NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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November 24, 2020

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Re: *Fries* v. *Myers and Fitness International, LLC*, CL-2020-9231

Dear Counsel:

This matter came before the court on October 23, 2020 upon Defendants' *Motions To Stay Proceedings And Compel Arbitration*. For the reasons set forth below, Defendants' motions are granted, the proceedings are stayed, and the parties are ordered to initiate arbitration pursuant to the terms of the *Dispute Resolution Agreement*.

MATERIAL FACTS

For purposes of the instant motions, the court finds the following as the material facts.

Plaintiff Fries is a former employee of Fitness International ("FI"). *Compl.* ¶¶ 15 and 37. Plaintiff was hired by Defendant Zachary Myers ("Myers") in July 2017 to work at FI's facility in Alexandria as a sales counselor. *Compl.* ¶ 15. At the time, Plaintiff was 21 years old and a high school

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graduate, but had no job or income, and was living with his parents. *Pl.'s Decl.* ¶¶ 3-6. Myers was Plaintiff's supervisor at FI. *Compl.* ¶ 16. Myers was employed by FI at all times Plaintiff was an employee of FI. *Compl.* ¶ 3.

At the commencement of, and as a condition of, his employment, Plaintiff executed a *Dispute Resolution Agreement* ("*Agreement*") with FI. The *Agreement* states in pertinent part:

> I recognize that differences possibly may arise between me and Fitness International LLC including its employees, agents, officers, related companies, affiliates and all persons acting by and through them (hereafter the "Company") during the application process or my employment with the Company[.] I recognize that it is in the interest of both me and the Company that disputes be resolved in a manner that is fair, private, expeditious, economical, final and less burdensome or adversarial than court litigation[.] Therefore, the Company and I mutually consent to the resolution by arbitration of all claims or controversies described below, past, present, or future, whether or not arising out of or related to my application, employment, or its termination, that the Company may have against me or that I may have against the Company, its officers, directors, employees or agents, including all parent, subsidiary and affiliated entities, as well as their successors and assigns.
>
> By way of example only, such claims include claims under federal, state and local statutory or common law, such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Fair Labor Standards Act, the Family Medical Leave Act, the Uniformed Services Employment and Reemployment Rights Act, the law of contract and law of tort. I further understand that I still may file administrative charges with the Equal Employment Opportunity Commission or similar federal, state or local agency, but that upon receipt of a right-to-sue letter or similar administrative determination, I shall arbitrate any claim that I may have against the Company.
>
> I understand that if I do file a lawsuit regarding a dispute arising out of or relating to my candidacy for employment, employment (including its terms or compensation), or the cessation of employment, the Company may use this Agreement to request the court to dismiss the lawsuit and require me instead to use arbitration pursuant to the Federal Arbitration Act, including, but not limited to, 9 U.S.C. § 9[.]

During his employment at FI, Plaintiff alleges, Myers used a Taser on him (Counts I-III) and physically assaulted him by slapping him in front of other FI employees and clientele (Counts IV-V).

Plaintiff's employment with FI was terminated on March 13, 2019. *Compl.* ¶ 37. When various superiors offered to let him come back to his job,

Plaintiff informed them that he was speaking to a lawyer about the termination. *Compl.* ¶¶ 38-39. When Myers learned of Plaintiff's intent to speak to a lawyer, he began harassing Plaintiff's brother, who also worked at FI. *Compl.* ¶¶ 42-44. This eventually escalated to an incident on July 28, 2019, where, Plaintiff alleges, Myers verbally and physically assaulted him, threatening to kill him (Counts VI-VII).

PROCEDURAL HISTORY

On June 30, 2020, Plaintiff filed a Complaint against FI and Myers, asserting claims for assault (Counts I, IV, and VI), battery (Counts II, V, and VII), false imprisonment (Count III), and negligent retention (Count VIII). Defendants filed motions to stay proceedings and compel arbitration pursuant to the *Agreement*. The resolution of those motions turns on purely legal questions concerning the interpretation and application of the *Agreement*.

ANALYSIS

Code § 8.01-581.01 provides:

> A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract.

