Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1610

SAMUEL T. WHATLEY, II,

Plaintiff - Appellant,

v.

T-MOBILE USA, INC.,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Richard Mark Gergel, District Judge. (2:23-cv-01339-RMG)

Submitted: December 19, 2024 Decided: December 23, 2024

Before KING and BERNER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Samuel T. Whatley, II, Appellant Pro Se. Robert W. Humphrey, II, Charleston, South Carolina, Hunter Ray Pope, WILLOUGHBY HUMPHREY & D'ANTONI P.A., Columbia, South Carolina; Mitchell Myron Willoughby, WILLOUGHBY & HOEFER, PA, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Samuel T. Whatley, II, appeals the district court's order accepting the recommendation of the magistrate judge and granting T-Mobile USA, Inc.'s motion to compel arbitration in Whatley's civil action. We have reviewed the record and find no reversible error in the court's determination that the arbitration agreement was valid and covered the relevant dispute. Accordingly, we affirm the district court's order. *Whatley v. T-Mobile USA, Inc.*, No. 2:23-cv-01339-RMG (D.S.C. May 8, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: December 23, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1610
(2:23-cv-01339-RMG)

SAMUEL T. WHATLEY, II

Plaintiff - Appellant

v.

T-MOBILE USA, INC.

Defendant - Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

Appendix B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Samuel T. Whatley, II, Plaintiff, v. T-Mobile USA, Inc., Defendant.	Case No. 2:23-cv-01339-RMG-MGB **ORDER AND OPINION**

This matter is before the Court on the Report and Recommendation (R&R) of the Magistrate Judge, recommending that the Court grant Defendant's motion to compel arbitration. (*See* Dkt. No. 27). Plaintiff objected to the R&R. (Dkt. No. 31). Defendant replied to Plaintiff's objection. (Dkt. No. 36). For the reasons set forth below, the Court adopts the Report and Recommendation as the order of the Court and grants Defendant's motion to compel arbitration (Dkt. No. 21).

I. Background

This suit arises from Plaintiff's claim that a T-Mobile employee assisted an unidentified individual in unlawfully transferring his phone number to a new iPhone, ultimately resulting in his bank account being compromised and drained via Zelle. (Dkt. No. 1). T-Mobile filed a motion to compel arbitration and stay this action on March 27, 2024, citing the Terms & Conditions of its contract with Plaintiff requiring that disputes be handled through arbitration unless the customer affirmatively opts out of the agreement to arbitrate. (Dkt. No. 21 at 4). Plaintiff responded in opposition, claiming that the contract's arbitration provision is not binding because his signatures were "un-notarized and or un-dated" and "forged." (Dkt. No. 24, ¶ 1). Plaintiff also contends that

submitting this dispute to arbitration would violate "plaintiff's constitutionally protected rights to due process" due to the absence of "explicit and clear disclosure." (Dkt. No. 31, ¶ 1).

Defendant believes that Plaintiff "is bound by his repeated agreements to arbitrate this dispute" after "assent[ing] to the arbitration provision no fewer than nine times" over numerous years as a T-Mobile customer. (Dkt. No. 21 at 2). Defendant notes that "Plaintiff does not dispute that he agreed to the T&Cs at least seven times other than on April 5, 2022" and "disregards that the arbitration provision is unambiguously displayed in bold font in the T&Cs." (Dkt. No. 36 at 3).

After reviewing Defendant's motion, Plaintiff's response, and the applicable law, the Magistrate Judge recommended granting Defendant's Motion to Compel Arbitration. (Dkt. No. 27). Upon consideration of Plaintiff's objections to the R&R and Defendant's reply, the Court adopts the R&R in its entirety.

II. Legal Standard

A. Report and Recommendation

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the Report for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but

instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'") (quoting Fed. R. Civ. P. 72 advisory committee's note).

