ELIZABETH MURRAY, Plaintiff/Appellant, v. RUTGERS CANCER INSTITUTE OF NEW JERSEY; ACTALENT SCIENTIFIC, LLC; GINETTE WATKINS-KELLER; KASSIDY GREGORY; ABC CORPORATIONS 1-5 (fictitious names describing presently unknown business entities); and JOHN DOES 1-5 (fictitious names describing presently unidentified individuals); Defendants/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION On Appeal From: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY DOCKET NO.: MID-L-6504-23 Civil Action

BRIEF OF PLAINTIFF/APPELLANT, ELIZABETH MURRAY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Constitution Provisions

Other Authorities

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

Page(s)

I. PRELIMINARY STATEMENT

Plaintiff/Appellant Elizabeth Murray ("Appellant") appeals the dismissal of her claims of discrimination and retaliation against her former employers, Defendants/Respondents Rutgers Cancer Institute of New Jersey ("Respondent Rutgers"), Actalent Scientific, LLC ("Respondent Actalent"), Ginette Watkins-Keller ("Respondent Watkins-Keller"), and Kassidy Gregory ("Respondent Gregory") (collectively "Respondents"), all in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq. (the "NJLAD"). As discussed further below, the Honorable Joseph L. Rea, J.S.C.'s granting of the Respondents' respective Motions to Dismiss Plaintiff's Complaint and to Compel Arbitration at the trial court level cannot withstand scrutiny. This is because the trial court abdicated its duty to consider all arguments advanced by the parties in their respective briefing.

Indeed, after the parties submitted extensive briefs in support of, and in opposition to, the requested relief sought by the Respondents, the trial court simply granted Respondent Actalent's aforementioned motion on May 24, 2024 without providing any corresponding statement of reasons and/or explanation other than that the Arbitration Agreement at issue was "clearly enforceable, and which was signed by the plaintiff on 1/4/22." Then, on June 20, 2024, Respondents Rutgers and Watkins-Keller's motion, too, was granted without any corresponding statement of

reasons or explanation. This suggests that the arguments advanced by Appellant at the trial court level were insufficiently considered or, worse, not considered at all by the trial court.

First, there is a genuine dispute of material fact as to whether Appellant knowingly and voluntarily "agreed" to arbitrate any and all future claims arising out of her employment with Respondents. During Appellant's onboarding, Appellant received an instruction to log into her employee portal account and click through a series of company "policies" which were available for her review. Although she did not know it at the time, the Arbitration Agreement at issue was buried within the pages of these "policies," which Respondents instructed Appellant to click through before she could begin work. Appellant never "signed" the Arbitration Agreement and never did anything more than, allegedly, "acknowledge" same by simply opening up the link to the policy through the employee portal. It did not matter how long Appellant had the Arbitration Agreement opened for, whether she closed it and revisited it at a later date, or if she had any objections to the Arbitration Agreement. Instead, according to Respondents, simply opening the policy for a transient moment in time was sufficient for Appellant to have knowingly and voluntarily waived her constitutional right to a trial before a jury of her peers on her statutory employment discrimination claims. Although Appellant raised these arguments with the trial

court, it granted Respondents' motions without proper consideration, or consideration at all, of those advanced by Appellant.

Second, the Arbitration Agreement at issue is markedly vague and ambiguous such that it cannot be enforced as a matter of New Jersey Law. Indeed, the terms of the agreement relied upon by Respondents demonstrates that there is no clear and unmistakable waiver of Appellant's statutory rights under the NJLAD, as is required under Atalese v. U.S. Legal Services Group, L.P., 219 N.J. 430, 443 (2014) and its progeny. The language of the Arbitration Agreement fails to pass any muster under the framework set forth by Atalese. To make matters even more complicated to a layperson, the Arbitration Agreement at issue is between Appellant and Respondent Actalent; however, at all times throughout her employment with Respondents, Appellant worked onsite at Respondent Rutgers' location and reported directly to employees of Respondent Rutgers. Significantly, there is no Arbitration Agreement as between Appellant and Respondent Rutgers, nor is Respondent Rutgers mentioned anywhere in the Arbitration Agreement itself. In other words, there is no agreement between Appellant and Respondent Rutgers to arbitrate any disputes that may arise between them through Appellant's employment. This argument, too, was not sufficiently considered or, worse, not considered at all by the trial court in granting the drastic relief sought by Respondents in their respective motion applications which are the subject of the present appeal.

II. PROCEDURAL HISTORY[1]

On July 26, 2023, Appellant filed her Complaint and Jury Demand in the Superior Court of New Jersey, Monmouth County Vicinage, against her former employers, Respondents Rutgers Cancer Institute of New Jersey ("Respondent Rutgers"), Actalent Scientific, LLC ("Respondent Actalent"), Ginette Watkins-Keller ("Respondent Watkins-Keller"), and Kassidy Gregory ("Respondent Gregory") (collectively "Respondents"). (Pa000001).

On October 30, 2023, Respondents Rutgers and Watkins-Keller filed a motion to transfer venue from Monmouth County Vicinage to Middlesex County Vicinage. (Pa000049). On November 17, 2023, the Court granted said motion and the within action was transferred to New Jersey Superior Court, Middlesex County Vicinage. (Pa000051).

On December 11, 2023, Respondent Actalent filed a motion to dismiss Plaintiff's Complaint and to Compel Arbitration, pursuant to R. 4:6-2. (Pa000053). On December 15, 2023, Respondents Rutgers and Ginette-Watkins, too, filed a Motion to Dismiss Appellant's Complaint and to Compel Arbitration. (Pa000107). On February 6, 2024, Appellant filed timely Opposition to Respondents' motion applications. (Pa000115). On February 26, 2024, Respondent Actalent filed their Reply Brief in response to Appellant's opposition. (Pa000186). On the same date,

[1] Pa = Appellant Elizabeth Murray's Appendix before the Appellate Division

Respondents Rutgers and Watkins-Keller filed their Reply Brief, joining in the arguments advanced by Respondent Actalent in support of their motion. (Pa000197).

