JULIEN J. COPPI and ALEXIS J. COPPI (h/w), Plaintiffs-Appellants, v. FAMILY ADVENTURES NORTH JERSEY, LLC d/b/a URBAN AIR TRAMPOLINE AND ADVENTURE PARK; UATP MANAGEMENT, LLC; ABC COMPANIES 1-10 (fictitious designations); and JOHN DOES 1-10 (fictitious designations), Defendant-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-003083-23 **CIVIL ACTION** On Appeal from the Superior Court of New Jersey Bergen County Law Division Docket No. BER-L-358-23 **Sat Below:** Hon. Peter G. Geiger, J.S.C.

BRIEF OF PLAINTIFFS-APPELLANTS, JULIEN J. COPPI AND ALEXIS J. COPPI

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PRELIMINARY STATEMENT

The trial court improperly granted Respondent Family Adventures North Jersey, LLC, d/b/a Urban Air Trampoline and Adventure Park's ("Urban Air") motion to stay this litigation and compel the parties to arbitration. The trial court overlooked a critical fact: neither Appellant-Plaintiffs, Julien J. Coppi nor Alexis J. Coppi (the "Coppis"), ever knowingly agreed to arbitrate any disputes with Urban Air. Lacking prima facie showing that an arbitration agreement exists between the parties, the trial court's basis for compelling arbitration is legally deficient and should be reversed and remanded.

Even if Urban Air could demonstrate the Appellants' consent to arbitration, it has, as a matter of law, waived that right by engaging in extensive discovery. Urban Air has benefited from multiple rounds of interrogatory responses and depositions of the Appellants while delaying its own production of critical discovery materials. After 426 days of civil discovery, Urban Air's sudden request to invoke arbitration should have been considered untimely and denied by the trial court.

Finally, even assuming both consent to arbitration and a timely motion (neither of which has been shown by Urban Air), the arbitration agreement itself fails to meet the legal standard for enforceability. The agreement did not provide sufficient notice to the Appellants of the rights they would waive, rendering it

unenforceable. For any of these reasons, this Court should reverse and remand the trial court's decision to grant Urban Air's motion to compel arbitration.

CONCISE PROCEDURAL HISTORY

This is appeal from an Order granting Respondent, Urban Air's, Motion to Compel Arbitration and Stay the Case. Appellants filed their Complaint on January 20, 2023 against Urban Air. Pa0005-Pa0018. On March 8, 2023, Urban Air filed their Answer. Pa0019-Pa0027. Therein, Urban Air asserted as an affirmative defense that there was an arbitration clause which should be enforced. Pa0054.

On October 24, 2023, the Coppis filed a Motion to Amend their Complaint to include additional corporate entities, UATP Management, LLC, UATP IP LLC, and UATP Attractions LLC. Pa0028. On November 29, 2023, the Coppis forwarded a correspondence to the trial court, correcting their request to only add corporate entity, Respondent, UATP Management, LLC ("UTAP"), and submitted a corrected draft first amended complaint representing shame. Pa0035. On December 7, 2023, the trial court granted Coppis' motion to file an Amended Complaint. Pa0066-Pa0067. The Coppis filed their Amended Complaint that same day, naming UTAP as an additional Defendant. Pa0037-Pa0065.

On March 22, 2024, Urban Air filed a Motion to Stay and Compel Arbitration in Lieu of an Answer to the Amended Complaint. Pa0068. On April 4, 2024, UATP file their Cross-Motion to Stay and Compel Arbitration. Pa0242. On April 5, 2024, the Coppis filed their Opposition to Urban Air's Motion to Stay and Compel Arbitration. Pa0262. On April 8, 2024, Urban Air filed their Reply brief in response to the Coppi's Opposition. Pa0346. On April 9, 2024, UATP filed their Reply brief in response to the Coppi's Opposition. Pa0390. After hearing oral argument on May 2, 2024, Judge Geiger, issued an oral opinion granting Urban Air's and UTEP's motion and cross-motion to Stay and Compel Arbitration[1]. Pa0001-Pa0004. The Coppis now file the within appeal of the trial court's May 2, 2024 Orders.

STATEMENT OF FACTS

On February 22, 2022, the Plaintiff, Julien J. Coppi ("Julien"), suffered a traumatic brain injury while lawfully present as a business invitee on the premises owned and operated by Urban Air, an indoor trampoline park. Pa0005-Pa0018. Julien entered Urban Air's facility with his family, including his wife and Co-Plaintiff, Alexis J. Coppi ("Alexis"), their young son, Isaac, their infant daughter, Julien's mother, Julien's brother, and his two nieces. Pa0112 at 2T19:22-24. With the

[1] 1T = transcript of Motion to Compel Arbitration, dated May 2, 2024;
2T = deposition transcript of Julien Coppi, dated October 3, 2023; and
3T = deposition transcript of Alexis Coppi, dated October 3, 2023.

intention of safely enjoying the facility with his family, Julien approached the front register to purchase a ticket for his son. Pa0114 at 2T21:12-14. However, Urban Air's employee informed him that, due to his son's age, a parent had to accompany the child through the trampoline park. Pa0119 at 2T26:11-13. Julien, wanting to ensure his son could participate, agreed to the requirement and Urban Air's employee then directed Julien to fill out a waiver form specifically for his son's participation. Pa0119 at 2T26:13-14.

Julien was directed to a set of screens near the register, where he was given only a brief opportunity to review a document titled, "CUSTOMER RELEASE, ASSUMPTION OF RISK, WAIVER OF LIABILITY, ARBITRATION, AND INDEMNIFICATION AGREEMENT" (the "Agreement"). Pa0115 at 2T22:7-12; Pa0087. The Agreement listed Isaac as the designated "jumper" and Julien as the Parent/Guardian accompanying him. Pa0091-Pa0092. Due to a line of other customers forming behind him, Julien felt pressured to quickly review and sign the Agreement, which only identified Isaac as the participant. Pa0115 at 2T22:7-12. Julien never reviewed or signed any documents labeling him as a "jumper" at the trampoline park. Yet, an Urban Air employee required Julien to purchase specific socks for both himself and Isaac in order to access the trampolines, implicitly directing him to participate. Pa0119 at 2T26:18-27:2. Julien then put on these socks for himself and Isaac as instructed. Pa0120 at 2T27:17-20.

Shortly after entering the trampoline park, Julien accompanied his niece to an area called the "Pro Zone." Pa0125 at 2T32:6-10. This area, accessible to all guests, allows only one participant at a time and includes two L-shaped trampolines with parallel walls. Pa0125 at 2T32:6-10. The Pro Zone actively encourages patrons of all skill levels to jump as high as possible by displaying markers on the walls that show the height reached. Pa0129 at 2T36:20-22; Pa0130 at 2T37:22-25.

While jumping in the Pro Zone and using the wall's height indicators, Julien struck his head on a hard object protruding dangerously close to the L-shaped trampoline. Pa0131 at 2T38:20-24. This impact caused a severe flapping laceration on his right forehead and scalp, resulting in substantial bleeding. Pa0132 at 2T39:2-6. Julien needed numerous sutures inside and outside his head and, since the incident, has suffered from migraines, sleep difficulties, restricted neck movement, and balance problems. Pa0165 at 2T72:5-25; Pa0167 at 2T74:3-22; Pa0171 at 2T78:14-79:8.

Despite the Coppi's efforts to resolve this matter out of court, Plaintiffs filed their initial complaint against Urban Air on January 20, 2023, initiating a prolonged discovery process. See Pa0005. Since then, the Plaintiffs have fully cooperated, promptly providing extensive discovery responses, including answers to Form A and supplemental interrogatories, and numerous document productions. The Plaintiffs also complied with Urban Air's repeated discovery requests, serving supplemental

answers and completing both personal and loss-of-consortium interrogatories from Alexis. Pa0286-Pa0290. The Coppis satisfied these requests and served supplemental answers on October 2, 2023; November 21, 2023; December 18, 2023; January 4, 2024; January 5, 2024; January 29, 2024; February 13, 2024; and March 29, 2024. Pa0291-Pa0307.

Furthermore, Julien underwent multiple defense exams at Urban Air's requests, and despite this good-faith cooperation, Urban Air has persistently delayed its own responses, often supplying only boilerplate answers with improper objections. Pa0327-Pa0339, For example, Urban Air claimed that identifying witnesses present during the incident was "unduly burdensome," obstructing the Coppi's access to critical information. Pa0336. Additionally, despite multiple requests, Urban Air has not made its corporate representatives or experts available for deposition and has repeatedly hindered Plaintiffs' attempts to inspect the property. Pa0285.

At the May 2, 2024, motion hearing, the trial court initially noted that this case had undergone two discovery extensions, totaling over 420 days, with the final extension ending just one day prior, on May 1, 2024. 1T4:18-21. The court acknowledged the extensive discovery efforts completed to prepare for trial, including depositions of the Coppis and independent medical examinations (IMEs) of Julien. 1T4:18-5:3. Yet, the trial court also referenced that at no point did either

Respondent move to stay the proceedings or compel arbitration until this latest motion was filed. 1T4:24-25:5. The trial court recognized that enforcing the arbitration agreement could prevent the Coppis from accessing crucial discovery materials. 1T7:1-5. The Coppis argued this restriction would cause them significant prejudice, as it would grant the Defendants access to information unavailable to the Coppis through arbitration. 1T17:15-22.

As to the actual language of the Agreement, Coppis argued that a genuine factual dispute exists regarding whether Julien personally consented to the Arbitration Clause or merely did so on behalf of his son, Isaac. 1T11:1-5. They highlighted that it remains unclear whether the agreement Julien signed applied only to his son as the "jumper," with Julien acting only as a supervisor, or whether it was also intended to cover Julien as a "jumper" himself. 1T11:6-11. If the latter is true, Julien would have been required to sign two separate agreements - one for his son and one for himself. Ibid. Crucially, Urban Air's counsel conceded that they were uncertain of their own policy on whether an adult who intends to participate alongside a minor must sign separate arbitration agreements for themselves and the minor. 1T21:8-14.

The Coppis also noted that Julien had very limited time to review the Agreement before signing, approximately one to two minutes, while a line formed behind him. 1T11:14-21. The Coppis further highlighted that Julien felt pressured to

sign the document and was unaware of what he was actually agreeing to at the time of the incident. 1T13:18-14:4.

Despite the lack of clarity on Urban Air's policy regarding separate agreements for a parent and minor, the trial court mistakenly concluded it was "undisputed" that Julien signed the Agreement on behalf of both himself and his son. 1T27:9-15. The court neglected to address other key issues, including concerns about Urban Air's unsafe conditions, the parties' engagement in civil discovery, and the need for a factual hearing on the arbitration agreement. 1T27:17-29:10. Given these unresolved disputes, it was improper for the trial court to compel arbitration. The presence of significant factual issues requires further examination by a factfinder, not dismissal through motion practice, making it clear that the Respondents' motion is unfounded and should not have been granted under New Jersey law.

LEGAL ARGUMENT

I. STANDARD OF REVIEW.

In New Jersey, the Appellate Court's review applies to the validity and enforceability of arbitration agreements, as well as the applicability and scope of such agreements. Hirsch v. Amper Financial Services, LLC, 215 N.J. 174 (2013). Essentially, the Appellate Court reviews the trial court's legal determinations with no special deference to the trial court's conclusions. Ibid.

The New Jersey Arbitration Act mandates this Court, not an arbitrator, decide whether an agreement to arbitrate exists and that the controversy is subject to an agreement to arbitrate. N.J.S.A. 2A:23B-6(b). If those questions are to be answered summarily, like here by way of motion practice, the Court must view all facts and inferences in the light most favorable to the non-movants, Plaintiffs. Kleine v. Emeritus at Emerson, 445 N.J. Super. 545, 548 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). Under that standard of review, Urban Air have not met their burden for the court to grant summary judgment to compel arbitration. See id. at 551 ("[A]rbitrability was decided summarily. At that stage, the judge was required to assume the truth of [the alleged contracting party's] sworn statements and consider the language of the agreement in the light most favorable to plaintiff.").

Critically in this case, and as recognized by Kleine, the standard requires any factual dispute about arbitrability to be resolved by way of evidentiary hearing. Ibid. (citing Muhammad v. Cnty. Bank of Rehoboth Beach, 189 N.J. 1, 15 (2006)). Given the differences between Plaintiffs' deposition testimony and Urban Air's assumptions, any determination in favor of arbitrability must come after a hearing, not summary motion practice.

II. THE TRIAL COURT FAILED TO ANALYZE WHETHER ARBITRATION WAS WAIVED AND THE SUBSTANTIAL PREJUDICE COMPELLING ARBITRATION WOULD CAUSE THE COPPIS (1T17:15-18:19).