In light of Code § 8.01-581.01, the "public policy of Virginia favors arbitration." *TM Delmarva Power, LLC v. NCP of Va., LLC*, 263 Va. 116, 122 (2002). Federal law is similar; an arbitration provision in a contract "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

Accordingly, absent any ground under Virginia law for voiding the *Agreement*, the court will enforce it. Plaintiff raises six (6) grounds for voiding the *Agreement*, which the court now addresses.

1. The Consideration Was Sufficient

Plaintiff argues that the *Agreement* is unenforceable because it lacked sufficient consideration. *Pl.'s Opp'n to Defs.' Joint Br. in Supp. of Mots. to Stay Proceedings and Compel Arbitration* at 12-14 [hereinafter *"Pl.'s Opp'n"*]. Defendants argue that the mutual agreement to arbitrate constitutes sufficient consideration for the *Agreement* to be enforced. *Defs.' Joint Reply Br. in Supp. of Motions to Stay Proceedings and Compel Arbitration* at 1-3 [hereinafter *"Defs.' Reply"*].

Resolution of this issue turns on the law of contracts. *See e.g., Mission Residential, LLC v. Triple Net Props., LLC*, 275 Va. 157, 160-61 (2008) ("The law of contracts governs the question whether there exists a valid and enforceable agreement to arbitrate . . . . Such an agreement must contain the essential elements of a valid contract at common law.").

One of the essential elements of a valid contract is "valuable consideration." *Montagna* v. *Holiday Inns, Inc.*, 221 Va. 336, 346 (1980). But, it is well-established that "mutual promises in a contract constitute valuable consideration." *Price v. Taylor*, 251 Va. 82, 85 (1996) (citations omitted). Moreover, "a promise to forbear the exercise of a legal right is adequate consideration to support a contract." *Greenwood Assocs., Inc. v. Crestar Bank*, 248 Va. 265, 268-69 (1994) (citation omitted). Specifically with regard to arbitration agreements, the Fourth Circuit has recognized that "'[a] mutual promise to arbitrate constitutes sufficient consideration for [the] arbitration agreement.'" *Johnson v. Circuit City Stores,* 148 F.3d 373, 378 (4th Cir. 1998) (citation omitted). *See also Hill v. PeopleSoft USA, Inc.*, 412 F.3d 540, 544 (4th Cir. 2005) ("Because the Arbitration Agreement, on its face, unambiguously requires both parties to arbitrate, the district court erred when it concluded that the Arbitration Agreement was not supported by consideration.").[1]

The *Agreement* states in relevant part:

> [T]he Company and I [Plaintiff] mutually consent to the resolution by arbitration of all claims . . . that the Company may have against me or that I may have against the Company.

It states further:

> [I]f I do file a lawsuit regarding a dispute arising out of or relating to my candidacy for employment, employment (including its terms or compensation), or the cessation of employment, the Company may use this Agreement to request the court to dismiss the lawsuit and require me instead to use arbitration . . . .

Because there are mutual promises to arbitrate and to forgo exercising the right to sue in a court of law, the *Agreement* is supported by sufficient consideration.[2]

2. <u>The Parties Are Sufficiently Identified</u>

Plaintiff argues that the *Agreement* is unenforceable because the phrase "the Company, its officers, directors, employees or agents, including all parent, subsidiary and affiliated entities, as well as their successors and assigns" in the *Agreement* does not allow Plaintiff to identify with reasonable certainty the parties to the *Agreement*. *Pl.'s Opp'n.* at 14-15. Defendants respond that the specified phrase identifies the parties with reasonable certainty because each of the terms constitutes "a definable class capable of determination under any set of applicable facts and circumstances." *Defs.'*

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[1] The Virginia Supreme Court "considers Fourth Circuit decisions as persuasive authority . . . ." *Toghill v. Commonwealth*, 289 Va. 220, 227 (2015).

[2] Plaintiff spends several pages of his motion emphasizing the breadth of the *Agreement's* arbitration provision. *Pl.'s Opp'n* at 5-10. While this provision may be broad, this breadth applies to both Plaintiff **and** FI. Whether the breadth of the *Agreement* renders it void is addressed, *infra*.

Reply at 3-4.