On May 24, 2024, and without conducting oral argument, the Court entered an Order granting Respondent Actalent's motion, stating, in pertinent part, "Plaintiff's Complaint and all claims against Actalent Scientific, LLC are hereby **DISMISSED** without prejudice and the parties are referred to private arbitration in accordance with the Mutual Arbitration Agreement, ***which is clearly enforceable, and which was signed by the plaintiff on 1/4/22.***" (Pa000204 (emphasis added)).

On June 20, 2024, the Court entered an Order granting Respondents Rutgers and Ginette-Watkins' motion, stating, in pertinent part, as follows:

> **ORDERED** that the Rutgers Defendants' motion to dismiss Plaintiff's Complaint and compel arbitration pursuant to the parties' Mutual Arbitration Agreement is hereby **GRANTED**; and it is further
>
> **ORDERED** that the Plaintiff's Complaint and all claims against the Rutgers Defendants are hereby **DISMISSED without prejudice**; and it is further
>
> **ORDERED** that the parties are referred to private arbitration in accordance with the Mutual Arbitration Agreement[.]

(Pa000205 (emphasis in original)).

On June 20, 2024, Appellant filed her Notice of Appeal and, as such, now seeks to reverse the Superior Court's Orders erroneously dismissing Appellant's

Complaint and compelling this matter to arbitration without consideration of her meritorious arguments advanced in Opposition to Respondents' motions.

On July 2, 2024, after Appellant had already filed her Notice of Appeal, the Court entered an Amended Order to the aforementioned May 24, 2024 Order. (Pa000207). The July 2, 2024 Amended Order was identical to the Court's May 24, 2024, Order except the Amended Order contained the following "statement of reasons":

> This is a LAD, employment case (that does not allege sexual harassment). The order entered by the court was for a **without** prejudice dismissal. During Dr. Murray's onboarding she signed a Mutual Arbitration Agreement (MAA). Same was dated January 4, 2022. The MAA is valid on its face. Plaintiff's complaint fails to seek any declaratory relief declaring the MAA void or otherwise unenforceable.

See id. (emphasis in original).

III. FACTUAL BACKGROUND

A. Appellant's Allegations in the Complaint.

In her Complaint, Appellant alleges that she was subjected to disability-based discrimination and retaliation during her employment with Respondents, in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq. (the "NJLAD"). (Pa000001). To wit, Appellant has been diagnosed with a rare progressive systemic connective disorder which is similar to Pseudoxanthoma elasticum ("PXE"). See id. Specifically, Appellant was subjected to disability

discrimination as a direct result of Respondents' failure to provide Appellant with the reasonable accommodations she required for her disability and refused to engage Appellant in the interactive process to provide her reasonable accommodations for said disabilities. See id. Finally, Respondents retaliated against her in violation of the NJLAD when they terminated her employment following her request for reasonable accommodations in connection with her disability. See id.

1. Appellant begins working with Respondents Rutgers and Actalent.

At all relevant times, Respondents Actalent and Rutgers are single and/or joint employers of Appellant within the meaning of the NJLAD and New Jersey state law. (Pa000001, ¶¶ 2-4). Upon information and belief, Respondents Actalent and Rutgers' operations are interrelated and unified, and they share common management, centralized control of labor relations, common ownership, common control, common business purposes, and interrelated business goals. See id. at ¶ 4. Further, Respondents Actalent and Rutgers jointly determine and manage the pay practices, rates of employee pay and method of payment, maintenance of employee records and personnel policies, and practices and decisions with respect to the employees. See id.

On or about January 18, 2022, Appellant began working for Respondents Actalent and Rutgers as a clinical research educator, working at Respondent Rutgers' New Brunswick location at 195 Little Albany Street, New Brunswick, New

Jersey 08901. See id. at ¶ 14. At all times throughout her employment, she performed her job duties in an exemplary fashion, loyally committed to Respondents Actalent and Rutgers and the patients which they served. See id. at ¶ 15. However, despite her demonstrated ability to maintain the highest levels of job performance, her career was quickly derailed after she requested reasonable accommodations for her disability and rather than engage Appellant in the interactive process, Respondents instead terminated Appellant's employment in retaliation for her request for same. See id. at ¶¶ 16-17.

2. Appellant is diagnosed with a rare medical disability which forces her to take a brief medical leave of absence and immediately faces discrimination and retaliation because of her disclosure of same and requests for reasonable accommodations in connection with same.

In or around April 2022, Appellant began experiencing a rare progressive systemic connective tissue disorder which is similar to Pseudoxanthoma elasticum ("PXE"). (Pa000001, ¶ 18). Appellant was diagnosed with a facial infection related to said tissue disorder which was exacerbated by daily mask wearing. See id. Appellant informed Respondents of her condition and requested a brief medical leave of absence in connection with her treatment for said condition.[2] See id.

[2] To this day, Plaintff's doctors have yet to be able to precisely diagnose her skin condition. (Pa000001, ¶ 18, fn. 2).

On April 29, 2022, Appellant's short-term disability ("STD") leave began; at that time, Appellant only intended to be out of work for a short period of time. See id. at ¶ 19. Within the first few days of the commencement of Appellant's STD leave, Respondents approved Appellant's prior request for a space heater in her cubicle, demonstrating Respondents' intentions of retaining Appellant as an employee after she returned from her STD leave. See id. at ¶ 20. On May 18, 2022, Department Administrator, Jackie Henderson ("Ms. Henderson"), dispatched a text message to Appellant confirming that Appellant's request for a space heater near her desk was approved on May 2, 2022. See id. at ¶ 21. On May 4, 2022, Ms. Henderson sent Appellant an email advising Appellant that said space heater arrived and was awaiting Appellant's return under her desk. See id.

On or about May 9, 2022, Respondents' insurance carrier, MetLife Insurance Company ("MetLife"), was provided with paperwork from Appellant's physician which confirmed (1) Appellant's medical disability; (2) that Appellant would be cleared to return to work on May 16, 2022; and (3) as a part of Appellant's return to work, she would require an accommodation in the form of "a private area to work where [Appellant] can work without a mask on" because mask wearing "should be limited as much as possible." See id. at ¶ 22.