This Court should reverse the trial court's decision to compel arbitration, as the Respondents have waived any purported right to arbitrate by unfairly benefiting from the Coppis' good-faith discovery production prior to filing their motion. As stated in Knorr v. Smeal, 178 N.J. 169, 177 (2003), "[w]aiver is the voluntary and intentional relinquishment of a known right." Our appellate courts have recognized that after the completion of a fact-sensitive inquiry, a court can determine that a party has waived their right to arbitrate. Cole v. Jersey City Med. Ctr., 215 N.J. 265, 278 (2013).

In Cole, the New Jersey Supreme Court endorsed the Third Circuit's Hoxworth factors as a point of reference for this fact-specific inquiry. 215 N.J. at 279 (citing Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 926-27 (3d Cir. 1992)). These factors are:

1. Timeliness or lack thereof of a motion to arbitrate;
2. The degree to which the party seeking to compel arbitration has contested the merits of its opponent's claims;

> 3. Whether that party has informed its adversary of the intention to seek arbitration even if it has not yet filed a motion to stay the district court proceedings;
>
> 4. The extent of its non-merits motion practice;
>
> 5. Its assent to the district court's pretrial orders; and
>
> 6. The extent to which both parties have engaged in discovery.
>
> [Hoxworth, 980 F.2d at 926-27 (citations omitted).]

In Hoxworth, the Third Circuit ultimately held the defendants waived their right to arbitrate because, as summarized in Cole, "the litigation had been ongoing for eleven months prior to the defendants' motion to compel arbitration, the parties had engaged in extensive motion practice, and the parties had engaged in comprehensive discovery." 215 N.J. at 279 (citing Hoxworth, 980 F.2d at 925-27). "As a result, the plaintiffs suffered prejudice, and the defendants waived their right to arbitrate." Ibid. (citing Hoxworth, 980 F.2d at 927). Here, the Respondents' eleventh-hour attempt to compel arbitration after receiving their desired discovery is exactly why the trial court should have denied their applications.

As to the first and third Hoxworth factors, the Respondents' motions to compel arbitration were untimely. At no point before filing this motion did Urban Air mention arbitration to the Plaintiffs. Urban Air's motion was filed approximately 14 months after the Initial Complaint (426 days after discovery began) and over two

years after our firm first reached out to resolve this dispute amicably. See Pa0035-Pa0005; Pa0319.

The Respondents did not mention their request for arbitration to the Coppis prior to filing their motion. The Agreement explicitly states that both parties shall "engage in good faith efforts to mediate a settlement **prior to filing a demand for arbitration**." Pa0089 (emphasis added). Although the parties participated in mediation during this appeal, the Respondents filed their motion with no legitimate attempt to mediate, as required by the very agreement they seek to enforce.

Furthermore, the Coppis are significantly disadvantaged in the upcoming mediation due to the Respondents' failure to participate fully in discovery. Despite multiple requests, the Respondents never provided dates for depositions of their corporate representatives or allowed an inspection of the Property. By filing their motions without facilitating these essential steps, the Respondents have failed to support a fair and transparent mediation process. For these reasons, both the first and third Hoxworth factors weigh in the Plaintiffs' favor.

As for the fourth and fifth Hoxworth factors, and as detailed in the Procedural History section of this brief, substantial motion practice has already taken place in this litigation prior to the Respondents' motions to compel arbitration. First, on October 24, 2023, Plaintiffs filed a motion to amend their complaint, which was

granted on December 7, 2023. See Pa0374. Second, on January 18, 2024, after the Plaintiffs filed a Motion to Compel Discovery, this Court ordered the Defendants to provide the raw data regarding Coppi's neuropsychological evaluation. Pa0342-Pa0344. Urban Air has complied with both orders, further demonstrating the substantial progress already made in this case. Thus, the fourth and fifth Hoxworth factors also weigh in favor of the Plaintiffs.

As for the sixth Hoxworth factor, the parties have been engaged in discovery for 426 days before Urban Air's first motion to compel discovery. Throughout this period, the Coppis have been more than cooperative in providing discovery to the Respondents. The Coppis have produced hundreds of pages of medical and other records and made themselves available for three defense expert examinations. See 1T4:18-5:3. Notably, Urban Air filed its motion only after having the benefit of its experts examining Coppi. See 1T5:1-5. Additionally, while Urban Air has completed depositions of both Coppis, it has yet to provide any proposed dates for the Coppis to depose Urban Air's corporate representatives. These actions further underscore that the Coppis have acted in good faith, while Urban Air has failed to engage in the discovery process equitably.

The only ever mention of arbitration was amongst boilerplate defenses in Urban Air's Answer, which alone is unavailing. See Pa0054. Rather, "[a] court will consider an agreement to arbitrate waived. . . if arbitration is simply asserted in the

answer and no other measures are taken to preserve the affirmative defense." Cole, 215 N.J. at 281 (emphasis added). In that vein, Urban Air's arbitration defense was listed amongst 24 other, largely irrelevant or inapplicable defenses such as service of process and collateral estoppel. See Pa0021-Pa0024. Despite being an affirmative defense, Urban Air did not support it with the requisite statement of facts required by Rule 4:5-4.

Under these same circumstances, but regarding a statute of limitations defense, this Appellate Division has found, "[i]t is difficult to take such a pleading seriously and absent efforts to assert the defense a plaintiff would not be fairly apprised a defendant intended to rely upon it." White v. Karlsson, 354 N.J. Super. 284, 290 (App. Div. 2002). Here, Urban Air's Answer did not apprise of any intention to rely on the defense. Urban Air submitted a certification under Rule 4:5-1, which requires a party to certify there are no pending, related arbitrations and that no arbitrations are contemplated. See Pa0026.

The Coppis are compelled to conclude that Urban Air's inaccurate Rule 4:5-1 certifications, refusal to engage in mutual discovery, and belated demand for arbitration are not mere coincidences, but deliberate tactics. Urban Air must be held accountable for the representations made in its Answer, as such tactics align with the very conduct the New Jersey Supreme Court warned against in its Cole decision, which added an additional factor for consideration: "whether the delay in seeking

arbitration was part of the party's litigation strategy[.]" Cole, 215 N.J. at 281. That is clearly the case here. Urban Air's purposeful delay, coupled with its other tactics, has forced the Coppis to provide a wealth of material and information that Urban Air would not have been entitled to or received had it revealed its intention to compel arbitration at the outset of the parties' collaboration, or even at the start of litigation.

For example, the Agreement stipulates that if arbitration occurred, it would be conducted under the Commercial Rules of the American Arbitration Association (the "AAA Rules"), which are designed for complex commercial disputes, not premises liability cases. See Pa0325. Regarding depositions, the AAA Rules permit them only in "exceptional cases," "at the discretion of the arbitrator," and "upon good cause shown," all while maintaining the expedited nature of arbitration. Pa0326. Had Urban Air properly asserted its claim for arbitration earlier in these proceedings, it only could depose the Plaintiffs if the arbitrator allowed it, which was far from guaranteed. Ibid. Furthermore, the AAA Rules lack provisions for medical exams or the provision of answers to interrogatories. Therefore, Urban Air only sought to enforce the Agreement after it had already obtained all discovery that the AAA Rules would not have allowed.

The only reasonable inference is that Urban Air intentionally delayed its demand for arbitration to first secure the discovery it sought, likely to avoid the possibility that the arbitrator would deny depositions. This calculated delay and

strategic maneuvering are critical in demonstrating that Urban Air's demand for arbitration is not made in good faith. Such tactics are precisely the type of behavior the court in Cole sought to prevent. Even if Urban Air's actions result from inaction or negligence, the discovery produced thus far is overwhelmingly favorable to Urban Air, making it unjust to compel the parties to arbitrate under the AAA Rules. See Cole, 215 N.J. at 279 (citing Hoxworth, 980 F.2d at 925-27).

Respondents have already benefited from the full scope of civil discovery to obtain the necessary information, yet now, relying on the language in the Arbitration Agreement, which they were aware of from the outset of litigation, they ask this Court to compel arbitration. This is unjust. This order would severely prejudice the Coppis, who have acted in good faith throughout this litigation. The Respondents are only pursuing arbitration now because they have exploited 426 days of discovery, and now seek to enforce an ambiguous agreement that Julien never consented to, to his significant detriment. For these reasons, and is accordance with the Howe factors, the Respondents waived any right to arbitration, and the trial court's decision should be reversed and remanded. See Howe, at 980 F.2d at 926-27.

III. THE TRIAL COURT IMPROPERLY ENFORCED THE ARBITRATION CLAUSE WITHOUT CONDUCTING THE REQUIRED HEARING (1T26:20-29:17).

The trial court erred in its unequivocal determination that Julien signed the Agreement on behalf of both himself and his son. This conclusion improperly disregarded the Coppis' well-supported arguments, including evidence that Julien was unaware he was signing on behalf of his son, as well as whether he was afforded adequate and reasonable time to review the Agreement. These unresolved factual disputes cannot be adequately addressed through motion practice alone. At a minimum, the trial court should have ordered a factual hearing to examine these critical issues.

Arbitrability, which is whether valid, mutual agreement to arbitrate was reached, requires consideration of the context and circumstances of the purported agreement and its terms. No where in the Respondents' motions did they substantiate any affirmative agreement with the Coppis that would bind them to arbitration, especially considering the circumstances surrounding the signing of the Agreement. As indicated above, the New Jersey Arbitration Act mandates this Court, not an arbitrator, decide whether an agreement to arbitrate exists and that the controversy is subject to an agreement to arbitrate. N.J.S.A. 2A:23B-6(b). If those questions are to be answered summarily, like here by way of motion practice, the Court must view all facts and inferences in the light most favorable to the non-movants, Plaintiffs.

Kleine v. Emeritus at Emerson, 445 N.J. Super. 545 548 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). Under that standard of review, Urban Air have not met their burden for the court to grant summary judgment to compel arbitration and Coppi is entitled to further discovery surrounding his execution of the agreement. See id. at 551.

In Kleine, the brother of the plaintiff, Frank McMahon, was presented with stacks of paper to sign and initial to admit his sister to a new nursing home, after removing her from a different nursing home where she was caused to suffer trauma. See Kleine, 445 N.J. Super. at 548-549. McMahon was left alone to sign the stacks of paper with no explanation or instructions but ended up signing a waiver to his sister's right to a jury trial and right to appeal any adverse decision. Id. at 549. The only thing McMahon was told about the documents was that he was required to sign them "right away" because his sister was being admitted to the facility. Ibid.

The Kleine Court opined had the judge assumed the truth of the sworn statements of McMahon and considered the language of the agreement in the light most favorable to McMahon, "the one-sided waiver extracted by defendant, as well as an assumption of the truth of McMahon's assertions about the manner in which the contract was formed, would have required an evidentiary hearing related to unconscionability." Id. at 551. The facts that demanded an evidentiary hearing in Kleine are present in this case.

Here, during Julien's deposition, he described a chaotic and hurried environment when signing the agreement. Julien testified that he was presented with a six-page document on a computer right after purchasing a ticket to enter the property, without any prior notice of the Agreement's terms. Pa0115 at 2T22:7-12. He also explained that he felt pressure to sign quickly, as there was a line of other patrons waiting behind him. Id. at 2T22:4-25. These facts strongly suggest that the Agreement was presented in a manner that was rushed and lacking in fairness, mirroring the conditions in Kleine. Accordingly, the trial court should have ordered an evidentiary hearing to determine whether the Agreement is unconscionable.

Also like in Klein, Julien's testimony underscores that significant factual questions remain unresolved, further necessitating a factual hearing and discovery. For example, the Coppis have not yet received or reviewed security footage from the time Julien signed the Agreement. This footage is critical for the factfinder to assess whether Julien was given a genuine opportunity to review the Agreement and to verify his assertion that a line of patrons was forming behind him, pressuring him to act quickly.

Further fact-finding is also necessary to clarify Urban Air's protocol regarding how many waivers are required when an adult is supervising a minor "jumper." The Coppis raised a significant dispute during the motion hearing, asserting that Julien believed he was signing the Agreement only on behalf of his son, not for himself

personally. Although Urban Air contends that Coppi signed on behalf of both himself and his son, **their own counsel** conceded during oral argument that they were unsure whether the protocol mandates a separate waiver for each participant or if a single waiver suffices for both the parent and minor. See 1T21:8-14.

This ambiguity in Urban Air's waiver protocol highlights a critical factual dispute. At a minimum, this uncertainty required denying the motion or ordering an evidentiary hearing under Kleine to let the court hear directly from Urban Air regarding whether their protocol was followed in this instance. These unresolved material facts further underscore the necessity of a factual hearing to ensure a just and comprehensive resolution of the issues.

Overall, the Respondents have failed to meet their burden to justify an order to arbitrate, and the Coppis have the right to continue the discovery process. The trial court committed reversible error by summarily granting the motion to enforce the Agreement without holding a factual hearing, as required under Kleine. The unresolved material disputes surrounding the formation and execution of the Agreement demand further factual exploration. This Court should reverse the trial court's decision to enforce the Agreement and remand the case for further proceedings.