"'An objection is specific if it 'enables the district judge to focus attention on those issues—factual and legal—that are the heart of the parties' dispute.'" *Dunlap v. TM Trucking of the Carolinas, LLC*, No. 0:15-cv-04009, 2017 WL 6345402, at *5 n.6 (D.S.C. Dec. 12, 2017) (citation omitted). A specific objection "requires more than a reassertion of arguments from the [pleading] or a mere citation to legal authorities." *Sims v. Lewis*, No. 6:17-cv-3344, 2019 WL 1365298, at *2 (D.S.C. Mar. 26, 2019). It must "direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Thus, "[i]n the absence of specific objections ... this court is not required to give any explanation for adopting the recommendation." *Field v. McMaster*, 663 F. Supp. 2d 449, 451–52 (4th Cir. 2009).

B. Motion to Compel Arbitration under the FAA

A litigant may compel arbitration under the FAA if it can demonstrate "(1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of the defendant to arbitrate the dispute." *Whiteside v. Teltech Corp.*, 940 F.2d 99, 102 (4th Cir. 1991). Once a litigant moves to compel arbitration under the FAA, 9 U.S.C. §§ 1 *et seq.*, the district court determines whether a matter should be resolved through arbitration depending on (1) whether a valid arbitration agreement exist and (2) whether the dispute falls within the substantive scope of the arbitration agreement. *AT&T Tech. Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 651 (1986). The Supreme Court has consistently encouraged a "healthy regard for the federal policy favoring arbitration." *Levin v. Alms and Associates, Inc.*, 634 F.3d 260, 266 (4th Cir. 2011).

"Even though arbitration has a favored place, there still must be an underlying agreement between the parties to arbitrate." *Arrants v. Buck*, 130 F.3d 636, 640 (4th Cir. 1997). Section 4 of the FAA requires the district court to "decide whether the parties have formed an agreement to arbitrate." *Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, 944 F.3d 225, 234 n.9 (2019). The question of whether an arbitration agreement has been formed is one of contract law, and ordinary state law principles apply. *See First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). When a party "unequivocally denies 'that an arbitration agreement exists,'" that party bears the burden of coming forward with "sufficient facts" to support her position. *Berkeley Cnty. Sch. Dist.*, 944 F.3d at 234. The standard to decide whether the party has presented "sufficient facts" is "akin to the burden on summary judgment," and the court may consider matters outside the pleadings. *Chorley Enters., Inc. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 564 (4th Cir. 2015). The trial provision of Section 4 is invoked only where "the record reveals a genuine dispute of material fact 'regarding the existence of an agreement to arbitrate.'" *Berkley Cnty. Sch. Dist.*, 944 F.3d at 234. Where there is no genuine dispute of material fact an agreement exists, the court will compel arbitration.

III. Discussion

After careful review of the record, the R&R, and the Plaintiff's objections, the Court finds that the Magistrate Judge ably addressed the issues and correctly concluded that a binding contract to arbitrate the disputes in this case exists.

Plaintiff raises just one specific objection to the R&R – that the Magistrate Judge "wrongfully lists that plaintiff was at the T-Mobile store located in Traveler's Rest" when "Plaintiff was never at that store nor anywhere within a hundred-mile radius of Traveler's Rest,"

but rather was "in Charleston on the day of the crime." (Dkt. No. 31, ¶ 1).[1] Plaintiff's self-serving testimony does not create a genuine dispute of material fact as to whether or not an arbitration agreement exists in this case. Plaintiff does not address the effect of his repeated assent to the arbitration provision in prior contracts with T-Mobile, nor does he provide any corroborating evidence that he was in fact in Charleston on April 5, 2022 or that his signature to the April 5, 2022 contract was forged. A party's self-serving statement cannot by itself defeat a motion to compel arbitration. *See Snow v. Genesis Eldercare Rehabilitation Servs., LLC*, 2023 WL 371085, at *3 (D.S.C. Jan. 24, 2023); *see also CTB, Inc. v. Hog Slat, Inc.*, 954 F.3d 647, 658 (4th Cir. 2020) ("A party's self-serving opinion ... cannot, absent objective corroboration, defeat summary judgment."). As a result, Plaintiff has not set forth evidence creating a genuine dispute of fact as to the authenticity of Plaintiff's agreement to arbitrate any disputes arising out of his contract with Defendant.