On May 16, 2022, at 7:54 AM, Appellant dispatched a text message to Respondent Watkins-Keller, Appellant's immediate supervisor, advising that she

could return to work as early as that day. See id. at ¶ 23. Specifically, Appellant advised that she was planning to return to work on a full-time basis on May 18, 2022, but offered to work a half-day on May 16, 2022, so Appellant could begin to re-acclimate herself to work and catch up on updates that had occurred while Appellant was on her STD leave. See id. at ¶¶ 23-24. Respondent Watkins-Keller did not respond to Appellant's text message. See id. at ¶ 25. Instead, at approximately 8:45 AM the same day, Appellant received a text message from one of Respondents' recruiters, Respondent Gregory, requesting a call with Appellant. See id. at ¶ 26.

Approximately one (1) hour after Appellant sent the text offering to return to work for a half day on May 16, 2022, Respondents unceremoniously fired Appellant from her employment because of alleged "poor work performance." See id. at ¶ 27. Instead of engaging Appellant in the interactive process with respect to her requested accommodation, Respondents instead terminated Appellant without making any efforts to address Appellant's request in any way, shape, or form. See id. at ¶ 28. On the call, and tacitly acknowledging Respondents' discriminatory and retaliatory basis for terminating Appellant's employment, Respondent Gregory informed Appellant that she would work with Appellant to allegedly find her another position for Respondents which was commensurate with Appellant's experience and education. See id. at ¶ 29. On May 25, 2022, after more than one (1) week passed without hearing from Respondent Gregory about this promise, Appellant sent a

follow-up email to Respondent Gregory which, too, was simply ignored. See id. at ¶ 30.

Appellant was shocked by Respondents' sudden termination of her employment because she only ever received positive feedback for her performance and never once received a reprimand or discipline of any kind. See id. at ¶ 31. Similarly, Respondents never placed Appellant on a performance improvement plan prior to her termination, nor did they even discuss any work performance issues with Appellant prior to then. See id. Appellant's termination was even more shocking because Respondents had already (1) approved Appellant's request to use a space heater near her desk and (2) put the space heater in Appellant's office prior to her return to work from STD leave. See id. at ¶ 32. Respondents further failed to provide Appellant with any documentation related to her unlawful termination despite Appellant making multiple requests for same which, of course, entirely undermines the purported performance issues leading to Appellant's termination and shows that they were, in fact, false and pretextual. See id. at ¶ 33. Respondents invented said performance issues in a calculated effort to conceal their discriminatory and retaliatory animus against Appellant because of (1) her medical disability; (2) for taking a protected medical leave of absence in connection with said disability; (3) for requesting an accommodation upon her return to work in connection with said

disability; and (4) the possibility that Appellant may require further medical treatment and work accommodations in connection with same. See id. at ¶ 34.

Immediately upon Respondents' unlawful termination of Appellant's employment, Respondents locked her out of her work accounts, which restricted Appellant from accessing critical written communications she had with Respondents related to her leave. See id. at ¶ 35. Respondents' unlawful termination of her employment further prevented Appellant from accessing basic information about her employment with Respondents, as her account access was the only way she could find copies of her employment agreement, company policies, and the like. See id. at ¶ 36.

Additionally, Respondent Gregory failed to respond to Appellant's request to use accrued "Paid Time Off" ("PTO") to cover the first week of her STD leave, which was not covered by insurance. See id. at ¶ 37. As a result, Appellant suffered significant economic damages. See id. Further, Appellant has been unable to retrieve valuable personal belongings which she left in her office before her STD leave. See id. at ¶ 38. Although Respondents' employee policy manual provided that Appellant was to receive her personal belongings no later than her last day of employment, and Appellant reached out to Respondents requesting her belongings just one day after her termination, Respondents failed to return Appellant her personal belongings as of the date of filing the Complaint. See id. at ¶¶ 39-40. Finally, Appellant has

incurred out-of-pocket medical expenses associated with treatment which has, in turn, created ongoing medical issues and expenses for Appellant, meaning she will incur additional damages moving forward which are both economic and caused by emotional distress stemming from Respondents' unlawful discrimination and retaliation targeted towards Appellant. See id. at ¶¶ 41-43.

B. The Purported Arbitration Agreement.

In response to Appellant's well-plead Complaint, Respondent Actalent, and then Respondents Rutgers and Watkins-Keller, filed Motions to Dismiss Appellant's Complaint and to Compel Arbitration, arguing that Appellant executed an Arbitration Agreement (also referred to as the "Agreement") as part of her employment with Respondents. (Pa000053) (Pa000107). According to Respondents, the Agreement means Appellant waived her right to a trial by a jury of her peers and agreed to submit any claims related to her employment to binding arbitration against Respondents. See id.; (Pa000210). However, in reality, the facts demonstrate that Appellant did not knowingly and voluntarily waive her right to a jury trial. (Pa000213).

1. Appellant did not knowingly and voluntarily waive her right to a trial by jury on claims she may have against Respondents related to her employment.

Appellant has certified that she began working with Respondents in or around January 2022. (Pa000213). At that time, Appellant was offered employment by

Respondent Actalent and through Respondent Actalent, Appellant was assigned to work at her specific site, located at Respondent Rutgers' New Brunswick location. See id. In early-January 2022, Respondent Actalent's hiring manager contacted Appellant and provided her with a number of tasks to complete as part of the onboarding process. See id. Among other things, Respondents required Appellant to attend a pre-employment health screening and acknowledge a number of Respondent Actalent's policies and procedures through its online portal. See id.