IV. THE ARBITRATION AGREEMENT FAILED TO PROVIDE ADEQUATE NOTICE OF THE WAIVER OF RIGHTS TO THE COPPIS (1T13:6-10).

Even assuming Julien signed the Agreement in his personal capacity rather than on behalf of his son, Moving Defendant's attempt to compel arbitration is improper based on the plain language of the Agreement and established principles of New Jersey law. Primarily, the Agreement is invalid because it fails to inform the signer of the rights and remedies clearly and unequivocally being waived, as required under New Jersey law. Such a failure renders the Agreement unenforceable.

New Jersey imposes strict requirements on arbitration agreements to ensure they are the product of valid, mutual assent. Atalese v. U.S. Legal Servs. Grp. L.P., 219 N.J. 430, 442 (2014). "Mutual assent requires that the parties have an understanding of the terms to which they have agreed." Ibid. Because "an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court," NAACP of Camden Cnty. E. v. Foulke Mgmt., 421 N.J. Super. 404, 424 (App. Div. 2011), mutual assent to arbitration agreement requires the parties "have full knowledge of [their] legal rights and inten[d] to surrender those rights." Knorr v. Smeal, 178 N.J. 169, 177 (2003) (citing W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 153 (1958)).

New Jersey law requires arbitration agreements to clarify to parties, "that in electing arbitration as the exclusive remedy, they are waiving their time-honored

right to sue." Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001) (quoting Marchak v. Claridge Commons, Inc., 134 N.J. 275, 282 (1993)). There is no magic formulation, but our jurisprudence has upheld arbitration agreements that make it clear the party is agreeing to, "waive [their] right to a jury trial[,]" Martindale v. Sandvik, Inc., 173 N.J. 76, 89 (2002); that arbitration would be the exclusive remedy, Griffin v. Burlington Volkswagen, Inc., 411 N.J. Super. 515, 518 (App. Div. 2010); and that explained in thorough detail what arbitration is and the differences between arbitration and civil litigation, such as the rules being different, there being no judge or jury, and judicial review of the arbitrator's decision being limited. Curtis v. Cellco Partnership, 413 N.J. Super. 26, 33-37 (App. Div. 2010).

Curtis is an apt point of comparison. There, the arbitration provisions were held to be "sufficiently clear, unambiguously worded, satisfactorily distinguished from the other [a]greement terms, and drawn in suitably broad language to provide a consumer with reasonable notice of the requirement to arbitrate" where the agreement stated:

> Instead of suing in court, we each agree to settle disputes (except certain small claims) only by arbitration. The rules in arbitration are different. There's no judge or jury, and review is limited, but an arbitrator can award the same damages and relief, and must honor the same limitations stated in the agreement as a court would.
>
> [Curtis, 413 N.J. Super. at 31].

Additionally, the New Jersey Appellate Division found an arbitration provision invalid because the clause was not, "written in plain…clear and understandable language to the average consumer. Morgan v. Sanford Brown Inst., 225 N.J. 289, 303 (2016) (quoting Atalese, 219 N.J. at 446). The decision also cited to the length of the clause, which was 750 words running on in thirty-five unbroken lines, and stated that "[t]he best that can be said about the arbitration provision is that it is as difficult to read as other parts of the enrollment agreement." Ibid.

Here, Urban Air's arbitration provision similarly fails to adequately explain what Coppi would be giving up by consenting to the Agreement. The Agreement is deficient in several areas:

1. It does not explain how the rules of arbitration differ from those in court;

2. It fails to outline the differences between an arbitrator and a judge or jury;

3. It provides no information on the limits of review when challenging an arbitrator's decision;

4. It does not specify the types of relief available in arbitration; and

5. It offers no meaningful description of the rights being waived by the party.

[Pa0118-Pa0125]

As such, the Agreement does not satisfy the legal requirement to clearly explain both the rights that are waived and the rights that replace them. See Atalese, 219 N.J. at 444. Therefore, trial court made a reversable error in enforcing the Agreement and this Court should reverse and remand.

V. THE TRIAL COURT ERRED IN BINDING JULIEN COPPI TO THE AGREEMENT, AS HE IS NOT THE "PARTICIPANT" REFERENCED IN ITS TERMS (1T:11:1-21).

The Agreement's language makes clear that Julien's participation in activities at Urban Air's property does not automatically bind him to the Arbitration Agreement intended solely for Isaac Coppi's ("Isaac") use of Urban Air's attractions.

In New Jersey, when parties have not expressly agreed to arbitrate their disputes – as is the case here – careful scrutiny is necessary to determine whether arbitration is still appropriate. Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 196 (2013). This is because, "absent express contractual language signaling an agreement to arbitrate, a court has little to interpret in favor of compelling arbitration." Ibid. (citing Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001)). Further, as has been repeatedly reaffirmed by our Supreme Court, "[i]n the absence of a consensual understanding, neither party is entitled to force the other to arbitrate their dispute. Subsumed in this principle is the proposition that only those issues may be arbitrated which the parties have agreed

shall be." In re Arbitration Between Grover & Universal Underwriters Ins. Co., 80 N.J. 221, 228 (1979).

If the terms of a contract are clear and unambiguous, there is no room for interpretation or construction and the courts must enforce those terms as written. The court should not look outside the four corners of the contract to determine the parties' intent, and parol evidence should not be used to alter the plain meaning of the contract. Namerow v. PediatriCare Associates, LLC, 461 N.J. Super. 133, 140 (2018).

Urban Air argues that Coppi's signature and purchase of socks and use of the trampoline automatically makes him a "participant" under the Arbitration Agreement. However, the plain language of the Agreement directly contradicts this claim. Thus, this Court should therefore reject Urban Air's argument and enforce the Agreement as written.

Specifically here, the Agreement states that Julien is the Parent/Guardian for the "Jumper," Isaac. Pa0123. At the top of the page with Julien's signature, it states:

> [Julien], the Parent/Guardian, on behalf of myself and that of the minor identified above, as applicable, have read the above Assumption of Risk, Waiver of Liability, and Indemnification Agreement and fully understand and agree to its terms. [Julien] further acknowledge that I am agreeing to indemnify [Urban Air], as provided above, for all claims the **referenced minor may have** against [Urban Air].
>
> [Pa0124]

Therefore, Julien was signing this agreement **on behalf of Isaac** and any injuries that **Isaac** may have suffered while on Urban Air's property. Nowhere in the Agreement does it extend its provisions to Julien, even if he may have mistakenly believed the Agreement applied to his own injuries. Julien' signature was specifically to address Isaac's participation, not his own. The clear and unambiguous language of the Agreement confines its scope to Isaac's potential injuries and does not expand to Julien's injuries.

Therefore, Urban Air cannot bind Julien to the arbitration provision simply because he was on their premise at the time of the injury. Julien never knowingly consented to arbitrate any claims related to his own injury under this Agreement. The intent of the Agreement is evident, and any attempt to stretch its terms beyond what is written would contradict basic contract principles. As the Agreement unambiguously pertains to Isaac, not Julien. The trial court made a reversable error compelling Julien to arbitration under this Agreement and the decision should be reversed and remanded.

CONCLUSION

For these reasons, the Coppis respectfully request that this Court reverse the trial court's Order granting the Motion and Cross-Motion to Compel Arbitration and remand for further discovery.

Respectfully submitted,

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Dated: December 12, 2024

Superior Court of New Jersey

Appellate Division

Docket No. A-003083-23

JULIEN J. COPPI and ALEXIS J. COPPI (h/w), *Plaintiffs-Appellants,* vs. FAMILY ADVENTURES NORTH JERSEY, LLC d/b/a Urban Air Trampoline and Adventure Park, UATP MANAGEMENT, LLC, ABC COMPANIES 1-10 (fictitious designations) and JOHN DOES 1-10 (fictitious designations), *Defendants-Respondents.*	CIVIL ACTION ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, BERGEN COUNTY DOCKET NO. BER-L-358-23 Sat Below: HON. PETER G. GEIGER, J.S.C.

BRIEF FOR DEFENDANT-RESPONDENT FAMILY ADVENTURES NORTH JERSEY, LLC D/B/A URBAN AIR TRAMPOLINE AND ADVENTURE PARK

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PRELIMINARY STATEMENT

This matter arises out of a claim for injuries allegedly sustained by Plaintiff/Appellant Julien Coppi on February 2, 2022, while participating in trampoline activities at the Urban Air Trampoline & Adventure Park ("the Park") located in South Hackensack, New Jersey. The Park is owned by Defendant/Respondent, Family Adventures North Jersey, LLC d/b/a Urban Air Trampoline and Adventure Park. Appellant was injured while using the "ProZone" attraction, which consists of an enclosed area with two trampoline beds, with a vertical wall area on two sides. As a pre-condition of entry to the Park, Plaintiff consented to a Customer Waiver, Release, and Indemnification Agreement ("the Agreement") which required all claims arising out of his presence at the Park to be brought in binding arbitration.

On May 2, 2024, the Honorable Peter G. Geiger, J.S.C., sitting in the New Jersey Superior Court, Bergen County, Law Division, Civil Part, heard oral argument on, and subsequently granted Respondent's Motion for an Order staying the case as to all parties pursuant to N.J.S.A. 2A:23B-7 and compelling arbitration. Appellant claims that the lower Court erred when it found that the Agreement was enforceable, and when it found that Respondent had not waived its right to enforce the arbitration clause in the Agreement.

Despite Appellant's protests, the Court did not err by granting

Respondent's motion and compelling this matter to binding arbitration without holding an evidentiary hearing. The Court did not err when it held that the terms of the Agreement are clear and sufficient to notify Appellant of the rights being waived. Further, Appellants will not be prejudiced by the Court's finding that Respondent did not waive its right to arbitration.

PROCEDURAL HISTORY

Appellants filed their Complaint on January 20, 2023. Pa0005-Pa0018. On March 8, 2023, Respondents filed their Answer and Separate Defenses Pa0019-Pa0027. In Respondents' affirmative defenses they asserted that there existed an arbitration clause that should be enforced. Pa0054. On October 3, 2023, Respondents took the deposition of Appellant, Julien Coppi, in order to determine whether Appellant understood that the arbitration clause applied to him at the time it was signed. 2T22:5-23[1]. On March 22, 2024, Respondents filed a Motion to Stay and Compel Arbitration. Pa0068. On April 5, 2024, Appellants filed their opposition to Respondents' motion. Pa0262. On April 5, 2024, Respondents filed their reply brief to Appellants' opposition. Pa0346. After hearing oral argument on May 2, 2024, Judge Geiger issued an oral opinion granting Respondents' motion to Stay and Compel Arbitration. Pa0001-Pa0004.

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[1] 1T = transcript of Motion to Compel Arbitration, dated May 2, 2024;
[2] T = deposition transcript of Julien Coppi, dated October 3, 2023

STATEMENT OF THE FACTS

Respondent, Family Adventures North Jersey, LLC, owns and operates Urban Air Trampoline & Adventure Park ("the Park") located in South Hackensack, New Jersey. Pa0019-Pa0027. As a standard business practice, Respondent requires that any individual who intends to utilize the attractions within the Park. to first review and sign a Customer Waiver, Release, and Indemnification Agreement ("the Agreement"). Pa0086-Pa0092.

The Agreement provides in pertinent part as follows:

> 5. Release of Claims. **TO THE FULLEST EXTENT PERMITTED BY LAW, ADULT PARTICIPANT, ON BEHALF OF HIMSELF/HERSELF AND ON BEHALF OF ANY CHILD PARTICIPANT AND ON BEHALF OF ANY SPOUSE, HEIRS, EXECUTORS, AND REPRESENTATIVES OF ANY PARTICIPANT HEREBY RELEASES, DISCHARGES AND AGREES TO HOLD HARMLESS…**
>
> **THE "PROTECTED PARTIES" FROM AND AGAINST ALL LIABILITIES, LOSSES, DAMAGES, CLAIMS, JUDGMENTS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, COSTS, FEES, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT OR OTHER COSTS) RELATING TO, RESULTING FROM, OR ARISING OUT OF OR ALLEGED TO HAVE RISEN OUT OF (IN WHOLE OR IN PART) ANY BODILY INJURY TO OR DEATH OF PARTICIPANT OR DAMAGE TO OR LOSS OF PARTICIPANT'S PROPERTY: (A) DURING OR RELATING TO PARTICIPANT'S PARTICIPATION (WHETHER ACTIVELY OR PASSIVELY) IN ANY ACTIVITIES ON THE PREMISES OR OTHER LOCATION WHERE THE ACTIVITIES ARE BEING CONDUCTED, INCLUDING BUT NOT LIMITED TO PARTICIPANT'S USE OF ANY EQUIPMENT, PARTICIPANT'S INVOLVEMENT IN ANY**

CLASSES OR INSTRUCTION, AND PARTICIPANT'S INVOLVEMENT IN ANY COMPETITION OR EVENT SPONSORED BY THE PROTECTED PARTIES…

PARTICIPANT HEREBY AGREES NOT TO BRING ANY SUITS, CLAIMS, CAUSES OF ACTION, DEMANDS OR LEGAL ACTIONS AGAINST THE PROTECTED PARTIES FOR ANY ITEM RELEASED HEREUNDER.