Accordingly, the Court agrees with the Magistrate Judge that Defendant has produced record evidence that a valid agreement to arbitrate exists between the parties, and that the agreement covers the matter in dispute. The Court agrees that Plaintiff has failed to produce material evidence challenging that finding. Consequently, the Court finds on this record that a valid and enforceable arbitration agreement existed between Plaintiff and Defendant and under these circumstances the Court is required to stay or dismiss this case and compel arbitration. *See* 9 U.S.C. §§ 3, 4; *see also Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709–10 (4th Cir. 2001) ("[D]ismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable."). Whereas in this case, it appears that all of Plaintiff's claims would be

[1] The remainder of Plaintiff's "objections" are in substance an attempt to replead his arguments and complain about miscellaneous issues. Because they do not constitute specific objections to the R&R, the Court need not address them. *See Sims*, 2019 WL 1365298, at *2.

encompassed by the arbitration agreement, dismissal is an appropriate remedy. *See Choice Hotels Int'l, Inc.*, 252 F.3d at 709–10. Thus, the Court will dismiss Plaintiff's claims.

IV. Conclusion

In light of the foregoing, the Court **ADOPTS** the R & R as the Order of the Court. Plaintiff is **COMPELLED** to arbitrate his claims against Defendant. This action is **DISMISSED WITHOUT PREJUDICE.**

AND IT IS SO ORDERED.

s/Richard M. Gergel
Richard Mark Gergel
United States District Judge

May 8, 2024
Charleston, South Carolina

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Samuel T. Whatley, II, Plaintiff, vs. T-Mobile USA, Inc., Defendant.	Case No. 2:23-cv-01339-RMG-MGB **REPORT AND RECOMMENDATION**

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed this civil action on April 3, 2023. (Dkt. No. 1.) Currently before this Court is Defendant's Motion to Compel Arbitration (Dkt. No. 21). Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2)(e), D.S.C., all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration. For the reasons set forth below, the undersigned **RECOMMENDS** that the Court **GRANT** Defendant's motion (Dkt. No. 21) and compel arbitration.

RELEVANT BACKGROUND

Plaintiff alleges that an employee of Defendant "unlawfully transferred [his] phone number to another device" in April of 2022 while he was at a T-Mobile store located in Traveler's Rest, South Carolina. (Dkt. No. 1 at 3.) Plaintiff claims that "[i]t later resulted in compromising [his] entire bank account and funds were unlawfully transferred via Zelle." (*Id.*) According to Plaintiff, "[t]he authorities were contacted about it the next day but were unsuccessful in apprehending the suspect after providing the police with the [International Mobile Equipment Identity Number] of the swapped device and evidence of the unlawful transfers after the bank account was

compromised." (*Id.*) As a result, Plaintiff filed the instant lawsuit against Defendant, seeking "[c]ompensation for the unlawful transfer of electronic communications leading to the unauthorized access and compromise of [his] bank account," and alleging, *inter alia*, violations of the Electronic Communications Privacy Act of 1986 and the Electronic Funds Transfer Act of 1978. (*Id.* at 3–4.)

On March 27, 2024, Defendant filed a Motion to Compel Arbitration, arguing that "[o]ver a period of years, [Plaintiff] repeatedly consented to T-Mobile's Terms and Conditions . . . and explicitly agreed to arbitrate disputes with T-Mobile." (Dkt. No. 21 at 2.) Defendant explains that Plaintiff was given the option to opt out of arbitration but declined to do so. (*Id.*) As such, Defendant asserts that Plaintiff "is bound by his repeated agreements to arbitrate this dispute" and this Court should therefore compel arbitration. (*Id.*)

On April 1, 2024, Plaintiff responded to Defendant's motion. (Dkt. No. 24.) Defendant replied to Plaintiff's response on April 15, 2024. (Dkt. No. 26.) Accordingly, the motion before the Court has been fully briefed and is ripe for disposition.