On or about January 14, 2022, Appellant was sitting in her doctor's office awaiting her pre-employment screen when she received instructions from Respondent Actalent urging her to immediately login to the employee portal and click through a series of company policies. See id. Importantly, Appellant certified that she was specifically told that her employment would not begin unless she immediately logged onto the portal and clicked through these various screens. See id. As a direct result of the pressure from Respondent Actalent about timely acknowledging the policies, Appellant rushed through all of the screens on Respondent Actalent's portal from her cell phone in the waiting room for her doctor's office. See id. Among other things, Appellant recalls these documents related to various company policies, such as the company's paid time off policy, an employee handbook and appropriate workplace conduct. See id. Importantly, Appellant further certified that no one from Respondent Actalent explained to

Appellant that by clicking through the screens on the portal, Appellant was impacting her legal rights in any way. See id.

Even after clicking through the screens on the employee portal, Appellant was not provided with copies of the policies she reviewed while awaiting her pre-employment health screening. See id. Similarly, Appellant was never provided with any receipts indicating that she had acknowledged or accepted any employee policies. See id. Instead, Respondent Actalent provided web links to each of the forms; however, when Appellant tried to access those forms after allegedly acknowledging them, she could not access the portal to review the forms. See id. Therefore, after Appellant clicked through the screens of the portal on the first instance, she was unable to view them again. See id.

Appellant further certified that she was surprised to learn that there was an Arbitration Agreement buried within the several pages of the company policies she was instructed to hurriedly rush through. See id. Indeed, Respondents never informed Appellant that by acknowledging or even opening up these policies on her employee portal that she was waiving her right to a jury trial. See id. Instead, Appellant was instructed to simply click through the screens on the employee portal as soon as possible so she could begin work immediately after her pre-employment health screen. See id. No one at Respondent Actalent advised Appellant to review the documents with an attorney or that she should ask questions about any of the

policies in terms of the potential impact on her legal rights. See id. Even after Appellant was placed at her worksite at Respondent Rutgers, she was never provided with a copy of any of the documents she allegedly acknowledged when she clicked through the employee portal. See id. Furthermore, Appellant did not "sign" any of these statements of company policy, nor did she even type her name into the screen. See id. Appellant did not do anything more than log into the portal and click through the various policy screens that appeared. See id.

Additionally, Appellant could not have voluntarily entered into the Arbitration Agreement because she certified that she did not even know what arbitration meant until after Respondents filed their respective motions to compel arbitration. See id. Appellant was never provided with a copy of the Arbitration Agreement after she allegedly acknowledged same, or at any point thereafter, during her employment with Respondents Actalent and Rutgers. See id. However, even reading the Arbitration Agreement after the fact, Appellant has certified that she does not understand the differences between filing an arbitration claim against Respondents and filing a lawsuit in New Jersey Superior Court. See id. Had Appellant known she was waiving her right to a jury trial simply by opening up the policies located on the employee portal, she would not have opened up the alleged Arbitration Agreement or, at the very least, would have asked for a physical copy to review with an attorney before "agreeing" to anything. See id.

Further complicating the matter is the fact the alleged Arbitration Agreement is by and between Appellant and Respondent Actalent – not Respondent Rutgers. See id. Despite Appellant and Respondent Actalent being the parties to any Arbitration Agreement, Appellant worked exclusively with employees of Respondent Rutgers throughout her employment. See id. Appellant's supervisor during her employment was an employee of Respondent Rutgers and, aside from the Arbitration Agreement allegedly being by and between Appellant and Respondent Actalent, Respondent Actalent played no role in the day-to-day of her employment. See id. Appellant was specifically instructed to raise any questions or concerns about her position to employees of Respondent Rutgers and, further, it was Respondent Rutgers who allegedly decided to terminate Appellant's employment. See id. After Appellant completed the employee onboarding procedure with Respondent Actalent, she had hardly any interaction with any employees of Respondent Actalent. See id. Additionally, Respondent Rutgers never required Appellant to acknowledge policies or procedures even though all of her job duties—including the physical location she would need to be in to complete her job—were dictated and assigned by Respondent Rutgers. See id. Accordingly, Appellant never agreed to arbitrate any claims of discrimination and retaliation which accrued throughout her employment with Respondents, and if she did allegedly enter into the Arbitration Agreement at issue, Appellant certainly did not do so knowingly and voluntarily.

IV. ARGUMENT

A. The Standard of Review on this Appeal is De Novo. (Not Raised Below)

The interpretation of an arbitration clause is a matter of contractual construction that the appellate court should address *de novo*. NAACP of Camden County v. Foulke Management Corp., 421 N.J. Super, 404, 430 (App. Div. 2011) (quoting Coast Auto. Grp., Ltd. v. Withum Smith & Brown, 413 N.J. Super. 363, 369, 995 A.2d 300 (App. Div. 2010)*;* see also EPIX Holdings Corp. v. Marsh & McLennan Cos., 410 N.J. Super. 453, 472, 982 A.2d 1194 (App. Div. 2009) (noting that "[o]ur standard of review of the applicability and scope of an arbitration agreement is plenary"). *De novo* review is especially appropriate in evaluating a trial court's ruling on summary judgment. NAACP of Camden County, supra, 421 N.J. Super, at 431; Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608, 713 A.2d 499 (1998). This standard of review should apply equally to review of a trial court's ruling on a R. 4:6-2 motion to dismiss. However, as discussed further below, the trial court failed to properly consider, or consider at all, Appellant's legitimate arguments demonstrating that the Arbitration Agreement at issue is unenforceable as a matter of state and federal law.

B. The Arbitration Agreement is Unenforceable as a Matter of Law. (Pa000204) (Pa000207) (Pa000213)

1. Any purported Arbitration Agreement is still subject to ordinary principles of contract law. (Pa000204) (Pa000207)

It is widely understood that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA") is not designed to "federalize" state contract law. Rather, the FAA was only designed to "overrule the judiciary's longstanding refusal to enforce agreements to arbitrate." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 219-20 (1985). Or, as Congress explained at the time, the purpose of the Act was to place arbitration agreements "upon the same footing as other contracts." H.R. Rep. No. 96, 68th Cong. 1st Sess., 1, 2 (1924). Thus, the FAA is intended "**to make arbitration agreements as enforceable as other contracts, not more so.**" Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 404 n.12 (1967) (emphasis added).