6. Indemnity. **ADULT PARTICIPANT, ON HIS/HER BEHALF, AND ON BEHALF OF ANY CHILD PARTICIPANT(S), AND ON BEHALF OF ANY SPOUSE, HEIRS, EXECUTORS, AND REPRESENTATIVES, AGREES TO INDEMNIFY, DEFEND, RELEASE, AND HOLD HARMLESS THE PROTECTED PARTIES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, SUITS, LOSSES, LIABILITIES, DAMAGES, FINES, PENALTIES, LIENS, JUDGMENTS, SETTLEMENTS, PROCEEDINGS, COSTS, FEES, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT OR OTHER COSTS) OF ANY NATURE WHATSOEVER FOR OR RELATING TO DEATH, BODILY INJURY OR PROPERTY DAMAGE RESULTING FROM, RELATING TO, OR CAUSED BY (WHETHER IN WHOLE OR IN PART) ANY OF THE FOLLOWING MATTERS (WHICH NECESSARILY INCLUDE ALL CLAIMS TO DO OR MAY BELONG TO THE CHILD PARTICIPANT(S)): (A) PARTICIPANT'S ACTS, OMISSIONS, OR PRESENCE ON OR ABOUT ANY PART OF THE PREMISES OR OTHER PREMISES WHERE ACTIVITIES SPONSORED BY URBAN AIR ARE TAKING PLACE, (B) PARTICIPANT'S ACTIVE OR PASSIVE PARTICIPATION IN OR OBSERVENCE OF ANY OF THE ACTIVITIES, (C) ANY CLAIMS ARISING OUT OF THE NEGLIGENT, GROSSLY NEGLIGENT, OR WILLFUL ACTS OR OMISSIONS OF PARTICIPANT, OR (D) PARTICIPANT'S USE OF ANY FIXTURES, EQUIPMENT, OR PERSONAL PROPERTY IN, ON, OR ABOUT THE PREMISES OR OTHER PREMISES WHERE ACTIVITIES SPONSORED BY URBAN AIR ARE TAKING PLACE, THE INDEMNITY CONTAINED IN THIS PARAGRAPH WILL**

APPLY EVEN IF ANY SUCH INJURY OR DAMAGE IS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE PROTECTED PARTIES.

7. Dispute Resolution/Waiver of Jury Trial. If a dispute arises under this Agreement or from Participant's use of the Premises or participation in the Activities, the Participant shall engage in good faith efforts to mediate a settlement prior to filing a demand for arbitration. Should the dispute not be resolved by mediation, Urban Air and the Participant agree that all disputes, controversies, or claims arising out of the Participant's use of the Premises or participation in the Activities shall be submitted to binding arbitration before and in accordance with the Commercial Rules of the American Arbitration Association then in effect. It is acknowledged, understood, and agreed that any such arbitration will be final and binding, and that by agreeing to arbitration, the parties are waiving their respective rights to seek remedies in court, including the right to a jury trial. The parties waive, to the fullest extent permitted by law, any right they may have to a trial by jury in any legal proceedings directly or indirectly arising out of or relating to this Agreement, whether based in contract, tort, statute (including any federal or state statute, law, ordinance, or regulation), or any other legal theory. **It is expressly acknowledged, understood, and agreed that; arbitration is final and binding; the parties are waiving their right to seek legal remedies in court including the right to a trial by jury; pre-arbitration discovery generally is more limited than and different from that available in court proceedings; the arbitrator's award is not required to include factual findings or legal reasoning; and any party's right to appeal or vacate, or seek modification of the arbitration award is strictly limited by law…** [Pa0086-Pa0092].

When a customer proceeds to the registration/payment area, they are directed to complete an Agreement at the waiver station before they pay admission. 2T21:7-24. There are several devices located immediately inside the

Park where customers can complete the Agreement by using those devices. 2T21:7-24.

Once the Participant has completed a valid Agreement, the employee confirms whether the Participant has "Urban Air" socks, which are required to be worn by all Participants when using the attractions. 2T26:18-27:3. If the Participant does not have the requisite socks, then they are required to purchase the socks with their admission. 2T26:18-27:3.

On February 22, 2022, Appellants, Julien and Alexis Coppi were present at the Park. Pa0005-Pa0018. Appellant, Julien Coppi, purchased admission for himself and his son, who was less than three (3) years old at the time. 2T19:22-24. Prior to being permitted access to the Park, Appellant executed the Agreement on behalf of himself and his son. 2T21:4-7. The terms of the Agreement designate Appellant as "Adult Participant", and Appellant's son as "Child Participant". Pa0086-Pa0092. Appellant purchased Urban Air socks for himself and his son, and put them on before being permitted access to the Park. 2T26:18-24. Appellant testified in his deposition that he read and understood the terms of the Waiver agreement. 2T22:5-23. Specifically, Appellant testified "if I'm going to put my signature on something, I'm going to read it." 2T22:5-7. Further, Plaintiff testified that "it seemed like it was saying, do you agree there is a risk associated with going into a trampoline park and trampoline

activity. Which I completely understand. I remember reading something like injuring, like you can break your bone, you can hurt your wrist, something like that. And again, I'm not an idiot. I understand if I'm going to a trampoline park, if I fall improperly, I can injure myself." 2T22:15-23.

Plaintiff engaged and/or participated on multiple attractions during his time in the Park. 2T28:13-29:12. Plaintiff used an attraction that included a rocking climbing wall and inflatable slide. 2T28:19-29:4. Plaintiff also used one trampoline attraction before the ProZone. 2T29:4-12. Appellant accompanied his niece, not his son, to the ProZone attraction. 2T32:11-14. Appellant observed the instructions for the ProZone, and interacted with the Urban Air employee monitoring the ProZone, who informed Appellant that only one Participant may use the ProZone at a time. 2T31:3-32:10. While using the ProZone attraction, Appellant improperly jumped into one of the walls and hit his head, causing him injuries. 2T38:20-24.

Appellants filed the Complaint forming the basis for this litigation on January 20, 2023. Pa0005-Pa0018. Despite Appellant's contractual obligation to "engage in good faith efforts to mediate a settlement", Pa0089, Appellant has refused to entertain reasonable offers to settle this matter, and has increased their demand to Respondents multiple times since filing the Complaint. 1T6:5-17.

Respondent served Appellants with requests for responses to Form

Interrogatories, Supplemental Interrogatories, Loss-of-Consortium Interrogatories, and Notice to Produce Documents on April 3, 2023 [Pa0290]; Appellants produced responses on May 2, 2023 [Pa0292]. Respondent served Appellants with requests for responses to a Supplemental Notice to Produce Documents on December 20, 2023 [Pa0287-Pa0289]; Appellants produced responses on January 5, 2024 [Pa0301]. Appellants amended their responses to Interrogatories and Notice to Produce Documents on October 2, 2023, December 18, 2023, January 4, 2024, January 29, 2024, February 13, 2024, and March 29, 2024. Pa0291-Pa0307.

Respondents answered Appellants' requests for responses to Form Interrogatories on May 1, 2023. Pa0328-Pa0339. Appellants have not propounded any Supplemental Interrogatories or Notice to Produce Documents on Respondents since May 1, 2023. Pa0292. On January 24, 2024, Appellant Julien Coppi underwent an independent medical evaluation ("IME") with Andrew M. Hutter, MD, FAAOS, FACS. Da0001. On February 14, 2024, Appellant Julien Coppi underwent an IME with David M. Masur, Ph.D, ABPP. Da0002.

The depositions of Appellants were conducted on October 3, 2023. Pa0094. Appellants have never noticed any deposition of Respondent's corporate representatives or employees. Pa0353. On April 19, 2024, Appellants

noticed an inspection on June 11, 2024, of the site where the alleged injuries took place. Da0003. The inspection had previously been scheduled to take place on April 15, 2024, and on May 21, 2024, however Appellants notified of their need to reschedule both of these dates. Pa0353. Both Appellants and Respondents retained expert witnesses to attend the site inspection. Both expert witnesses were located out-of-state and therefore needed advanced notice of the date of inspection to make travel plans. Pa0353. Additionally, the site inspection needed to be scheduled for a date and time when the business was either closed to the public or not expected to be busy, so as not to interfere with Respondents' normal business operations. Pa0353.

On March 22, 2024, Respondents filed a Motion for an Order staying the case as to all parties pursuant to N.J.S.A. 2A:23B-7 and compelling arbitration. Pa0068-Pa0085. On May 2, 2024, oral argument on the Motion was heard by the Honorable Peter G. Geiger, J.S.C., sitting in the New Jersey Superior Court, Bergen County, Law Division, Civil Part. 1T3:1.

LEGAL ARGUMENT

I. THE STANDARD OF REVIEW REQUIRES THE APPELLATE COURT TO GRANT DEFERENCE TO THE DECISION OF THE TRIAL COURT

An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws,

statutes, or rules is de novo. See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020) (agency's interpretation of a statute); State v. G.E.P., 243 N.J. 362, 382 (2020) (retroactivity of statute); State v. Hemenway, 239 N.J. 111, 125 (2019) (constitutionality of a statute); State v. Hyland, 238 N.J. 135, 143 (2019) (appealability of a sentence); Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019) (statutory interpretation); Green v. Monmouth Univ., 237 N.J. 516, 529 (2019) (applicability of charitable immunity); State v. Fuqua, 234 N.J. 583, 591 (2018) (statutory interpretation); State v. Dickerson, 232 N.J. 2, 17 (2018) (interpretation of court rules).

We agree that the Appellate courts "review de novo the trial court's judgment dismissing the complaint and compelling arbitration." Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 131 (2020). See Skuse v. Pfizer, Inc., 244 N.J. 30, 46 (2020). A reviewing court however must accept the factual findings of a trial court that are ”supported by sufficient credible evidence in the record.” State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting

Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). In this case, a review of the Court's decision fails to show any findings or conclusions that were manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interest of Justice.

II. THE TRIAL COURT WAS NOT REQUIRED TO HOLD A HEARING BEFORE ENFORCING THE ARBITRATION CLAUSE IN THE AGREEMENT

Appellants argue that "the Agreement was presented in a manner that was rushed and lacking in fairness, mirroring the conditions in Kleine. Accordingly, the trial court should have ordered an evidentiary hearing to determine whether the Agreement is unconscionable." Appellants opine that further discovery is necessary to determine the factual circumstances surrounding Julien Coppi signing the Agreement. Appellants claim that review of the security footage from the time Julien signed the Agreement "is critical for the factfinder to assess whether Julien was given a genuine opportunity to review the Agreement and to verify his assertion that a line of patrons was forming behind him, pressuring him to act quickly."

Appellants attempt to draw comparisons between the matter at hand and the facts at issue in Kleine v. Emeritus at Emerson, 445 N.J. Super. 545 (App. Div. 2016), however, the circumstances have shockingly little in common. In Kleine,

the plaintiff was presented with "a stack of papers, of which the admission agreement was one of several documents", Kleine, *supra* at *549, meanwhile Appellant Julien Coppi was presented with a six (6) page document. Pa0086-Pa0092. The Kleine plaintiff was also under a considerable amount of stress, given that his sister had been caused to suffer trauma at her previous nursing home, and the plaintiff was now preparing to leave his sister at a new, unknown nursing home without his protection. Kleine, *supra* at *549. In contrast, , Appellant Julien Coppi voluntarily arrived at the Premises with the intent of "enjoying the facility with his family", which is not comparable to the stress that the Kleine plaintiff was under. Most significantly, the Kleine plaintiff was told by the admission-person that he needed to sign the agreement "right away", Kleine, *supra* at *549, which indisputably caused the plaintiff to feel pressured and rushed. There are no such similar circumstances in the matter at hand. Appellant testified that "if I'm going to put my signature on something, I'm going to read it" 2T22:5-7, and further testified that he completely understood the risks outlined in the Agreement because he is "not an idiot." 2T22:15-23.

The trial court heard Appellants' arguments and held that the circumstances described by Appellants are not dispositive to the validity of the Agreement. 1T28:10-24. The court addressed these claims during oral argument, noting that Appellant could have stepped out of line to review the Agreement more closely

or asked questions about it. 1T11:22-12:11; 1T28:10-14. The trial court went on to note that Appellant had the option to simply not sign the Agreement if he was uncomfortable or felt that he did not understand the terms. 1T13:5-14:23; 1T28:10-14. Appellant, Julien Coppi, is a college educated computer software engineer that manages several employees overseeing a computer system that runs a financial company in Manhattan. He is not an unsophisticated person of limited intelligence. Clearly, he was capable of reading and understanding the agreement.