While there does not appear to be a Virginia Supreme Court case holding that the parties to a contract need not be specifically named in a contract as long as they can be identified with reasonable certainty, that Court has held that a "contract is not valid and it is unenforceable if the terms of the contract are not established with reasonable certainty." *Dodge v. Trs. of Randolph-Macon Woman's College,* 276 Va. 1, 6 (2008) (citation omitted).[3] Accordingly, the court agrees with the holding of the Fourth Circuit that, "'[w]hile the parties [to an agreement] need not be named formally, there can be no enforceable agreement unless [they] . . . can be identified with reasonable certainty.'" *Arrants v. Buck,* 130 F.3d 636, 642 (4th Cir. 1997) (citation omitted) (letters and numbers written in boxes insufficient to identify introducing broker with reasonable certainty in clearing broker's agreement with customers).

The *Agreement* identifies the parties and beneficiaries with reasonable certainty. Although some of the terms contemplate entities that may not exist now, but may exist in the future (*i.e.*, "parent, subsidiary and affiliated entities;" "successors and assigns"), and entities that will change over time (*i.e.*, "officers, directors, employees or agents"), they would be identifiable with reasonable certainty at any given time that the arbitration clause might be invoked. Thus, unlike the series of letters and numbers identifying the introducing broker in *Arrants,* these entities would not be totally unidentifiable.

3. <u>There Was No Undue Influence</u>

Plaintiff argues that the *Agreement* should be rescinded as a result of undue influence. *Pl.'s Opp'n* at 15-16. Specifically, Plaintiff argues that the parties were not dealing with each other on equal terms because Plaintiff was a young, high school graduate in desperate need of a job. *Pl.'s Opp'n* at 15-16. Defendants respond that the facts and circumstances of the case do not rise to the level necessary to meet the high burden required for a contract to be rescinded due to undue influence. *Defs.' Reply* at 4-5.

Friendly Ice Cream Corp. v. Beckner, 268 Va. 23 (2004) explained:

> To set aside a . . . contract on the basis of undue influence requires a showing that the free agency of the contracting party has been destroyed. . . .
>
> Thus, if the party seeking rescission of the . . . contract produces clear and convincing evidence of **great weakness**

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[3] Defendants assert that *Horney v. Mason,* 184 Va. 253 (1945) and *Kelley v. Griffin,* 252 Va. 26 (1996) held that "[c]ontracting parties need not be specifically named in a contract." *Defs.' Reply* at 3. This assertion is erroneous as both cases dealt with third party beneficiaries. *Horney* held: "A person may have a beneficial interest in a contract to which he is not a *named* party." 184 Va. at 257 (emphasis in original). *Kelley* held: "[A] third party who claims to be the beneficiary of a contract between others need not be named in the contract." 252 Va. at 29.

> **of mind *and* grossly inadequate consideration or suspicious circumstances**, he has established a *prima facie* case of undue influence and, absent sufficient rebuttal evidence, is entitled to rescission of the document.

268 Va. at 31-32 (citations omitted) (emphasis added).

Plaintiff has not met his burden of showing undue influence. Plaintiff asserts that he was 21 years old, high-school-educated, living with his parents, and very much in need of gainful employment at the time he signed the *Agreement*. *Pl.'s Decl.* ¶¶ 3-6, 8. Plaintiff also asserts that signing the *Agreement* was a non-negotiable condition of employment at FI. *Pl.'s Decl.* ¶ 10. What is missing is any assertion by Plaintiff that he was of unsound mind or legally incompetent or that his free agency was overborne.

Moreover, there was neither grossly inadequate consideration (discussed, *supra*) nor suspicious circumstances. *Cf. Bibby v. Thomas*, 165 Va. 248 (1935) (deed by elderly, infirm, illiterate woman, conveying property valued at $1,200 to caretaker for $100 was rescinded).

The *Agreement* will not be rescinded on the basis of undue influence.

4. The *Agreement* Is Not An Unconscionable Adhesion Contract

Plaintiff argues that the *Agreement* is a procedurally and substantively unconscionable adhesion contract because it was a non-negotiable standard form contract and because its terms were unfair. *Pl.'s Opp'n* at 17-18. Defendants respond that the *Agreement* is not an unconscionable adhesion contract because its terms do not favor one party over the other. *Defs.' Reply* at 5-6.

Smyth Bros. Et Als v. Beresford, 128 Va. 137 (1920) explained that an unconscionable bargain:

> has been defined to be "one that no man in his senses and not under a delusion would make, on the one hand, and as no fair man would accept, on the other." The inequality must be so gross as to shock the conscience.