Under the FAA, in determining the enforceability and scope of an arbitration clause, state courts can and should apply ordinary contract principles under state law so long as they do not give arbitration agreements disfavored treatment. First Options of Chicago v. Kaplan, 514 U.S. 938, 944 (1995). This is expressly provided by the FAA itself, which states that arbitration agreements shall be enforceable "save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; see also Perry v. Thomas, 482 U.S. 483, 493 (1987). Accordingly, this

Court can—and should—apply ordinary New Jersey principles of contract construction for the purported Arbitration Agreement, so long as it does not treat the document in any way differently than it would any other purported contract.

A basic tenet of contract law is that an agreement is enforceable, provided the parties to the agreement have a "meeting of the minds." N.J. Model Civil Jury Charge 4.10C. On this point, the jury charge explains:

> For the parties to reach an agreement, they must have a meeting of the minds, **both parties must understand what each is agreeing to do or not to do.** The contract cannot be based upon secret or hidden intention or understanding of one party.

Id. (emphasis added).

Here, the trial court simply granted Respondent Actalent's motion to dismiss the complaint and compel arbitration without providing any statement of reasons and/or explanation other than that the Arbitration Agreement at issue was "clearly enforceable, and which was signed by the plaintiff on 1/4/22." (Pa000204). The trial court's original May 24, 2024 Order as to Respondent Actalent was later amended to include a "statement of reasons"; however, the extremely limited rationale provided therein further evidences that the trial court failed to properly consider, or consider at all, each of the arguments advanced by Appellant demonstrating that the subject Arbitration Agreement should not be enforced. Indeed, the only reasoning

provided by the trial court as part of its aforementioned Amended Order is as follows:

> This is a LAD, employment case (that does not allege sexual harassment). The order entered by the court was for a **without** prejudice dismissal. During Dr. Murray's onboarding she signed a Mutual Arbitration Agreement (MAA). Same was dated January 4, 2022. The MAA is valid on its face. Plaintiff's complaint fails to seek any declaratory relief declaring the MAA void or otherwise unenforceable.

(Pa000207 (emphasis in original)).

This statement of reasons, as does the aforementioned rationale contained within the trial court's original May 24, 2024 Order, fails to consider ***any*** of the arguments advanced by Appellant against the enforcement of the Arbitration Agreement at issue. To wit, Appellant argued (1) the Arbitration Agreement should not be enforced because Appellant did not enter into same knowingly and voluntarily; (2) the language of the Arbitration Agreement failed to meet the standards required to enforce arbitration agreements set forth by the Supreme Court in Atalese v. U.S. Legal Services Group, L.P., 219 N.J. 430 (2014), and its progeny; and (3) Appellant cannot be compelled to arbitration with respect to her claims against Respondents Rutgers and Watkins-Keller because there is no Arbitration Agreement as between Appellant and Respondents Rutgers and/or Watkins-Keller.

Had the trial court properly considered, or considered at all, the legitimate arguments raised by Appellant in Opposition to Respondents' motions, it would have

found that it cannot rule as a matter of law that Appellant knowingly and voluntarily entered in the Arbitration Agreement at issue. Accordingly, Appellant urges this Court to reverse the trial court's glaringly improper dismissal of Appellant's claims.

2. The NJLAD and its remedies, including the right to a jury trial, are fundamental rights that cannot be waived by involuntary and ambiguous arbitration agreements.

New Jersey courts have repeatedly and explicitly emphasized the State's "strong policy against discrimination." Jones v. Haridor Realty Corp., 37 N.J. 384, 392 (1962). Indeed, New Jersey case law is laden with "frequent references in judicial opinions to the remedial objectives of the NJLAD and the breadth with which its policies are to be applied in light of its overall design." Craig v. Suburban Cablevision, 274 N.J. Super. 303, 309 (App. Div. 1994), aff'd, 140 N.J. 623 (1995). As the NJLAD itself provides, it "shall be liberally construed in combination with other protections available under the laws of this State." N.J.S.A. 10:5-3. The "overarching goal of the [NJLAD] is nothing less than the eradication 'of the cancer of discrimination.'" Fuchilla v. Layman, 109 N.J. 319, 334 (1988) (quotations omitted). New Jersey takes this strong stand because unlawful discrimination not only causes significant injury to the victim, "but menaces the institutions and foundation of a free democratic State." N.J.S.A. 10:5-3.

The key to the NJLAD's use as a weapon against discrimination is found in its broad remedies and enforcement mechanisms. It provides victims of

discrimination with an array of remedies, including economic damages, recovery for pain and suffering, punitive damages, and attorneys' fees. N.J.S.A. 10:5-3; see also N.J.S.A. 10:5-27.1. One of the most important tools of the NJLAD is the right to a trial by jury of discrimination claims. In fact, when the Supreme Court held that there was no right to trial by jury for NJLAD cases in Shaner v. Horizon Bancorp., 116 N.J. 433 (1989), the Legislature promptly overruled the Supreme Court and added an explicit right to trial by jury in N.J.S.A. 10:5-13. See L.1990, c.12, Assembly Judiciary, Law and Public Safety Committee Statement (reprinted as an annotation to N.J.S.A. 10:5-3). "The swiftness of the Legislature's reaction to [the Shaner] decision leads to the inference that the amendment was curative, intended to express that the Legislature actually meant to confer a jury-trial right despite its failure to expressly say so." Allstate New Jersey Ins. Co. v. Lajara, 222 N.J. 129, 150-51 (N.J. 2015); see 1A Normal J. Singer, Sutherland Statutory Construction, § 22.31, at 375 (7th ed. 2009) (noting that when amendment is expeditiously adopted to overturn judicial interpretation of statute, courts may "logically conclude that a[n] amendment was adopted to make plain what the legislation had been all along from the time of the statute's original enactment").