III. THE AGREEMENT PROVIDED SUFFICIENT NOTICE OF THE WAIVER OF RIGHTS TO APPELLANTS

Appellants argue that the Agreement is invalid because it does not adequately inform the consumer of their rights and remedies that are to be waived. Appellants rely on precedent that has upheld arbitration agreements which make it clear the party is agreeing to, "waive [their] right to a jury trial[,]" Martindale v. Sandvik, Inc., 173 N.J. 76, 89 (2002); that arbitration would be the exclusive remedy, Griffin v. Burlington Volkswagen, Inc., 411 N.J. Super. 515, 518 (App. Div. 2010); and that explained in thorough detail what arbitration is and the differences between arbitration and civil litigation, such as the rules being different, there being no judge or jury, and judicial review of the arbitrator's decision being limited. Curtis v. Cellco Partnership, 413 N.J. Super. 26, 33-37

(App. Div. 2010). However, Appellants have not cited any precedent to support their assertion that the alleged "deficiencies" of the Agreement render it unenforceable.

Section 7 of the Agreement is titled "Dispute Resolution/Waiver of Jury Trial" and provides the exact information that the courts want these agreements to contain. Pa0089. Section 7 explains that all disputes, controversies and claims shall be submitted to binding arbitration. Pa0089. Section 7 states that the arbitration shall be subject to the Commercial Rules of the America Arbitration Association. Pa0089. Section 7 states that the parties are "waiving their respective rights to seek remedies in court, including the right to a jury trial." Pa0089. Then, in **bold**, Section 7 states "**It is expressly acknowledges, understood, and agreed that; arbitration is final and binding; the parties are waiving their right to seek legal remedies in court including the right to a trial by jury; pre-arbitration discovery generally is more limited than and different from that available in court proceedings; the arbitrator's award is not required to include factual findings or legal reasoning; and any party's right to appeal or vacate, or seek modification of, the arbitration award, is strictly limited by law.**" Pa0089. Further, Section 11 of the Agreement revisits the subject, stating "Participant acknowledges that he/she has read this Agreement in its entirety, fully understands its terms, and

understands that he/she is giving up substantial rights herein, including his right to sue in a court of law." Pa0090.

The trial court held that "the liability waiver within the body of the [A]greement is clear. It's unambiguous. And it plainly states that there is a waiver, a release, a hold harmless, and an indemnity provision towards the [Respondents]." 1T27:12-20. The court went on to find that "[Appellants'] contention that the language within the [A]greement is ambiguous is without merit and is unsupported by the language in the [A]greement itself." 1T27:24-28:2. The fact that there is no language within the Agreement demonstrating the differences in function between an arbitration and a jury trial was insufficient to convince the court that the Agreement was invalid. 1T28:2-6. The court found that the Agreement is "actually a comprehensive agreement" and is enforceable. 1T28:6-9.

IV. THE TRIAL COURT DID NOT ERR IN FINDING THAT PLAINTIFF, JULIEN COPPI, WAS A "PARTICIPANT" BY THE TERMS OF THE AGREEMENT

During oral argument, Appellants asserted that "generally speaking, when a parent goes in with their child, they sign the two agreements. And that's what's unusual about the case, because they never had the father sign his own agreement at the jump." 1T11:1-13. Appellants have not provided any support for this baseless assertion, and have taken portions of the oral argument out of

context for their benefit, specifically by claiming that "[c]rucially, Urban Air's counsel conceded that they were uncertain of their own policy on whether an adult who intends to participate alongside a minor must sign separate arbitration agreements for themselves and the minor. 1T21:8-14." [Appellants' Brief, pg. 7]. Counsel for Respondents was responding to the baseless assertions from Appellants' counsel, stating that "I'm not aware of any policy that requires that the waivers be executed on behalf of a child and adults (emphasis added). 1T21:9-11. Counsel's lack of knowledge about a client's internal protocols cannot be imputed to the counsel's client who is not even present during the oral argument.

Further, Appellants incorrectly argue that Julien Coppi's participation in the activities does not automatically make him bound by the Arbitration Agreement intended for his son's use of Urban Air's attractions. The Agreement clearly states that it applies to "Participants". PA0086-Pa0092. The definitions at the beginning of the Agreement clearly show that Appellant Julien Coppi, as an adult accompanying his son, was considered a "Participant", in addition to his son, who was considered a "Child Participant." Pa0087.

Section 4 of the Agreement states that Appellant, on behalf of himself and his Child Participant, "warrants that he/she has read this Agreement in its entirety, acknowledges that the Activities contain inherent risks which vary with

the activity, … appreciates the types of injuries that may occur as a result of the Activities…, and asserts that participation is voluntary and that Participant knowingly assumes all risks inherent with the Activities." Pa0088. The terms of this paragraph clearly explain that Appellant adopts the representations by "signing this Agreement, entering the Premises **and/or** participating in the Activities." Pa0088 (**emphasis** added). Even if the Court finds that Appellant is correct in arguing that his signature on the Agreement does not make him a Participant, there is no question that Appellant entered the Premises and participated in the activities offered, thereby adopting the representations in Section 4 of the Agreement. Again Appellant's own deposition testimony makes this clear. He testified that he understood that using the trampolines park's equipment meant that he was going to be exposed to some risk. 2T22:13-23.

Section 5 of the Agreement clearly states that "to the fullest extent permitted by law, Adult Participant, on behalf of himself/herself, and on behalf of any Child Participant…" will hold [Respondent] harmless for injuries sustained "during or relating to Participant's participation (whether actively or passively) in any activities on the premises…". Pa0088. At the time of his injury, Appellant, Julien Coppi, was using the ProZone attraction. 2T32:11-38:24. Appellant, Julien Coppi, was an Adult Participant, and Appellants' son was a Child Participant, per the terms of the Agreement. Appellant, a

"Participant" per the terms of the Agreement, was injured while participating in activities on the Premises. The plain language of the Agreement clearly applies to Appellants' claims.

V. THE TRIAL COURT DID NOT ERR IN FINDING THAT RESPONDENTS DID NOT WAIVE THE RIGHT TO COMPEL THE MATTER TO ARBITRATION

Appellants argue that they will be significantly disadvantaged in arbitration due to Respondent's alleged failure to fully participate in discovery. Appellants allege that Respondents failed to provide dates for a corporate representative deposition, despite never having served a Notice of Deposition. Appellants also attempt to muddy the waters and blame Respondents for the lack of a site inspection, when in reality the site inspection was not conducted because of scheduling conflicts amongst both parties and their respective expert witnesses. Appellants fail to mention that on two (2) separate occasions (April 15, 2024, and May 21, 2024), the parties agreed on a date to conduct the site inspection, only for Appellants to cancel. Pa0353. Further, Appellants omit the fact that they already conducted a site inspection of the premises without Respondent's knowledge. On April 1, 2024, Appellants produced a report drafted after a purported site inspection of the premises was conducted on March 13, 2022 by an expert retained by Appellants, only weeks after Julien Coppi's injury occurred. Da0004-Da0020. The report included photos of the premises.

Not only were Respondents not made aware of the site inspection before it occurred, but Appellants' counsel waited more than two (2) years to notify Respondents of this inspection.

Appellants claim that Respondents gained "a wealth of material and information that [Respondents] would not have been entitled to or received" under the rules of the American Arbitration Association ("AAA") [Appellants' Brief, pg. 14-15]. Appellants attempt to paint Respondents' actions as intentional by insinuating that Respondents were worried about being unable to depose the Appellants under the AAA's rules. However, such discovery would certainly be permitted if the two parties to the arbitration agreed to it as a condition of the arbitration. Counsel for Respondent handles various litigations involving trampoline park injuries, and has taken multiple such matters to arbitration. It is a standard practice of this firm to enter into discovery exchange agreements with claimants once the matter has been compelled to arbitration, but before the claimant files a demand with AAA. Such agreements provide for the exchange of written discovery and document production between the parties, as well as site inspections, independent medical evaluations of the claimant and depositions of all parties. Da0021-Da0024. Appellants claim that the discovery conducted to date would unfairly prejudice them in arbitration, however they fail to explain why they would prefer to engage in arbitration without all relevant

information available. Whether Appellants' claims are heard by the Court, or by an arbitrator, either avenue involves a search for the truth. The information exchanged is necessary in order to further the goal of the arbitration, which is to reach a mutually agreeable resolution of the matter. Appellants are not prejudiced as they have not had to undergo anything that they would not have had to do, if the case was filed as an arbitration from the beginning. In fact, now that most of discovery has been completed, the matter will be able to be arbitrated in a quicker fashion, as much of the discovery has already been conducted.

Respondent unequivocally denies Appellants' assertions that it has intentionally delayed seeking arbitration as part of its litigation strategy. In the very early stages of this litigation, Appellant Julien Coppi took the position that the waiver did not apply to him, only to his son. Therefore, Respondents needed to conduct discovery, including taking Julien Coppi's deposition, on his understanding of the waiver at the time he signed it. Appellant Julien Coppi testified that he read the Agreement prior to purchasing admission, and understood the risk of potential injury by participating in the activities conducted on the premises. T122:4-25. Julien Coppi testified that he understood that the Agreement he signed applied to both his son and himself. T125:24-26:3.

This testimony was necessary in order for Respondents to determine their ability to file the motion to stay the matter and compel arbitration.

Appellants argue that the discovery exchanged between the parties is one-sided in favor of Respondents, and claim that they will be prejudiced as a result. However, Appellants allowed the discovery end date to pass without filing a motion to extend. Appellants claim that they required more information from Respondents, but never served Respondents with supplemental interrogatories, or any supplemental requests. Appellants claim that they needed to take depositions of Respondents' representatives, but never served a Notice of Deposition. Appellants argue that Respondents' discovery responses were boilerplate and improper, but never served Respondents with a deficiency letter and never filed a motion to compel discovery. Again, Respondents have maintained that we would produce our clients for deposition whenever Appellants wanted them, but we were trying to hold off requiring Appellants to undergo that expense to see if we could resolve the case. If this matter proceeds to arbitration we would agree to produce our clients for a depositions should Appellants indicate that they need that.

Appellants incorrectly assert that the Agreement "explicitly states that both parties shall 'engage in good faith efforts to mediate…'" [Appellants' Brief pg. 12]. In fact, the Agreement states that "[i]f a dispute arises under this

Agreement or from Participant's use of the Premises or participation in the Activities, the Participant shall engage in good faith efforts to mediate a settlement prior to filing a demand for arbitration." Pa0089 (emphasis added).

Appellants incorrectly stated that "[t]he trial court recognized that enforcing the arbitration agreement could prevent the Coppis from accessing crucial discovery materials. 1T7:1-5." [Appellants' Brief pg. 6]. The trial court hypothesized about the potential prejudice that Appellants may face if the matter was compelled to arbitration and Appellants were not allowed to conduct any more discovery than they already had to date, but did not go so far as to find that there were "crucial discovery materials" that Appellants were missing.

CONCLUSION

Therefore, for the foregoing reasons, Respondents would argue that Appellants' appeal has no merit, and the trial court's order in this matter should be affirmed.

Respectfully submitted,

REILLY, McDEVITT & HENRICH, P.C.

By: */s/ Michael J. Jubanyik*
Michael J. Jubanyik, Esquire
Andrew R. Churchill, Esquire
Attorneys for Defendant Family Adventures North Jersey, LLC

Dated: January 13, 2025

Superior Court of New Jersey

Appellate Division

Docket No. A-003083-23

JULIEN J. COPPI and ALEXIS J. COPPI (h/w), *Plaintiffs-Appellants,* vs. FAMILY ADVENTURES NORTH JERSEY, LLC d/b/a Urban Air Trampoline and Adventure Park, UATP MANAGEMENT, LLC, ABC COMPANIES 1-10 (fictitious designations) and JOHN DOES 1-10 (fictitious designations), *Defendants-Respondents.*	CIVIL ACTION ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, BERGEN COUNTY DOCKET NO. BER-L-358-23 Sat Below: HON. PETER G. GEIGER, J.S.C.

BRIEF FOR DEFENDANT-RESPONDENT UATP MANAGEMENT, LLC

On the Brief:
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PRELIMINARY STATEMENT

The Trial Court correctly granted Defendant/Respondent, UATP Management, LLC's (hereinafter "UATP") Cross Motion to Stay the Superior Court litigation and Compel Arbitration because all of Plaintiffs/Appellants' ("Plaintiffs") claims against UATP are subject to binding arbitration. The relationship between Plaintiffs and UATP is contractual and is governed by the Customer Release, Assumption of Risk, Waiver of Liability, Arbitration and Indemnification Agreement ("the Agreement") which requires the parties to arbitrate all disputes arising out of the use of the premises or participation in the activities.