128 Va. at 170.

More recently, the Court held that "unconscionability deals primarily with a grossly unequal bargaining power at the time the contract is formed." *Envirotech Corp. v. Halco Eng'g,* 234 Va. 583, 593 (1988).

With respect to adhesion contracts, *Flint Hill Sch.* v. *McIntosh*, No. 181678, 2020 WL 33258, at *5 (Va. Jan. 2, 2020) (unpublished) summarized the meaning of an adhesion contract:

> An adhesion contract is a "standard-form contract prepared by one party, to be signed by another party in a weaker position, usually a consumer, who adheres to the contract with little choice about the terms." Black's Law Dictionary 403 (11th ed. 2019).

2020 WL 33258, at *5.[4]

In another unpublished opinion, the Court reiterated the view of established treatises on contracts:

> While a court may take into consideration that a contract is one of adhesion in determining whether a contractual provision is unconscionable, such contracts are not unconscionable *per se*. *See, e.g.*, John E. Murray, Jr. & Timothy Murray, 5 *Corbin on Contracts* § 24.27A (Supp. 2017) (stating that "[s]ince the bulk of contracts signed in the country are adhesion contracts, a rule automatically invalidating adhesion contracts would be completely unworkable"); J. Murray & T. Murray, *supra*, § 24.27H (stating that "adhesion contracts are neither inherently wrong nor automatically invalid") . . . .

PHC-Martinsville, Inc. v. *Dennis*, No. 161019, 2017 WL 4053898, at *2, n.4 (Va. Sept. 14, 2017) (unpublished).[5]

While the *Agreement* is, like the vast number of contracts that people sign in conducting their daily lives, an adhesion contract, it is not an unconscionable adhesion contract either procedurally or substantively.

With respect to procedural unconscionability, the question under Virginia law is whether there was "grossly unequal bargaining power." *Envirotech Corp., supra,* 234 Va. at 593. While FI is a large corporate entity, Plaintiff has not proferred any evidence that there were no other jobs available such that he could not have simply walked away when confronted with the *Agreement*, nor has he shown that he even attempted to bargain with FI. Thus, the court cannot find that there was any procedural unconscionability.

As to substantive unconscionability, as mentioned, *supra*, the arbitration clause of the *Agreement* applies to both FI and Plaintiff, so that either party could enforce it against the other. Most of the terms of the *Agreement* and the *Dispute Resolution Rules and Procedures*, which are incorporated into the *Agreement*, do not favor one party over the other. *See* e.g., *Dispute Resolution Rules and Procedures* Rules 15 (selection of arbitrator) and 17 (Award). Indeed, several terms actually favor Plaintiff. *See Dispute Resolution Rules and Procedures* Rules 6 (location of arbitration)

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[4] See Virginia Supreme Court Rule 5:1(f):

> The citation of judicial opinions . . . that are not officially reported, whether designated as "unpublished," "not for publication," "non precedential," or the like, is permitted as informative, but shall not be received as binding authority.

[5] The opinion in *Sanders v. Certified Car Ctr., Inc.*, 2016 WL 9076185, 93 Va. Cir. 404 (Va. Cir. Ct., May 24, 2016), mirrors these views, concluding that an arbitration agreement was not substantively unconscionable because the terms "do not unfairly favor one party over the other, nor do they impose an undue burden on the parties." 2016 WL 9076185, at *3.

and 13 (costs). It is thus not a contract which "no man in his senses and not under a delusion would make, on the one hand, and as no fair man would accept, on the other," nor is the inequality between FI and Plaintiff "so gross as to shock the conscience." *Smyth Bros. Et Als, supra,* 128 Va. 137 at 170. The *Agreement* is thus not an unconscionable adhesion contract and will not be rescinded on this basis.

5. The Breadth Of The *Agreement* Does Not Make It Void On Its Face

Plaintiff argues that the *Agreement* is void on its face because of its extreme breadth. Plaintiff cites no authority for this argument and there does not appear to be any authority one way or another. This court concludes, however, that the Agreement is not as broad as contended by Plaintiff and, as a result, it is not void on its face because of its extreme breadth.