DISCUSSION

I. Relevant Law

A. Motions to Compel Arbitration

In ruling on a motion to compel arbitration, the Court employs the same standard as when ruling on a motion for summary judgment. *Rowland v. Sandy Morris Fin. & Est. Plan. Servs., LLC*, 993 F.3d 253, 258 (4th Cir. 2021); *Cummings v. NC Fin. Sols. of S.C.*, No. 3:22-cv-2430-SAL-SVH, 2022 WL 18717553, at *1 (D.S.C. Nov. 30, 2022), *adopted*, 2023 WL 2025167 (D.S.C. Feb. 15, 2023). Thus, the Court should grant a motion to compel arbitration only if the

moving party "shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Federal Arbitration Act

The Federal Arbitration Act ("FAA") governs the arbitrability of this dispute. (*See generally* Dkt. Nos. 21, 21-1.) Section 4 of the FAA, provides, in part, that a "party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4. "[Q]uestions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration . . . [and] any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 25–26 (1983). "In the Fourth Circuit, a litigant can compel arbitration under the FAA if he can demonstrate '(1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of the defendant to arbitrate the dispute.'" *Adkins v. Lab. Ready, Inc.*, 303 F.3d 496, 500–01 (4th Cir. 2002) (citing *Whiteside v. Teltech Corp.*, 940 F.2d 99, 102 (4th Cir. 1991)). Plaintiff makes no arguments relating to elements one, three, and four.[1] (*See generally* Dkt. No. 24.) Rather, Plaintiff contends only that "[t]he un-notarized and or un-dated forged digital signatures not matching the ID signature of the mobile business account owner is not a legally binding or recognized document." (Dkt. No. 24 at 1.)[2]

[1] The undersigned therefore considers these elements undisputed.

[2] Plaintiff's response to Defendant's Motion to Compel Arbitration is structured as "Plaintiff's Countermotion for Summary Judgment and Response to the Defendant's Motion." (Dkt. No. 24.) As a result, the bulk of the assertions

The FAA states that a written arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Although federal law governs the arbitrability of disputes, state law principles apply when considering whether parties have an enforceable agreement to arbitrate. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005). "Thus, generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening [the FAA]." *Dr.'s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996).

II. Analysis

The record reflects that Plaintiff opened a line of service with Defendant in September of 2017, in the name of Art Heaven Academy (which is purportedly Plaintiff's business). (Dkt. No. 21-1 at 2.) Plaintiff added several lines to this account and, in doing so, entered into various agreements with Defendant. (*Id.* at 2–5.) Relevant here, Plaintiff entered into a Service Agreement when he opened his account in 2017. (*Id.* at 3.) The Service Agreement states "Your 'Agreement' with T-Mobile includes: (a) this Service Agreement; (b) T-Mobile's 'Terms and Conditions'; and (c) any terms specific to your Rate Plan or service. You can obtain copies of T-Mobile's Terms and Conditions and your Rate Plan specific terms at www.T-Mobile.com[.]" (*Id.* at 3, 7.) Right under this provision, in bold print, the Service Agreement says: "T-Mobile requires ARBITRATION OF DISPUTES UNLESS YOU OPT-OUT WITHIN 30 DAYS OF ACTIVATION." (*Id.*)

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contained therein pertain to Plaintiff's summary judgment motion. (*See generally* Dkt. No. 24.) Nevertheless, the undersigned has liberally construed Plaintiff's arguments and has considered any arguments that could be interpreted as responding to Defendant's Motion to Compel Arbitration when rendering the recommendations contained herein.

The Terms and Conditions in effect at the time of the 2017 Service Agreement provide: "[b]y accepting these T&Cs, you are agreeing to resolve any dispute with us through binding arbitration (unless you opt out) or small claims dispute procedures, and to waive your rights to a class action suit and jury trial," and include a link to the "complete arbitration agreement, including opt-out instructions." (*Id.* at 13.) The complete arbitration agreement reads:

> **Dispute Resolution and Arbitration. YOU AND WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW (AND EXCEPT AS TO PUERTO RICO CUSTOMERS), ANY AND ALL CLAIMS OR DISPUTES IN ANY WAY RELATED TO OR CONCERNING THE AGREEMENT, OUR PRIVACY POLICY, OUR SERVICES, DEVICES OR PRODUCTS, INCLUDING ANY BILLING DISPUTES, WILL BE RESOLVED BY BINDING ARBITRATION OR IN SMALL CLAIMS COURT.** This includes any claims against other parties relating to Services or Devices provided or billed to you (such as our suppliers, dealers, authorized retailers, or third party vendors) whenever you also assert claims against us in the same proceeding. You and we each also agree that the Agreement affects interstate commerce so that the Federal Arbitration Act and federal arbitration law, not state law, apply and govern the enforceability of this dispute resolution provision (despite the general choice of law provision set forth below). THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. THE ARBITRATOR MUST FOLLOW THIS AGREEMENT AND CAN AWARD THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING ATTORNEYS' FEES).
>
> Notwithstanding the above, YOU MAY CHOOSE TO PURSUE YOUR CLAIM IN COURT AND NOT BY ARBITRATION **IF YOU OPT OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE EARLIER OF THE DATE YOU PURCHASED A DEVICE FROM US OR THE DATE YOU ACTIVATED A NEW LINE OF SERVICE (the "Opt Out Deadline").** You must opt out by the Opt Out Deadline for each line of Service. You may opt out of these arbitration procedures by calling 1- 844-849-7497 or online at www.T-Mobiledisputeresolution.com **Any opt-out received after the Opt Out Deadline will not be valid and you must pursue your claim in arbitration or small claims court.**
>
> For all disputes (except for Puerto Rico customers), whether pursued in court or arbitration, you must first give us an opportunity to resolve your claim by sending a written description of your claim to the address provided in the "How Do We Send Notices to Each Other" Section below. You and we each agree to negotiate your claim in good faith. If you and we are unable to resolve the claim within 60

> days after we receive your claim description, you may pursue your claim in arbitration. You and we each agree that if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue, in small claims court, claims limited strictly to the collection of the past due amounts and any interest or cost of collection permitted by law or this Agreement.
>
> **If the arbitration provision applies or you choose arbitration to resolve your disputes, then either you or we may start arbitration proceedings.** You must send a letter requesting arbitration and describing your claim to our registered agent (see the "How Do We Send Notices to Each Other" section below) to begin arbitration. The arbitration of all disputes will be administered by the American Arbitration Association ("AAA") under its Consumer Arbitration Rules in effect at the time the arbitration is commenced. The AAA rules are available at www.adr.org or by calling 1-844-849-7497. The arbitration of all disputes will be conducted by a single arbitrator, who shall be selected using the following procedure: (a) the AAA will send the parties a list of five candidates; (b) if the parties cannot agree on an arbitrator from that list, each party shall return its list to the AAA within 10 days, striking up to two candidates, and ranking the remaining candidates in order of preference; (c) AAA shall appoint as arbitrator the candidate with the highest aggregate ranking; and (d) if for any reason the appointment cannot be made according to this procedure, the AAA may exercise its discretion in appointing the arbitrator. Upon filing of the arbitration demand, we will pay or reimburse all filing, administration and arbitrator fees. An arbitrator may award on an individual basis any relief that would be available in a court, including injunctive or declaratory relief and attorneys' fees. In addition, for claims under $75,000 as to which you provided notice and negotiated in good faith as required above before initiating arbitration, if the arbitrator finds that you are the prevailing party in the arbitration, you will be entitled to a recovery of reasonable attorneys' fees and costs. Except for claims determined to be frivolous, we agree not to seek an award of attorneys' fees in arbitration even if an award is otherwise available under applicable law. . . .

(*Id.* at 22–24.) Defendant has provided the Court with a signed, undated signature page evidencing Plaintiff's acceptance of the 2017 Service Agreement. (*Id.* at 7.)

Also relevant here, Plaintiff entered into two Equipment Installation Plans ("EIPs") with Defendant on April 5, 2022, the day on which the events giving rise to this civil action occurred. (*Id.* at 4.) One EIP covered Plaintiff's new device, the other covered his device accessories. (*Id.*) Both EIPs are attached to Defendant's motion, as are electronically signed and dated signature pages reflecting Plaintiff's assent to the agreements. (*Id.* at 92–106.) The "Dispute Resolution and

Arbitration" provision of the EIPs includes language identical to the arbitration provision contained in the Terms and Conditions in effect at the time Plaintiff entered into the 2017 Service Agreement.