The evidence presented to the Trial Court established that on February 2, 2022, as a precondition of entry to Urban Air Trampoline & Adventure Park in Hackensack, New Jersey (hereinafter, "Park"), Plaintiff/Appellant, Julien J. Coppi, (hereinafter "Plaintiff") executed the Agreement. In executing the Agreement, Plaintiff agreed that all disputes with UATP, arising out of the use of the premises or participation in the activities, are subject to mandatory arbitration before the American Arbitration Association ("AAA").

While participating in the trampoline activities at the Park on February 2, 2022, Plaintiff was injured. In contravention of the Agreement, Plaintiffs, Julien Coppi and Alexis Coppi, his wife, filed a Complaint in the Superior Court of

New Jersey, Bergen County. UATP was not named as a Defendant in Plaintiffs Complaint. UATP was brought into the litigation, by way of an Amended Complaint, nearly a year later. UATP immediately sought to enforce the arbitration clause in the Agreement and filed a Cross Motion to Stay the Litigation and Compel Arbitration. On May 2, 2024, the Honorable Peter G. Geiger, J.S.C. correctly granted UATP's Cross Motion.

On appeal, Plaintiffs reiterate the same legally flawed arguments that were made to the Trial Court that Plaintiff did not have sufficient time to read the Agreement and that the Agreement only applies to Plaintiffs' minor son. The Trial Court properly rejected these arguments, finding that the Agreement is clear, valid and enforceable. In so holding, the Trial Court noted that the Agreement was voluntarily signed by the Plaintiff on behalf of himself and his minor son as a precondition of entry to the Park.

Plaintiffs further argue that the Defendants waived any right to arbitration by participating in discovery. Plaintiffs' argument has no application to UATP because UATP never participated in any discovery in the Law Division because it was not a Defendant in the case until Plaintiffs filed their Amended Complaint. In lieu of filing an Answer to Plaintiffs' Amended Complaint, UATP filed its Cross Motion to Stay the Superior Court litigation and Compel Arbitration. The

Trial Court granted UATP's Cross Motion. As such, any argument that UATP participated in discovery in the Law Division is patently false.

Finally, Plaintiffs argue that the Trial Court erred when it granted UATP's Motion without conducting an evidentiary hearing. However, Plaintiffs are misguided. As discussed further herein, the question of whether an arbitration clause is enforceable is not factual in nature, but is instead a legal question. Moreover, the Trial Court afforded all parties a full hearing on the Defendants' Motions to Stay the Litigation and Compel Arbitration.

The issue before the Appellate Division is simple and involves only the enforceability of the Arbitration Agreement. While Plaintiffs attempt to distract this Honorable Court from this sole issue by flooding the record with the details of Plaintiff's injuries and circumstances of his accident, the Court must remain focused on the issue of arbitrability.

As will be established herein, and as correctly determined by the Trial Court, the Arbitration Agreement is valid, enforceable and severable. As such, arbitration must be compelled and all disputes regarding Plaintiff's accident must be resolved in arbitration. For these reasons and the reasons that follow, the Appellate Division should affirm the Trial Court's May 2, 2024 Orders Staying the Litigation and Compelling Arbitration.

RELEVANT PROCEDURAL HISTORY

On January 20, 2023, Plaintiffs Julien J. Coppi and his wife, Alexis Coppi, filed their Complaint in the Superior Court of New Jersey, Law Division, Bergen County, New Jersey. Pa0005-Pa0018. On March 8, 2023, Defendant Family Adventures North Jersey, LLC d/b/a Urban Air Trampoline & Adventure Park South Hackensack (hereinafter "Urban Air") filed its Answer to Plaintiffs' Complaint with Separate Defenses, and Jury Demand. Pa0019-Pa0027. In its Answer, Urban Air asserted, as its Twenty-Fourth Defense, "all rights and defenses available to it under the Customer Release, Assumption of Risk, Waiver of Liability, Arbitration and Indemnification Agreement signed and submitted by Plaintiffs." Pa0024.

On October 24, 2023, Plaintiffs filed a Motion For Leave to File a First Amended Complaint. Pa0028. On December 7, 2023, the Court entered an Order granting Plaintiffs' Motion For Leave to File a First Amended Complaint to add, in relevant part, UATP as a Defendant. Pa 0066-Pa67.

On March 22, 2024, Urban Air filed a Notice of Motion to Stay and Compel Arbitration. Pa0068. On March 25, 2024, Plaintiffs executed a Stipulation Extending UATP's time to file a responsive pleading to April 13, 2024. Pa0244. On April 4, 2024, UATP filed its Cross Motion to Stay and Compel Arbitration. Pa0242.

On April 5, 2024, Plaintiffs filed Opposition to Urban Air's Motion to Stay and Compel Arbitration. Pa262. On April 8, 2024, Urban Air filed a Reply to Plaintiffs' Opposition. Pa0347. On April 9, 2024, UATP filed its Reply to Plaintiffs' Opposition. Pa0355.

On May 2, 2024, the Trial Court heard lengthy oral argument on the Defendants' Motions. T1. The Trial Court afforded all parties a full and fair opportunity to argue their positions. T2. Thereafter, in a thorough, thoughtful and legally supported ruling, the Court granted the Defendants' Motions. T.28 L.25. In so holding, the Honorable Peter G. Geiger, J.S.C. stated:

***

> this Court finds that the participant agreement here was voluntarily signed by the Plaintiff. It's valid. It's enforceable. It's undisputed that the Plaintiff signed the agreement—the participation agreement on behalf of his minor child and himself, as a precondition to enter the Defendant's indoor playground.
>
> ***

T.27 L. 9-15.

The Trial Court rejected the Plaintiffs' claims that the Agreement is ambiguous stating:

***

> The Court finds that the Plaintiff's contention that the language within the agreement is ambiguous is without merit and is unsupported by the language in the agreement itself. The fact that there—there are not provisions demonstrating the differences between an arbitration and how an arbitration functions, and how a

> trial or trial by jury functions, is not sufficient—is not sufficient. The Court finds that the agreement is actually a comprehensive agreement. And is enforceable. And is not void as a matter of public policy.
>
> ***

T.27 L.24-T.28 L.9.

On May 2, 2024, the Honorable Peter G. Geiger, J.S.C. entered two (2) Orders granting the Defendants' Motions to Stay the litigation and Compel Arbitration. Pa0001-Pa0004. Plaintiffs filed the instant appeal.

STATEMENT OF FACTS

The adult Plaintiffs allege that on February 22, 2022, Plaintiff, Julien Coppi, was at Urban Air Trampoline and Adventure Park in South Hackensack, New Jersey. Pa0038,¶1. Plaintiffs further allege that Julien Coppi was injured while using the trampoline equipment at the Park. Pa0039,¶ 4. As a pre-condition of entry to the Park, all participants must sign a Customer Release, Assumption of Risk, Waiver of Liability, Arbitration and Indemnification Agreement. Pa0087-Pa0092. Julien Coppi voluntarily signed the Agreement on the date of the alleged incident. Pa 0087.

The Agreement provides in relevant part as follows:

***

> This Assumption of Risk, Waiver of Liability, Arbitration and Indemnification Agreement ("Agreement") is dated as of the Effective Date which is the date appearing on the signature page, between Family Adventures

North Jersey LLC b/b/a Urban Air Trampoline & Adventure Park South Hackensack ("Urban Air") and the undersigned in his/her own capacity ("Adult Participant") and if any minor (s) is/are named in the signature block below (collectively "Child Participant", whether one or more) on behalf of, and as the parent or legal guardian for such Child Participant(s) (all parties collectively, "Participant)…

4. Assumptions of Risks. By signing this Agreement, entering the Premises and/or participating in the Activities, Adult Participant, on behalf of himself, and on behalf of the child Participant(s), warrants that he/she has read this Agreement in its entirety, acknowledges that the Activities contain inherent risks which vary with the activity, understands the demands of the activities relative to a Participant's physical condition and skill level, appreciates the type of injuries that may occur as a result of the Activities and their potential impact on safety, well-being, and lifestyle and asserts that participation is voluntary and that Participant knowingly assumes all risks.

5. Release of Claims. **TO THE FULLEST EXTENT PERMITTED BY LAW, ADULT PARTICIPANT, ON BEHALF OF HIMSELF/HERSELF AND ON BEHALF OF ANY CHILD PARTICIPANT AND ON BEHALF OF ANY SPOUSE, HEIRS, EXECUTORS, AND REPRESENTATIVES OF ANY PARTICIPANT HEREBY RELEASES, DISCHARGES AND AGREES TO HOLD HARMLESS URBAN AIR, UATP MANAGEMENT, LLC, UATP, LLC …**
THE "PROTECTED PARTIES" FROM AND AGAINST ALL LIABILITIES, LOSSES, DAMAGES, CLAIMS, JUDGMENTS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, COSTS, FEES, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT OR OTHER COSTS) RELATING TO, RESULTING FROM, OR ARISING OUT OF OR ALLEGED TO HAVE RISEN OUT OF (IN WHOLE OR IN PART) ANY BODILY INJURY TO OR DEATH OF PARTICIPANT OR DAMAGE TO OR LOSS OF PARTICIPANT'S PROPERTY: (A) DURING OR RELATING TO PARTICIPANT'S PARTICIPATION (WHETHER ACTIVELY OR PASSIVELY) IN ANY ACTIVITIES ON THE PREMISES OR OTHER LOCATION WHERE THE ACTIVITIES ARE BEING CONDUCTED, INCLUDING BUT NOT LIMITED TO PARTICIPANT'S USE OF ANY EQUIPMENT, PARTICIPANT'S INVOLVEMENT IN ANY CLASSES OR INSTRUCTION, AND PARTICIPANT'S INVOLVEMENT IN ANY

COMPETITION OR EVENT SPONSORED BY THE PROTECTED PARTIES…

PARTICIPANT HEREBY AGREES NOT TO BRING ANY SUITS, CLAIMS, CAUSES OF ACTION, DEMANDS OR LEGAL ACTIONS AGAINST THE PROTECTED PARTIES FOR ANY ITEM RELEASED HEREUNDER…

6. Indemnity. **ADULT PARTICIPANT, ON HIS/HER BEHALF, AND ON BEHALF OF ANY CHILD PARTICIPANT(S), AND ON BEHALF OF ANY SPOUSE, HEIRS, EXECUTORS, AND REPRESENTATIVES, AGREES TO INDEMNIFY, DEFEND, RELEASE, AND HOLD HARMLESS THE PROTECTED PARTIES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, SUITS, LOSSES, LIABILITIES, DAMAGES, FINES, PENALTIES, LIENS, JUDGMENTS, SETTLEMENTS, PROCEEDINGS, COSTS, FEES, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT OR OTHER COSTS) OF ANY NATURE WHATSOEVER FOR OR RELATING TO DEATH, BODILY INJURY OR PROPERTY DAMAGE RESULTING FROM, RELATING TO, OR CAUSED BY (WHETHER IN WHOLE OR IN PART) ANY OF THE FOLLOWING MATTERS (WHICH NECESSARILY INCLUDE ALL CLAIMS TO DO OR MAY BELONG TO THE CHILD PARTICIPANT(S)): (A) PARTICIPANT'S ACTS, OMISSIONS, OR PRESENCE ON OR ABOUT ANY PART OF THE PREMISES OR OTHER PREMISES WHERE ACTIVITIES SPONSORED BY URBAN AIR ARE TAKING PLACE, (B) PARTICIPANT'S ACTIVE OR PASSIVE PARTICIPATION IN OR OBSERVANCE OF ANY OF THE ACTIVITIES, (C) ANY CLAIMS ARISING OUT OF THE NEGLIGENT, GROSSLY NEGLIGENT, OR WILLFUL ACTS OR OMISSIONS OF PARTICIPANT, OR (D) PARTICIPANT'S USE OF ANY FIXTURES, EQUIPMENT, OR PERSONAL PROPERTY IN, ON, OR ABOUT THE PREMISES OR OTHER PREMISES WHERE ACTIVITIES SPONSORED BY URBAN AIR ARE TAKING PLACE, THE INDEMNITY CONTAINED IN THIS PARAGRAPH WILL APPLY EVEN IF ANY SUCH INJURY OR DAMAGE IS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE PROTECTED PARTIES.**

7. Dispute Resolution/Waiver of Jury Trial. If a dispute arises under this Agreement or from Participant's use of the Premises or participation in the

> Activities, the Participant shall engage in good faith efforts to mediate a settlement prior to filing a demand for arbitration. Should the dispute not be resolved by mediation, Urban Air and the Participant agree that all disputes, controversies, or claims arising out of the Participant's use of the Premises or participation in the Activities shall be submitted to binding arbitration before and in accordance with the Commercial Rules of the American Arbitration Association then in effect. It is acknowledged, understood, and agreed that any such arbitration will be final and binding, and that by agreeing to arbitration, the parties are waiving their respective rights to seek remedies in court, including the right to a jury trial. The parties waive, to the fullest extent permitted by law, any right they may have to a trial by jury in any legal proceedings directly or indirectly arising out of or relating to this Agreement, whether based in contract, tort, statute (including any federal or state statute, law, ordinance, or regulation), or any other legal theory. **It is expressly acknowledged, understood, and agreed that; arbitration is final and binding; the parties are waiving their right to seek legal remedies in court including the right to a trial by jury; pre-arbitration discovery generally is more limited than and different from that available in court proceedings; the arbitrator's award is not required to include factual findings or legal reasoning; and any party's right to appeal or vacate, or seek modification of the arbitration award is strictly limited by law…**
>
> 8. Acknowledgments by Participant**.** Adult Participant acknowledges on behalf of himself/herself and on behalf of any Child Participant(s) that he/she/they would not be granted access to the Premises or the ability to participate in the Activities but for his/her agreement to the terms and conditions of this Agreement and these acknowledgments.
>
> ***

Pa0087-Pa0089.