The objectionable breadth of the *Agreement* is due primarily to the phrase "*whether or not* arising out of or related to my application, employment, or its termination" (emphasis added) in the third sentence of the first paragraph of the *Agreement*:

> [T]he Company and I mutually consent to the resolution by arbitration of all claims or controversies described below, past, present, or future, ***whether or not* arising out of or related to my application, employment, or its termination**, that the Company may have against me or that I may have against the Company, its officers, directors, employees or agents, including all parent, subsidiary and affiliated entities, as well as their successors and assigns. (Emphasis added).[6]

Standing alone, Plaintiff might be correct that this provision's extreme breadth might place the validity of the *Agreement* in doubt. *Cf. Wexler* v. *AT & T Corp.*, 211 F. Supp. 3d 500, 504-05 (E.D.N.Y. 2016) ("the arbitration clause is not enforced"). This general phrase is, however, in conflict with other provisions of the *Agreement*.

In the first paragraph itself, the first sentence states:

> I recognize that differences possibly may arise between me and Fitness International LLC including its employees, agents, officers, related companies, affiliates and all persons acting by and through them (hereafter the "Company") **during the application process or my employment with the Company**[.]

This sentence would plainly have been understood by the parties as a

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[6] The breadth of the *Agreement* is also due to the fact that it encompasses "the Company, its officers, directors, employees or agents, including all parent, subsidiary and affiliated entities, as well as their successors and assigns." But, in light of the court's finding, *infra*, that the breadth of the claims or controversies encompassed by the Agreement is far narrower than contended by Plaintiff, the breadth of the entities encompassed is not a concern because Plaintiff will have selected the defendant(s).

limit on the application of the arbitration requirement in the *Agreement* to acts which occurred during the application process or during Plaintiff's employment with the Company and thus not to include acts which occurred in the past, *i.e.*, prior to Plaintiff's application for employment; not to include acts which may occur in the future, *i.e.*, after termination of Plaintiff's employment; and not to include acts which did not arise out of or were not related to Plaintiff's application, employment, or termination. This sentence is thus in conflict with the far broader coverage of the third sentence of the first paragraph.

Further, the phrase "whether or not arising out of or related to my application, employment, or its termination" in the third sentence of the first paragraph of the *Agreement* is in conflict with the third paragraph, which states:

> I understand that **if I do file a lawsuit regarding a dispute arising out of or relating to my candidacy for employment, employment (including its terms or compensation), or the cessation of employment**, the Company may use this Agreement to request the court to dismiss the lawsuit and require me instead to use arbitration pursuant to the Federal Arbitration Act, including, but not limited to, 9 U.S.C. § 9[.] (Emphasis added).

Similar to the first sentence of the first paragraph, the bolded language here would plainly have been understood by the parties as a limit on the application of the *Agreement* to acts which occurred during the application process, during Plaintiff's employment, or during the termination of Plaintiff's employment with the Company and thus not to include acts which occurred in the past, *i.e.*, prior to Plaintiff's application for employment; not to include acts which may occur in the future, *i.e.*, after termination of Plaintiff's employment; and not to include acts which did not arise out of or were not related to Plaintiff's application, employment, or termination.

In light of the plain conflicts within the *Agreement*, the actual breadth of the *Agreement* must be determined by reversion to the rules of contract construction for internal conflicts. *See Mission Residential, LLC v. Triple Net Props., LLC*, 275 Va. 157, 160-61 (2008) ("The law of contracts governs the question whether there exists a valid and enforceable agreement to arbitrate.").

In *Bott* v. *N. Snellenburg & Co.*, 177 Va. 331 (1941), the Court held that, where "'treating the clauses as irreconcilable, . . . , where there is a repugnancy, a general provision in a contract must give way to a special one covering the same ground.' (citation omitted)." 177 Va. at 339. More recently, *Appalachian Reg'l Healthcare* v. *Cunningham*, 294 Va. 363 (2017) held:

> When two provisions of a contract conflict with one another, and one provision specifically addresses the dispute at hand while the other remains general, we have consistently held that the specific provision will govern over the general.

294 Va. at 373, n.9.[7]

The court finds that, because the question of the validity of the *Agreement* arises in the context of a lawsuit filed by Plaintiff regarding disputes with FI and one of its employees "arising out of" Plaintiff's employment with FI, the third paragraph is the more specific provision relating to the instant litigation and thus governs over the third sentence of the first paragraph.[8] The first sentence in the first paragraph is plainly more general because it relates to consent to arbitration generally, whereas the language in the third paragraph relates specifically to what transpires if Plaintiff files a lawsuit.