Specifically, in the context of whether an arbitration clause should be applied to an employee's NJLAD claim, the Supreme Court has emphasized that the "choice of forum established by the [NJ]LAD is an integral feature of the statute." Garfinkel

v. Morristown Obstetrics & Gynecology, 168 N.J. 124, 131 (2001). Therefore, it is clear that the history of the NJLAD mandates that the aggrieved party have the right to a jury trial. Ackerman v. The Money Store, 321 N.J. Super. 308, 324 (Law Div. 1998).

The New Jersey Constitution provides that "**[t]he right of trial by jury shall remain inviolate.**" N.J. Const. (1947) Art. 1, ¶ 9 (emphasis added). New Jersey courts have been vigilant in preserving the jury trial right against involuntary arbitration. For example, in holding that a judicially imposed arbitration system could not displace the right to a jury trial, one court explained:

> **We must not lose sight of the fact that however formal the arbitration proceedings become, they are not, nor were they ever contemplated to be an actual substitute for judicial disposition by trial.** The parties cannot be denied the constitutionally guaranteed right to a jury trial once they have participated in the arbitration process.

Mack v. Berry, 205 N.J. Super. 600, 603 (Law Div. 1985) (emphasis added).

Similarly, courts have held that a contractual waiver of the right to jury trial must be voluntary. See Fairfield Leasing v. Techni-Graphics, 256 N.J. Super. 538, 543 (Law Div. 1992) (holding that a non-negotiated jury waiver clause could not be enforced). Therefore, recognizing the importance of the right to sue for discrimination—and particularly the right to a jury trial on discrimination claims—New Jersey courts have held that such a right cannot be waived involuntarily by mandatory arbitration. See Gallo v. Salesian Society, Inc., 290 N.J. Super. 616, 654

(App. Div. 1996); see also Teaneck Bd. of Educ. v. Teaneck Teachers Ass'n, 94 N.J. 9, 17, 20-21 (1983). Under New Jersey law, it is clear that an employee cannot be compelled to waive his or her right to assert claims of discrimination under the NJLAD because employees such as Appellant cannot, and should not, be forced to waive the broad remedies available under the NJLAD, including the right to a trial by a jury of Appellant's peers.

If an employment arbitration agreement is to be enforced in the context of a discrimination claim, there can be no dispute that the arbitration provision at issue must clearly convey to the reader that it applies to the employee's future claims of discrimination. Unless an employee is explicitly aware of and informed of the very specific rights they are waiving as a result of agreeing to an arbitration provision, it cannot be enforced as a matter of law. Here, there are two (2) interrelated problems with the Arbitration Agreement at issue which render same unenforceable. First, as is indicated by the Certification of Appellant Elizabeth Murray (the "Murray Cert."), and the circumstances in which Appellant allegedly "agreed" to the provision at issue, demonstrates that she could not have knowingly and voluntarily waived her time-honored right to sue for statutory claims of discrimination. Based upon the trial court's erroneous decision as to Respondents' motions, which is supported by no meaningful legal analysis whatsoever, it is clear the trial court did not properly consider, or consider at all, Appellant's arguments and evidence in this regard.

Second, the trial court failed to appreciate the arguments articulated by Appellant that the language of the Arbitration Agreement itself does not clearly and unmistakably communicate to a reasonable layperson such as Appellant that they are waiving important statutory rights available under the law.

3. Appellant did not knowingly and voluntarily waive her right to a jury trial for future discrimination or retaliation claims. (Pa000213)

When an employer asserts an arbitration provision as a waiver of an employee's right to sue pursuant to a discrimination law, the employee must actually understand what they are doing and explicitly agree to the waiver. As articulated in Appellant's comprehensive Opposition to Respondents' motions at the trial court level, the facts herein wholly demonstrate that Appellant absolutely did not understand what she was doing when she allegedly agreed to arbitrate her claims of discrimination and retaliation against Respondents.

It is well-established that when an employer asserts an arbitration clause as a waiver of an employee's statutory right to sue under an anti-discrimination law, the employee must actually understand what she is doing and explicitly agree to the waiver. Nelson v. Cyprus Bagdad Copper Corp., 119 F.3d 756, 762 (9th Cir. 1997). Or, as the Appellate Division has put it, the "waiver presupposed full knowledge of the right and an intentional surrender." Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252, 267 (App. Div. 2000) (citations omitted).

Our Supreme Court has held that an agreement to arbitrate will not be enforced – even where both parties to the agreement had legal counsel when they agreed to arbitrate their claims – unless they actually understand what they were told regarding arbitration. See Fawzy v. Fawzy, 199 N.J. 456 (2009). In Fawzy, the parties to a divorce agreed to submit to arbitration issues of custody and time sharing. Both were represented by counsel, and the agreement to arbitrate was explained to them in open court. On appeal, the Supreme Court agreed that the issues were properly subject to arbitration. Fawzy, 199 N.J. at 482. Nonetheless, the Court found that the "agreement to arbitrate was insufficient to bind the parties" because it was not adequately explained to them. Fawzy, 199 N.J. at 482-83.

Here, as argued before the trial court, Appellant was not represented by counsel or specifically advised to speak with an attorney before allegedly reviewing the Arbitration Agreement at issue. (Pa000213). In fact, Appellant was not told anything about any sort of agreement to arbitrate disputes when she was instructed to open the files containing the alleged Arbitration Agreement. Rather, Appellant was suddenly rushed to log into her employee portal and simply click through a series of pages with Respondents' policies on them before she could begin her employment. See id. Even after Appellant reviewed the pages on the screen on the portal, Respondents never even provided Appellant with a physical copy or means to access the terms of the Arbitration Agreement until the within litigation had

already been commenced. See id. If the agreement in Fawzy was unenforceable where the parties were both represented by counsel at the time they agreed to arbitration, the agreement at issue here certainly cannot be enforceable where Appellant was not told **anything** about agreeing to arbitrate her statutory claims at the time she allegedly agreed to it. See id.