As noted, Plaintiff does not challenge that a dispute exists, that the transaction at issue relates to interstate commerce, or that he has refused to arbitrate the dispute. (*See generally* Dkt. No. 24.) Plaintiff also does not contest the arbitration provisions set forth above or claim that they do not cover the parties' dispute. (*See generally id.*) Instead, Plaintiff claims that his signatures were "un-notarized," "un-dated," "forged," and do not "match[] the ID signature of the mobile business account owner." (*Id.* at 1.) For these reasons, Plaintiff claims that no "legally binding or recognized" arbitration agreement exists. (*Id.*)

The undersigned finds Plaintiff's claims unconvincing. First, as Defendant correctly notes, there is no requirement that a signature to a contract be notarized or dated. (Dkt. No. 25 at 1.) Rather, the law merely requires assent. *See Edens v. Laurel Hill, Inc.*, 247 S.E.2d 434, 436 (S.C. 1978) (explaining that under South Carolina law, a contract is formed when there is, *inter alia*, "a mutual manifestation of assent to [its] terms"). South Carolina law further provides that when a party signs a contract, "it is conclusively presumed that he thereby assents to the terms of such contract, and is bound by them." *Young v. W. Union Tel. Co.*, 43 S.E. 448, 451 (S.C. 1903) (emphasis added). In other words, "'a party who signed a contract' containing an arbitration clause has thereby 'indicated' an 'unambiguous, mutual intent to arbitrate,'" regardless of whether that signature is notarized or dated. *Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, No. 2:18-cv-00151-DCN, 2024 WL 1349226, at *24 (D.S.C. Mar. 30, 2024) (quoting *York v. Dodgeland of Columbia, Inc.*, 749 S.E.2d 139, 146 (S.C. 2013)). Thus, to the extent Plaintiff argues that no "legally binding" arbitration agreement exists because his signatures were not notarized or dated, this argument fails.

Plaintiff's claims that his signatures were "forged," and do not "match[] the ID signature of the mobile business account owner" are also unconvincing. (Dkt. No. 24 at 1.) Indeed, Plaintiff provides only bare assertions to support these claims, and the record is devoid of any evidence to substantiate them. (*See generally* Dkt. Nos. 21-1, 24, 24-2.)

By contrast, Defendant has provided various signature pages demonstrating Plaintiff's assent to the arbitration agreement on multiple occasions. (*See generally* Dkt. No. 21-1.) Defendant's evidence further shows that Plaintiff was repeatedly informed of the arbitration provisions included in Defendant's Terms and Conditions and EIPs, and that he agreed to those arbitration provisions each time he procured a new line of service or a new device. (*See generally id.*) Defendant's evidence is corroborated by the continuing business relationship between the parties, through which Plaintiff received and paid for telephone services provided by Defendant for approximately five (5) years after first agreeing to the arbitration provision in his initial contract, without ever objecting to the arbitration requirement. (*See generally id.*) What is more, the record contains no evidence indicating that Plaintiff elected to "opt-out" of any arbitration provision presented to him over the course of the parties' business relationship. (*See generally id.*)

Plaintiff's self-serving assertions, without more, cannot dispel the substantial record evidence showing that he agreed to arbitrate the claims at issue here. *See Palmer v. Johns Island Post Acute, LLC*, No. 2:22-cv-3432-RMG, 2023 WL 4117366, at *3 (D.S.C. June 22, 2023) (concluding the plaintiff's affidavit "did not create a genuine dispute of fact as to the authenticity of the signature on the arbitration agreement" where plaintiff did not "offer any corroborating evidence," or "support his allegations with any other specific evidence"); *Snow v. Genesis Eldercare Rehabilitation Servs., LLC*, No. 3:22-cv-1794-SAL, 2023 WL 371085, at *3 (D.S.C. Jan. 24, 2023) (determining that plaintiff's allegations of "fraud and untruthfulness" against