The Plaintiff specifically indicated his assent to the Agreement by providing his signature and affirmatively placing a "check mark" on the boxes included within the Agreement. Pa 0087-Pa0092.

On January 20, 2023, Plaintiffs Julien J. Coppi and his wife, Alexis Coppi, filed their Complaint in the Superior Court of New Jersey, Law Division, Bergen

County, New Jersey. Pa0005-Pa0018. UATP was not named as a Defendant in Plaintiffs' Complaint. Pa0005-Pa0018. Nearly a year later, Plaintiffs filed a Motion to Amend their Complaint to include UATP. Pa0028.

On March 25, 2024, Plaintiffs executed a Stipulation Extending UATP's time to file a responsive pleading to April 13, 2024. Pa0244. On April 4, 2024, UATP filed its Cross Motion to Stay and Compel Arbitration. Pa0242. On May 2, 2024, the Honorable Peter G. Geiger, J.S.C. entered two (2) Orders granting the Defendants' Motions to Stay the litigation and Compel Arbitration. Pa0001-Pa0004. Plaintiffs filed the instant appeal.

LEGAL ARGUMENT

POINT I.

THE APPELLATE STANDARD OF REVIEW IS DE NOVO, WITHOUT DEFERENCE TO THE TRIAL COURT, UNLESS ITS INTERPRETIVE ANALYSIS OF THE ISSUES IS PERSUASIVE, AS IS THE CASE HERE

"De novo review applies when appellate courts review determinations about the enforceability of contracts, including arbitration agreements." Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 316 (2019) (citing Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013)). Generally, "[w]hether a contractual arbitration provision is enforceable is a question of law", but the reviewing court "need not defer to the interpretive analysis of the trial . . .court [] **unless we find it persuasive**." Ibid. (citing Morgan v. Sanford

Brown Inst., 225 N.J. 289, 302-03 (2016) (emphasis added). A reviewing court however must accept the factual findings of a trial court that are "supported by sufficient credible evidence in the record." State v. Mohammed, 226 N.J. 71, 88 (2016).

UATP respectfully submits that the Trial Court's Order and reasoning is persuasive and, on that basis, warrants deference. As established herein, the Trial Court did not err in its ruling and conducted a comprehensive analysis of the arbitration agreement in accordance with the law, thus resulting in its enforcement. The Trial Court afforded Plaintiffs a fulsome hearing of their arguments. All of the arguments currently posited by the Plaintiffs were considered and rejected by the Trial Court. Consequently, the Appellate Division should affirm the Trial Court's May 2, 2024 Orders staying the Superior Court action and compelling arbitration.

POINT II.

THE ARBITRATION AGREEMENT IS ENFORCEABLE AND REQUIRES THE ARBITRATION OF ALL CLAIMS

In order to determine whether arbitration should be compelled, the court must first determine whether the arbitration provision of a contract is valid and enforceable. Martindale v. Sandvik, Inc., 173 N.J. 76, 83, 92 (2002). Arbitration agreements are to be read liberally and in favor of arbitration. Garfinkel v. Morristown Obstetrics & Gynocology Assocs., P.A., §§168 N.J. 124,132 (2006)

(quoting Marchak v. Claridge Commons, Inc., 134 N.J. 275, 282 (1993)). Both the Federal Arbitration Act, 9 U.S.C. § 1-16 ("FAA") and New Jersey Arbitration Act, (hereinafter "NJAA") N.J.S.A. 2A:23B-6 (a), are applicable in the present cases.

Under the FAA, arbitration agreements are "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. "The 'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms'" (federal policy requires rigorous enforcement of arbitration agreements). AT & T Mobility, LLC v. Concepcion, 563 U.S. 333, 334 (2011). However, the FAA "permits states to regulate . . . arbitration agreements under general contract principles." Atalese v. U.S. Legal Servs. Grp, L.P., 219 N.J. 430, 441 (2014); see also Leodori v. CIGNA Corp., 175 N.J. 293, 302 (2003) ("[A] state is permitted to regulate agreements, including those that relate to arbitration, by applying its contract-law principles that are relevant in a given case.").

Section 2 of the FAA creates a heavy presumption in favor of arbitrability that requires courts to resolve all doubt as to the scope of arbitrable issues in favor of arbitration. Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983) ("questions of arbitrability must be addressed with a healthy

regard for the federal policy favoring arbitration," and "any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration . . ."); Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ., 489 U.S. 468, 475-76 (1989) ("settled" rule that questions of arbitrability in contracts subject to the FAA "must be resolved with a healthy regard for the federal policy favoring arbitration"); Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985) (while the parties' intentions control interpretation of a contract subject to the FAA, "those intentions are generously construed as to issues of arbitrability").

Both "[t]he Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1–16, and the nearly identical New Jersey Arbitration Act, N.J.S.A. 2A:23B–1 to –32, enunciate federal and state policies favoring arbitration." Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 440 (2014); see also Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 133 (2020); Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 556 (2015).

Arbitration is fundamentally a matter of contract. NAACP of Camden Cty. E. v. Foulkes Mgmt. Corp., 421 N.J. Super.404, 424 (App. Div. 2011). The New Jersey Supreme Court recognized in Atalese, its seminal opinion on arbitration agreements, that "[t]he FAA requires courts to 'place arbitration

agreements on an equal footing with other contracts and enforce them according to their terms.'" Atalese, 218 N.J. at 441 (quoting Concepcion, 563 U.S. at 339).

The Supreme Court of New Jersey has interpreted the scope of arbitration clauses broadly to vindicate "the strong public policy favoring the settlement of dispute through arbitration." Hojnowski v. Vans Skate Park, 187 N.J. 323, 343 (2006). Accordingly, the New Jersey Supreme Court emphasized that it imposes "no greater burden on an arbitration agreement than on any other agreement waiving constitutional or statutory rights." Id. at 447.

Pursuant to N.J.S.A. 2A:23B-7(a),

> On filing a summary action with the court by a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement: (1) if the refusing party does not appear or does not oppose the summary action, the court shall order the parties to arbitrate; and (2) if the refusing party opposes the summary action, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

If the court finds that an agreement to arbitrate is enforceable, it shall order the parties to arbitrate and stay any judicial proceeding that involves said claim. N.J.S.A. 2A:23B-7(g); see also 9 U.S.C. § 3 (stating a court action should be stayed if that action involves "any issue referable to arbitration").

In enforcing the Agreement in this case, the Trial Court highlighted that the Agreement is clear. Additionally, Plaintiff voluntarily entered into the Agreement and was not forced or compelled to execute the Agreement stating:

***

> Nothing has been presented before the Court demonstrating that the Plaintiff was forced or compelled to sign the agreement. Plaintiff could have freely rejected or refused to sign the agreement and left the Defendant's premises. There is no—Plaintiff doesn't cite any procedural irregularities or substantially unconscionable provisions within the body of the agreement itself. And this Court finds that the agreement was not unconscionable. And Plaintiff agreed to be bound by the terms of the agreement. And the agreement, again, is clear as to the provisions that have been presented here on the record today, as well as has been prevented (phonetic) in the papers supporting the two respective motions that are before the Court. As a result, I am going to grant the motion and cross-motion to stay filed by the Defendants.

***

T.28 L.10-T.29 L. 1.

As such, the Appellate Division should affirm the Trial Court's May 2, 2024 Orders staying the Superior Court action and compelling arbitration.

POINT III.

UATP DID NOT CONDUCT DISCOVERY IN THE LAW DIVISION AND DID NOT WAIVE ARBITRATION

Plaintiffs argue that the "Respondents" waived their contractual right to arbitration by conducting discovery in the Law Division prior to filing their motion. Pb10. Plaintiffs' contention is incorrect. UATP was not named in

Plaintiffs' January 20, 2023 Complaint. Pa0005-Pa0018. As such, it did not participate in any discovery since it was not a party to the case.

It was not until December 7, 2023, that the Court entered an Order granting Plaintiffs' Motion For Leave To File a First Amended Complaint to add, in relevant part, UATP as a Defendant. Pa 0066-Pa67.

On March 22, 2024, Urban Air filed a Notice of Motion To Stay and Compel Arbitration. Pa0068. On March 25, 2024, Plaintiffs executed a Stipulation Extending UATP's time to file a responsive pleading to April 13, 2024. Pa0244. On April 4, 2024, UATP immediately filed its Cross Motion to Stay and Compel Arbitration. Pa0242.

Plaintiffs in their brief make general references to "Respondents" and generally refer to "Urban Air." Plaintiffs' references are misleading and are designed to distract this Court from the fact that there are no grounds to argue waiver as to UATP, because UATP immediately sought to enforce the arbitration agreement.

The law is clear that absent a "substantial" delay, waiver does not apply if arbitration is sought immediately after an action is commenced. See Gavlik Constr. Co. v. H.F. Campbell Co., 526 F.2d 777 (3d Cir.1975). In Gavlik, the Court found no waiver applied because the defendant had moved for a stay pending arbitration immediately after removing the action to federal court.

Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 925 (3d Cir. 1992) (discussing Gavlik). In this matter, there was no delay which would implicate waiver of arbitration by UATP Management since UATP immediately filed a Motion to Compel Arbitration. Additionally, UATP did not participate in any discovery prior to filing its Motion to Compel Arbitration. As such, Plaintiffs' claims of waiver have no application to UATP.

While UATP categorically maintains that there was no waiver of arbitration by any party under the facts and circumstances of this case, the law is clear that arbitration agreements must be enforced in multi-party actions, even when some claims are not subject to arbitration. The United States Supreme Court has held that the Federal Arbitration Act, 9 U.S.C. § 1-16 ("FAA") "*requires* piecemeal resolution when necessary to give effect to an arbitration agreement." Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20 (1983) (emphasis in original). Thus, courts must "compel arbitration of pendent arbitrable claims when one of the parties files a motion to compel, even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 217 (1985); KPMG LLP v. Cocchi, 565 U.S. 18, 22 (2011). Moreover, this rule applies to state as well as federal courts. KPMG, 565 U.S. at 22. As the United States Supreme Court explained in Moses,

> Under the Arbitration Act, an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement. If the dispute between Mercury and the Hospital is arbitrable under the Act, then the Hospital's two disputes will be resolved separately—one in arbitration, and the other (if at all) in state-court litigation.
>
> 460 U.S. at 20.

New Jersey Courts recognize the foregoing principles of federal law. New Jersey Courts have consistently required arbitration when one set of claims is governed by an arbitration agreement but another set of claims is not. Waskevich v. Herold Law, P.A., 431 N.J. Super. 293, 300 (App. Div. 2013); Epix Holdings Corp. v. Marsh & McLennan, Inc., 410 N.J. Super. 453, 479-80 (App. Div. 2009), overruled on other grounds; Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 193 (2013); Angrisani v. Financial Technology. Ventures, L.P., 402 N.J. Super. 138, 145-46 (App. Div. 2008). Therefore, the Appellate Division should affirm the Trial Court's May 2, 2024 Order granting UATP's Motions to Stay the litigation and Compel Arbitration. Pa0003-Pa0004.

POINT IV.

THE TRIAL COURT CORRECTLY ENFORCED THE ARBITRATION CLAUSE AND NO HEARING WAS REQUIRED

Under Point III, Plaintiffs argue that the Trial Court erred when it failed to conduct a factual hearing prior to enforcing the parties' arbitration agreement. However, Plaintiffs are misguided. The question of whether an arbitration

clause is enforceable is not factual in nature, but is instead a legal question. See Hirsh v. Amper Fin. Servs. LLC, 215 N.J. 174, 186 (2013). Additionally, "a state cannot subject an arbitration agreement to more burdensome requirements than those governing the formation of other contracts." Leodori v. CIGNA Corp., 175 N.J. 293, 302, certif. denied, 540 U.S. 938 (2003).