Although Appellant's arguments in this regard were supported in fact and law, the trial court failed to articulate whether it considered this argument in granting Respondents' motions, as the trial court granted Respondents' motions without providing meaningful legal analysis accompanying its decision as to same. Insofar as Appellant has certified that she did not understand she was agreeing to arbitrate her claims with Respondents by simply opening policies on Respondents' employee portal, and Appellant was not even informed this was something she needed to be aware of in the first place, the Arbitration Agreement is unenforceable and, as such, the trial court's granting of the Respondents' motions should be reversed.

4. There is gross procedural unconscionability involved in the alleged execution of the agreement. (Pa000213)

As further argued by Appellant at the trial court level, which appears to have not been properly considered (or considered at all) by the trial court, the Arbitration Agreement should not be enforced because there was unconscionability in the alleged execution of same. Although a signature would generally signify agreement, that is not the case where the signer was induced to sign by a misrepresentation –

even where the misrepresentation could have been discovered simply by reading the document and the signer was negligent in failing to do so. Rowen Petroleum Properties, LLC v. Hollywood Tanning Systems, Inc., 2009 U.S. Dist. LEXIS 33685, at *11-12 (D.N.J. Apr. 20, 2009).

When it comes to the waiver of statutory discrimination claims, being provided with the necessary time to read and review the document is even more critical to the determination of whether there was unconscionability. See Riddell v. Medical Inter-Insurance Exchange, 18 F.Supp.2d 468 (D.N.J. 1998). In Riddell, the District Court made note of the fact the plaintiff there brought employment discrimination claims when confronted with a release she signed in connection with receiving a severance package, but the plaintiff did not understand what she was signing. See id. There, the employee admitted to having signed the release, but claimed she did not really understand it, and further "that she was given only a few minutes to review the document and never had an opportunity to negotiate its terms." Id. After undergoing a multi-factor analysis, the District Court invalidated the release. Id. at 471. This same test is used under New Jersey State law to evaluate the validity of releases for statutory claims. See Swarts v. Sherwin-Williams Co., 244 N.J. Super. 170, 177 (App. Div. 1990) (adopting the test for evaluating releases under the NJLAD); see also Keelan v. Bell Communications Research, 289 N.J. Super. 531 (App. Div. 1996).

In Riddell, one of the key factors weighing in favor of invalidating the release was the court's conclusion that the employee did not have sufficient time to read the release she was signing:

> We conclude that under the circumstances, Riddell did not have sufficient time to decide whether to sign the Release. Neither the wording of the Release or the MIIX representatives themselves informed Riddell that she had time to deliberate … Nor dd MIIX propose a deadline that might have alerted Riddell that she had time to make her decision. We conclude that a few minutes is not enough time for an employee just learning of her termination to knowingly and voluntarily waive her rights to sue. …

Riddel, 18 F.Supp.2d at 472-73.

In the present matter, Appellant has certified that she was never presented with a physical or digital copy of the Arbitration Agreement even after she "acknowledged" it. (Pa000213). Appellant was not provided with enough time to review and contemplate whether she would agree or have questions about the Arbitration Agreement because she was simply instructed to quickly click through the company "policies" listed on the employee portal. See id. In fact, Respondents instructed Appellant to click through these policies while she was preoccupied and in the waiting room to complete her pre-employment health screening. See id. No employee of Respondents ever informed Appellant that the Arbitration Agreement would be a part of the policies and procedures she reviewed, no employee told her an Arbitration Agreement would be part of the onboarding process, and no employee

ever informed Plaintiff that a condition of her employment would have been signing the Arbitration Agreement and giving up her right to sue for claims of discrimination before a judge and jury. See id.

The trial court further failed to properly consider, or consider at all, the fact that Appellant did not even sign the Arbitration Agreement itself. Instead, the only indication of Appellant's alleged "agreement" to arbitrate any claims she had against Respondents is a computer-generated statement of acknowledgement which required virtually no affirmative action by Appellant. See id. Unlike in Riddell, Appellant had absolutely no opportunity to independently review the Arbitration Agreement or ask questions about same, nor did anyone put Appellant on notice that she should carefully review these policies because they are, in fact, agreements that restrict her rights.

For these reasons, the present case is readily distinguishable from New Jersey cases where courts have enforced arbitration provisions with respect to discrimination claims. Martindale v. Sandvick, Inc., 173 N.J. 76 (2002). In Martindale, the New Jersey Supreme Court required the plaintiff to arbitrate their employment discrimination claims. See id. Unlike the case here, the entire agreement to arbitrate in Martindale was in capitalized letters. See id. at 81-82. The Court noted:

> It is undisputed that defendant provided her with the opportunity to ask questions about the application and the

> arbitration agreement and to consult a third party, including an attorney before signing the documents … Similarly, defendant's Director of Human Resources … testified at a deposition that his practice, followed in respect of plaintiff, was to ask an applicant to read the Application for Employment, review the document with the applicant, and offer to answer any questions. He said that applicants were permitted to take the application home and to complete it, and then return it at a later date.

Id. at 82. These were not immaterial facts mentioned in passing; very much to the contrary, they were central to the Court's conclusion that the plaintiff "knowingly and voluntarily" waived her right to sue in court for discrimination. Id. at 96-97 (citations omitted).

The facts of this case are precisely what distinguish it from Martindale. Here, nobody explained to Appellant that the Arbitration Agreement was buried within other policies related to Appellant's onboarding. (Pa000213). In fact, Respondents attributed virtually no significance to the policies that Appellant needed to click through because they simply instructed Appellant to hurriedly click through the employee portal as soon as possible so she could begin working. See id. Appellant was not told to take the documents home and review them carefully by herself or with counsel. See id. In fact, she was instructed to login on her cell phone so she could complete them immediately while she was in the waiting room for a doctor's appointment. See id. Indeed, there was no one who suggested to Appellant that these documents were important for any particular reason and, also, certainly no proffer

from Respondents that it was affecting her right to sue in a court of law. The totality of circumstances bespeaks procedural unconscionability requiring the Arbitration Agreement to be declared void *ab initio*. At the very least, the Court should reverse the trial court's dismissal of Appellant's claims to make findings of facts in dispute between the parties as to whether Appellant entered into the Arbitration Agreement.