defendant did not create a genuine issue of material fact as to authenticity of plaintiff's signature to arbitration agreement where she failed to provide support for her allegations); *see also CTB, Inc. v. Hog Slat, Inc.*, 954 F.3d 647, 658 (4th Cir. 2020) (explaining that a party's self-serving opinion cannot establish a genuine issue of material fact absent objective corroboration); *Brown v. Fam. Dollar Stores of N.C., Inc.*, No. 1:21-cv-00977, 2022 WL 3576972, at *3 (M.D.N.C. Aug. 19, 2022) (granting motion to compel arbitration, finding plaintiff's assertion that she did not electronically sign the arbitration agreement insufficient). Based on the foregoing, the undersigned cannot conclude that the arbitration agreement at issue here "is not [] legally binding," as Plaintiff contends. The undersigned therefore **RECOMMENDS** that Defendant's motion (Dkt. No. 21) be **GRANTED**.

The undersigned further notes that all of Plaintiff's claims fall within the scope of the arbitration agreement.[3] As such, this case should be **DISMISSED WITHOUT PREJUDICE**, rather than **STAYED**. *See Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709–10 (4th Cir. 2001); *Beasenburg v. Ultragenyx Pharm., Inc.*, No. 2:22-cv-4022-BHH, 2023 WL 5993169, at *6 (D.S.C. Sept. 15, 2023) ("[H]aving found that the parties' agreement is valid and that all of Plaintiff's claims are subject to arbitration . . . , the Court finds [it] appropriate to dismiss this action without prejudice."); *Anderson v. S. Fin. of S.C. Inc.*, No. 3:21-cv-2264-MGL-PJG, 2021 WL 5403755, at *3 (D.S.C. Oct. 15, 2021) (noting that "other courts within this circuit . . . have found that dismissal is appropriate when all of the issues in the case are covered by the arbitration agreement," and collecting cases before recommending dismissal without prejudice rather than a stay), *adopted*, 2021 WL 5371476 (D.S.C. Nov. 18, 2021); *Merritt v. Kolter Grp., LLC*, No. 2:19-cv-1002-RMG, 2019 WL 2646838, at *2 (D.S.C. June 27, 2019) ("Here, the parties

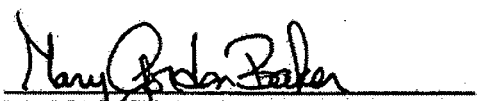
[3] The parties do not dispute this. (*See generally* Dkt. Nos. 21, 24, 26.)

agree that all claims are subject to arbitration and the Court finds in its discretion that dismissal, rather than staying the proceedings pending an arbitral determination, is the proper remedy.").[4]

CONCLUSION

Based on the foregoing, the undersigned **RECOMMENDS** that the Court **GRANT** Defendant's Motion to Compel Arbitration (Dkt. No. 21). The undersigned further **RECOMMENDS** that the parties be compelled to arbitrate, and that this case be **DISMISSED** in full.

IT IS SO RECOMMENDED.



MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

April 17, 2024
Charleston, South Carolina

[4] Although the parties have not briefed the issue of whether dismissal is appropriate in lieu of a stay, the instant recommendation of dismissal provides adequate notice to the parties, as they may address this procedural issue during the objection period if they so choose. *See Anderson v. S. Fin. of S.C. Inc.*, No. 3:21-cv-2264-MGL-PJG, 2021 WL 5403755, at *4 (D.S.C. Oct. 15, 2021) (referencing *Sparling v. Hoffman Const. Co.*, 864 F.2d 635, 637 (9th Cir. 1988) ("First, Active contends that dismissal was improper because Hoffman only requested a stay pending arbitration, not a dismissal. The fact that a dismissal was not requested, however, does not make it improper. A trial court may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a claim. The court must give notice of its intention to dismiss and give the plaintiff some opportunity to respond unless the plaintiffs cannot possibly win relief." (internal quotations, citations, and alterations omitted)); *Porter Hayden Co. v. Century Indem. Co.*, 939 F. Supp. 424, 429 (D. Md. 1996) ("For reasons not expressly stated in the record, defendants have sought a stay but not outright dismissal of this case. Nevertheless, federal district courts are vested with the inherent power to control and protect the administration of court proceedings."), *aff'd*, 136 F.3d 380 (4th Cir. 1998)), *adopted*, 2021 WL 5371476 (D.S.C. Nov. 18, 2021).

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).