The strong presumption in favor of arbitration limits a court's analysis on a motion to compel arbitration to two questions: (1) whether the parties agreed to arbitrate (i.e., whether they assented to the arbitration contract); and (2) if so, whether the agreement encompasses the asserted claims (i.e., whether the claims asserted are within the scope of the arbitration contract). Chiron Corp. v. Ortho Diagnostics Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000); Bruni v. Didion, 160 Cal. App. 4th 1272, 1283 (2008). In short, the two considerations are mutual assent and scope, and once the court finds that both are satisfied (as they are here), it must compel arbitration. Chiron at 1130 (the FAA "'leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.'") (quoting Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 218 (1985) (emphasis in original)). Accordingly, the FAA compels this Honorable Court to affirm the Trial Court's Orders compelling arbitration.

Likewise, the New Jersey Arbitration Act (hereinafter "NJAA"), codified at N.J.S.A. 2A:23B-1 to -32, provides that "[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract." N.J.S.A. 2A:23B-6(a).

Furthermore, no hearing was required because under New Jersey law, courts have repeatedly held, "the argument that either plaintiff did not understand the import of the arbitration agreement and did not have it explained to her by the [defendant] is simply inadequate to avoid enforcement of these clear and conspicuous arbitration agreements that each signed." Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 212 (2019), reconsideration denied, 238 N.J. 508 (2019).

Similarly, in Skuse v. Pfizer, Inc., 244 N.J. 30, 54 (2020), the New Jersey Supreme Court held that:

> "As a general rule, 'one who does not choose to read a contract before signing it cannot later relieve himself of its burdens.' The onus [is] on plaintiff to obtain a copy of the contract in a timely manner to ascertain what rights it waived by beginning the arbitration process."
>
> Skuse, 244 N.J, at 54, quoting Riverside Chiropractic Grp. V. Mercury Ins. Co., 404 N.J. Super. 228, 238 (App. Div. 2008) (quoting another source);

Here, the evidence establishes that Plaintiff agreed to the Agreement by Plaintiff affixing his signature to the document and affirmatively checking the boxes included in the Agreement. Pa0087, Pa0090, and Pa0092. Plaintiffs' reliance on Kleine v. Emeritus at Emerson, 445 N.J. 545 (App. Div 2016) is misguided as the facts in Kleine are unlike the facts in the instant action. In Kleine, plaintiff was told by the admissions person that he needed to sign the agreement "right away." Kleine at 549.

Conversely, in the instant action, the Trial Court recognized that Plaintiff had sufficient opportunity to read the Agreement and was not compelled to execute the Agreement. Specifically, Judge Geiger stated in his ruling:

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> Well, let –let me stop you right there. You said he had a minute or two to read it and sign it because the line behind him was getting longer. Well, was he forced to sign it? He could have stepped away out of the line and reviewed it, signed it, or had questions about it then. I—don't understand what –the issue you brought up about, he didn't have time to review it. I—I don't understand how that—how that plays into this. Certainly he didn't have to sign it. He could have stepped out of line, reviewed it, and, it he wanted to proceed, sign it, or not.

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T.11 L. 22-T. 12 L. 9.

Clearly, Plaintiff voluntarily entered the Park, signed the Agreement, and received the benefit of the bargain for which he signed the Agreement. Plaintiff

has failed to provide any reason to suggest that he did not intend to be bound and the Agreement must be enforced by its terms. Therefore, the Appellate Division should affirm the Trial Court's May 2, 2024 Order granting UATP's Motion to Stay the litigation and Compel Arbitration. Pa0003-Pa0004.

POINT V.

THE ARBITRATION AGREEMENT IS CLEAR AND UNAMBIGUOUS AND PROVIDED ADEQUATE NOTICE OF THE WAIVER OF A JURY TRIAL

Contractual provisions must be "sufficiently clear to place a consumer on notice that he or she is waiving a constitutional or statutory right." Atalese, 219 N.J. at 443. As applicable to arbitration provisions, the Atalese Court emphasized that "[t]he point is to assure that the parties know that in electing arbitration as the exclusive remedy, they are waiving their time-honored right to sue." Id at 444, quoting Garfinkle, 168 N.J. at 132.

With regard to agreements to arbitrate, the Atalese Court held that an enforceable arbitration provision "at least in some general and sufficiently broad way, must explain that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute." Atalese, 219 N.J. at 447. It further held that "[n]o particular form or words is necessary to accomplish a clear and unambiguous waiver of rights." Id. at 444. The language, to pass muster under

the Plain Language Act codified as N.J.S.A. 56:12 -2, must generally be "written in a simple, clear, understandable and easily readable way." Ibid.

Atalese remains the seminal opinion as to the enforceability of arbitration provisions, dictating exactly what is required for an agreement to arbitrate to be enforceable. Nothing more than that which is referenced in Atalese is required for an enforceable agreement to arbitrate to exist. The arbitration Agreement subject to this appeal complies with Atalese and must be enforced.

The Arbitration Agreement states the following:

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> 7. Dispute Resolution/Waiver of Jury Trial. If a dispute arises under this Agreement or from Participant's use of the Premises or participation in the Activities, the Participant shall engage in good faith efforts to mediate a settlement prior to filing a demand for arbitration. Should the dispute not be resolved by mediation, Urban Air and the Participant agree that all disputes, controversies, or claims arising out of the Participant's use of the Premises or participation in the Activities shall be submitted to binding arbitration before and in accordance with the Commercial Rules of the American Arbitration Association then in effect. It is acknowledged, understood, and agreed that any such arbitration will be final an binding, and that by agreeing to arbitration, the parties are waiving their respective rights to seek remedies in court, including the right to a jury trial. The parties waive, to the fullest extent permitted by law, any right they may have to a trial by jury in any legal proceedings directly or indirectly arising out of or relating to this Agreement, whether based in contract, tort, statute (including any federal or state statute, law, ordinance, or regulation), or any other legal theory. **It is expressly acknowledged, understood, and agreed that; arbitration is final and binding; the parties are waiving their right to seek legal**

> **remedies in court including the right to a trial by jury; pre-arbitration discovery generally is more limited than and different from that available in court proceedings; the arbitrator's award is not required to include factual findings or legal reasoning; and any party's right to appeal or vacate, or seek modification of the arbitration award is strictly limited by law.** It is understood, acknowledged and agreed that in any such arbitration, each party will be solely responsible for payment of his/her/its own counsel fees, with the costs of arbitration borne equally by the parties. Any such arbitration will be conducted in the State of New Jersey and the law of the State of New Jersey will apply.
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> ***
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> Pa0087-Pa0089.

The foregoing language appears in boldface, capital letters and was included in an arbitration clause that Plaintiff accepted by signing the Agreement. At the onset, paragraph 7, advises the consumer that it is a "Waiver Of Jury Trial."

Further, as mandated by the New Jersey Supreme Court in Atalese, the arbitration agreement presents a clear and unambiguous waiver of rights. It clearly apprises the consumer, in this case the Plaintiffs, in bold lettering that by accepting the terms of the arbitration agreement, they were "waiving" their right "to seek legal remedies in court, including the right to a jury trial."

By its terms, Plaintiff's agreement to arbitrate applies broadly to any dispute arising under this Agreement or from Participant's use of the Park or participation in Park activities. As all of the claims asserted in the Complaint

involve either Plaintiff's use of the Park or personal injury, these claims fall squarely within the scope of the arbitration clause and must be resolved in arbitration.

The arbitration clause explicitly informed Plaintiff that by agreeing to arbitration, he was waiving the right to a judicial adjudication of their disputes. This clause appropriately informs Plaintiff of the consequences of the agreement to arbitrate. The arbitration agreement includes the necessary terms and provisions such that it must be enforced pursuant to the above-cited case law and public policy favoring arbitration.

The Trial Court rejected the Plaintiffs' claims that the Agreement is ambiguous stating:

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> The Court finds that the Plaintiff's contention that the language within the agreement is ambiguous is without merit and is unsupported by the language in the agreement itself. The fact that there—there are not provisions demonstrating the differences between an arbitration and how an arbitration functions, and how a trial or trial by jury functions, is not sufficient—is not sufficient. The Court finds that the agreement is actually a comprehensive agreement. And is enforceable. And is not void as a matter of public policy.

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T.27 L.24-T.28 L.9.

Furthermore, as a matter of substantive federal law, which applies in State Courts, arbitration clauses are severable from the remainder of a contract. See Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445-46 (2006); see also Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 195 (2019) (holding that "Supreme Court holdings treat an arbitration agreement as severable and enforceable, notwithstanding a plaintiff's general claims about the invalidity of the contract as a whole."). This means that unless a plaintiff's challenge to an agreement is specifically directed towards the arbitration clause, any dispute regarding the agreement must be presented to the arbitrator. See e.g., Buckeye, 546 U.S. at 445-46. A challenge to the enforceability of the agreement as a whole cannot be a basis to avoid arbitration. See Goffe, 238 N.J. at 213.

Based on the foregoing, and as established, the Trial Court correctly stayed the Superior Court litigation and compelled arbitration. Consequently, the Appellate Division should affirm the Trial Court's May 2, 2024 Orders staying the Superior Court action and compelling arbitration.

POINT VI.

THE TRIAL COURT CORRECTLY FOUND THAT PLAINTIFF, JULIEN COPPI WAS A "PARTICIPANT" AS DEFINED IN THE AGREEMENT

Plaintiffs seek to avoid the Agreement by arguing that Julien Coppi was not a participant, as defined in the Agreement. Plaintiffs argue that Julien

Coppi's signature on the Agreement only applies to any potential injuries sustained by his son and does not apply to him. The Trial Court rejected this argument finding that the Agreement's language was clear that Julien Coppi is a participant under the terms of the Agreement. T.27 L. 24-T.28 L.2.

Plaintiffs allege in their Amended Complaint that Julien Coppi was injured, while using the trampoline equipment at the Park. Pa0039,¶ 4. As such, he was admittedly participating in the Park activities at the time of the incident.

Moreover, the Agreement's language is clear and unambiguous that it includes Julien Coppi. The Agreement provides in relevant part as follows:

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> This Assumption of Risk, Waiver of Liability, Arbitration and Indemnification Agreement ("Agreement") is dated as of the Effective Date which is the date appearing on the signature page, between Family Adventures North Jersey LLC b/b/a Urban Air Trampoline & Adventure Park South Hackensack ("Urban Air") and the undersigned in his/her own capacity ("Adult Participant") and if any minor (s) is/are named in the signature block below (collectively "Child Participant", whether one or more) on behalf of, and as the parent or legal guardian for such Child Participant(s) (all parties collectively, "Participant)…
>
> Pa0087.

Indeed, throughout the Agreement, the language is consistent that Julien Coppi, the signatory to the Agreement, is bound by the Agreement. The Agreement provides, in relevant portion,

> 4. Assumptions of Risks. By signing this Agreement, entering the

Premises and/or participating in the Activities, Adult Participant, on behalf of himself, and on behalf of the child Participant(s), …

5. Release of Claims. **TO THE FULLEST EXTENT PERMITTED BY LAW, ADULT PARTICIPANT, ON BEHALF OF HIMSELF/HERSELF AND ON BEHALF OF ANY CHILD PARTICIPANT AND ON BEHALF OF ANY SPOUSE, HEIRS, EXECUTORS, AND REPRESENTATIVES OF ANY PARTICIPANT…**

6. Indemnity. **ADULT PARTICIPANT, ON HIS/HER BEHALF, AND ON BEHALF OF ANY CHILD PARTICIPANT(S), AND ON BEHALF OF ANY SPOUSE, HEIRS, EXECUTORS, AND REPRESENTATIVES…**

7. Dispute Resolution/Waiver of Jury Trial. If a dispute arises under this Agreement or from Participant's use of the Premises or participation in the Activities…

8. Acknowledgments by Participant**.** Adult Participant acknowledges on behalf of himself/herself and on behalf of any Child Participant(s) that he/she/they would not be granted access to the Premises or the ability to participate in the Activities but for his/her agreement to the terms and conditions of this Agreement and these acknowledgments.

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Pa0087-Pa0089.

The Trial Court examined the above language prior to granting the Defendants' Motions. T.20 L.23-T. 24 L.10. After reviewing same the Court concluded that "Plaintiff's contention that the language within the agreement is ambiguous is without merit and is unsupported by the language in the agreement itself. T27 L. 24-T. 28 L. 2.

Based on the foregoing, and as established, the Trial Court correctly stayed the Superior Court litigation and compelled arbitration. Consequently,

the Appellate Division should affirm the Trial Court's May 2, 2024 Orders staying the Superior Court action and compelling arbitration.

CONCLUSION

For the foregoing reasons, the Appellate Division should affirm that Trial Court's May 2, 2024 Order staying the litigation and compelling arbitration.

Respectfully submitted,

WOOD SMITH HENNING & BERMAN, LLP
Attorneys for Defendants UATP Management

/s/ *Deborah Davison*
_____
Deborah Davison, Esq.

Dated: January 13, 2025