In sum, therefore, the court finds that the *Agreement* is not too broad and thus not void on its face.

6. The Scope Of The *Agreement*

Plaintiff argues that the *Agreement* does not apply to his claims against FI because they do not arise out of or relate to Plaintiff's employment. *Pl.'s Opp'n* at 20. Defendants answer that the *Agreement* applies to Plaintiff's claims because its provisions plainly include tort claims arising out of or related to Plaintiff's employment. *Defs.' Joint Br. in Supp. of Mots. to Stay Proceedings and Compel Arbitration* at 4-8 [hereinafter "*Defs.' Br.*"], and because Plaintiff alleges that Myers committed the acts underlying the claims as part of his job at FI. *Defs.' Reply* at 6.

Even if there were some doubt about whether Plaintiff's claims were encompassed by the arbitration clause, "the strong presumption of arbitrability mandates that a court must require the parties to submit to arbitration if the scope of an arbitration clause . . . is open to question." *Amchem Prods., Inc. v. Newport News Circuit Court Asbestos Cases*, 264 Va. 89, 97 (2002) (citations omitted).

In any event, Plaintiff's claims are plainly within the scope of the *Agreement*, the applicable provision of which states in relevant part:

> I understand that **if I do file a lawsuit regarding a dispute arising out of or relating to my candidacy for employment, employment (including its terms or compensation), or the cessation of employment**, the Company may use this Agreement to request the court to dismiss the lawsuit and require me instead to use

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[7] *See also* 11 Williston on Contracts § 32:15 (4th ed.):

> The better and apparent majority rule for resolving irreconcilable differences between contract clauses is to enforce the clause relatively more important or principal to the contract. This rule is tempered by the corollary that the more specific clause controls the more general.

[8] This conclusion is supported by the language of the first sentence in the first paragraph, which addresses "differences" that "possibly may arise between me" and the Company "*during the application process or my employment with the Company*[.]"

arbitration pursuant to the Federal Arbitration Act, including, but not limited to, 9 U.S.C. § 9[.] (Emphasis added).[9]

Most of Plaintiff's claims involve various incidents that occurred while he and Myers were employees of FI, whom Plaintiff is also suing on a vicarious liability theory (Counts I-V). These incidents certainly "aris[e] out of or relate[]" to Plaintiff's employment.

Although some of Plaintiff's claims involve an incident with Myers that occurred after Plaintiff's employment at FI had ended (Counts VI-VII), it can still be said to "aris[e] out of or relate[]" to the "cessation" of Plaintiff's employment in that the incident occurred because Myers learned that Plaintiff was contemplating speaking to an attorney about the termination of his employment at FI.

Finally, Plaintiff's negligent retention claim against FI (Count VIII) involves allegations against Myers that directly relate to Plaintiff's employment at FI.

CONCLUSION

For the reasons set forth above, Defendants' motions are GRANTED, the proceedings are stayed, and the parties are ordered to initiate arbitration pursuant to the terms of the *Dispute Resolution Agreement*.

An appropriate order will enter.

Sincerely yours,

[redacted]

Richard E. Gardiner
Judge

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[9] Defendants' argument focuses on the language of the third sentence of the first paragraph, while the court finds that the governing language is the third paragraph. Both provisions, however, include the "arising out of or relating to" language, which is the basis of the court's conclusions.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BRIAN FRIES	)	
	)	
Plaintiff	)	
	)	
v.	)	CL 2020-9231
	)	
ZACHARY MYERS and FITNESS INTERNATIONAL, LLC	)	
	)	
	)	
Defendants	)	

ORDER

THIS MATTER came before the court on October 23, 2020 upon Defendants' *Motions To Stay Proceedings And Compel Arbitration.*

THE COURT, having considered the arguments of the parties and for the reasons set forth in the court's letter opinion of today's date, it is hereby

ORDERED that Defendants' motions are GRANTED, and it is further

ORDERED that the proceedings are STAYED, and it is further

ORDERED that the parties shall initiate arbitration pursuant to the terms of the *Dispute Resolution Agreement.*

ENTERED this 24th day of November, 2020.

[redacted]

Richard E. Gardiner
Judge

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA

Copies to:

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