachment to the email?
6. Why Amedisys did not include the word "arbitration" in the email it sent to all employees?
7. Why Amedisys did not simply present, via a meeting or in writing, the arbitration agreement to its employees, and if it claims cost was the reason it did not:
    a. How much it estimates those distribution costs would have been, and
    b. How much it spent on the sophisticated mass email, pop-up, and tracking system it did use?
8. Whether Amedisys has sued any of its employees in state or federal court since distributing the arbitration agreement; thus, undermining its purported bilateral nature.
9. Why Amedisys restricted the parties to one fact witness deposition?
10. Whether Amedisys can verify that Plaintiff clicked the link to review the subject agreement?
11. If not, why Amedisys did not at least use available scroll-wrap technology to verify that Plaintiff reviewed the agreement? And,

12. Why Amedisys decided to circulate the arbitration agreement in the first place?

(R. pp. 128-129). "When [the] plaintiff can show that discovery is necessary in order to meet defendant's challenge to personal jurisdiction, a court should ordinarily permit discovery on that issue unless plaintiff's claim appears to be clearly frivolous." *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151, 723 S.E.2d 835, 839 (Ct. App. 2012); *quoting, Rich v. KIS Cal., Inc.*, 121 F.R.D. 254, 259 (M.D.N.C.1988).

Here the record and governing law establish that Appellant Amedisys' unsigned arbitration agreement is wholly unenforceable, and Ms. Lampo respectfully requests that the Lower Court's ruling be affirmed. However, in the alternative, should the Court determine that reversal is appropriate the Lower Court should be instructed to hold a jury trial with limited jurisdictional pre-trial discovery as set forth above.

CONCLUSION

Respondent Nicole Lampo, because the Appellants' unsigned electronic arbitration agreement is unenforceable, respectfully asks this Court to Affirm the holding of the Circuit Court and Remand this case so that Ms. Lampo can proceed to discovery with her case in the Georgetown County Court of Common Pleas.

(Signature Page Follows)

Respectfully Submitted,

CROMER BABB PORTER & HICKS

J. Paul Porter, Esquire (# 100723)
1418 Laurel Street
Post Office Box 11675
Columbia, South Carolina 29201
Phone 803-799-9530
Fax 803-799-9533

Attorney for Respondent Nicole Lampo

August 9, 2019
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2018-CP-22-01001
Appellate Case No. 2019-00451

Nicole Lampo ..... Respondent,

v.

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

CERTIFICATE OF COUNSEL

I, the undersigned attorney of Cromer Babb Porter & Hicks, LLC, certify that Respondent's Final Brief complies with Rule 211(b).

CROMER BABB PORTER & HICKS

J. Paul Porter, Esquire (# 100723)
1418 Laurel Street
Post Office Box 11675
Columbia, South Carolina 29201
Phone 803-799-9530
Fax 803-799-9533

Attorney for Respondent Nicole Lampo

August 9, 2019
Columbia, South Carolina