The foregoing issues of the Arbitration Agreement are exacerbated by the fact it is a contract of adhesion. As the New Jersey Supreme Court has explained:

> If an agreement is characterized as a "contract of adhesion" … non-enforcement of its terms may be justified on other than such traditional grounds as fraud, duress, mistake or illegality. … the essential nature of a contract of adhesion is that it is presented on a take-it-or-leave-it basis, commonly in a standardized printed form, without opportunity for the "adhering" party to negotiate except perhaps on a few particulars.

Rudbart v. Water Supply Comm'n, 127 N.J. 344, 353 (1992) (citations omitted).

Here, it is without question that the Arbitration Agreement at issue is a contract of adhesion. Appellant was forced to "accept" the terms of the Arbitration Agreement—albeit they were presented as company "policies"—as a condition of Appellant's employment with Respondents. If Appellant wanted to work, she was required to agree to arbitrate her claims of discrimination, retaliation, and virtually any other claims that may have arisen out of her employment with Respondents. Appellant was left with simply no choice but to "accept" the terms of the Arbitration Agreement.

It has long been established that contracts of adhesion will not be enforced when contrary to public policy. See, e.g., Vasquez v. Glassboro Service Ass'n, Inc., 83 N.J. 86, 98-105 (1980); Ellsworth Dobbs, Inc. v. Johnson, 50 N.J. 528, 553-55 (1967). For example, in Chimes v. Oritani Motor Hotel, Inc., 195 N.J. Super. 435 (App. Div. 1984), the Appellate Division refused to enforce a one-sided arbitration agreement against an employer because the court concluded it was a contract of adhesion contrary to public policy. Id. at 442-43; see also Fairfield Leasing v. Techni-Graphics, supra, 256 N.J. Super. at 540-41 (refusing to enforce a jury waiver provision in a contract of adhesion as being contrary to public policy); Discovery Bank v. Shea, 362 N.J. Super. 200, 210 (Law Div. 2001) (refusing to enforce arbitration provision in credit card "bill stuffer" modifying credit card agreement as a contract of adhesion contrary to public policy).

As explained above, the facts and circumstances underlying Appellant's exposure, more appropriately characterized as a lack thereof, to the purported Arbitration Agreement demonstrates that Appellant did not knowingly and voluntarily waive her right to a jury trial for employment discrimination claims under the NJLAD. At minimum, Appellant has presented genuine issues of fact which require a determination before dismissal of Appellant's claims.

C. Appellant cannot be compelled to arbitrate her claims against Respondents Rutgers and Watkins-Keller because there is no enforceable arbitration agreement between Appellant and Respondent Rutgers or Appellant and Respondent Watkins-Keller. (Pa000210)

Separate and apart from the arguments advanced above is the inescapable fact that Respondents Rutgers or Watkins-Keller simply cannot compel Appellant to arbitrate any claims she has against them because neither Respondent Rutgers nor Respondent Watkins-Keller are parties to the subject Arbitration Agreement. (Pa000210). As the plain language of the Arbitration Agreement makes clear, the parties to the Agreement are clearly indicated as being Appellant and the "Company," but Respondent Rutgers is not mentioned by name anywhere in same. See id. There is simply nothing in the record suggesting that Appellant's employment with Respondent Rutgers would be governed by terms set forth in the Arbitration Agreement allegedly entered into between Appellant and Respondent Actalent. Accordingly, there is no contractual privity between Appellant and Respondents Actalent and Watkins-Keller. Thus, while it is feasible the Court could have found that Appellant is required to arbitrate her claims against Respondent Actalent—who are both parties to the Arbitration Agreement—same is not the case for Appellant's claims as against Respondents Actalent and Watkins-Keller.

Since the trial court failed to issue a statement of reasons indicating this argument was considered (or a statement of reasons containing any meaningful legal

analysis at all, for that matter), the dismissal of Appellant's claims should be reversed.

D. At a minimum, the trial court should have provided a statement of reasons articulating, with some level of detail and/or specificity, the basis for dismissing Appellant's claims and compelling same to arbitration. (Not Raised Below)

As set forth above, Appellant set forth legitimate arguments, supported by existing law, in support of her arguments that the Arbitration Agreement should not be enforced. The trial court, however, granted Respondents' Motions to Dismiss and to Compel Arbitration without providing a statement of reasons with meaningful legal analysis as to why it believed Appellant's arguments were not availing. Without a proper statement of reasons, it is impossible to know the precise reasons the trial court granted Respondents' motions. However, more importantly for purposes of the within Appeal, it is impossible to know whether the trial court even considered Appellant's legitimate arguments in the first place. For all of the foregoing reasons, the trial court's granting of Respondents' Motions to Dismiss and to Compel Arbitration should be reversed.

E. In the alternative, the matter should be remanded to the trial court for a plenary hearing on the issue of whether Appellant actually signed the purported Arbitration Agreement. (Not Raised Below)

There is no dispute that Respondents moved under R. 4:6-2(e) to dismiss Appellant's Complaint and Jury Demand and compel arbitration. However, because the parties requested that the trial court decide the motion on "matters outside the

pleadings," to wit, the Certification of Elizabeth Murray and the alleged Agreement itself, the trial Court, pursuant to R. 4:6-2(e), should have treated Respondents' motions as summary judgment motions under R. 4:46, and therefore, applied the standards articulated in Brill v. The Guardian Life Ins. Company of America, 142 N.J. 520, 523 (1995) when deciding same.

Under the standard established by the New Jersey Supreme Court in Brill, a determination of whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, **when viewed in the light most favorable to the non-moving party**, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. 142 N.J. at 523 (emphasis added). The judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. Id. at 540.

A plenary hearing is used to resolve genuine issues of material fact in dispute. Eaton v. Grau, 368, N.J. Super. 215, 222 (App. Div. 2004); Harrington v. Harrington, 281 N.J. Super. 39, 47; Adler v. Adler, 229 N.J. Super. 496, 500 (App. Div. 1988). Genuine disputes over issues of fact are those having substance as opposed to insignificance. Cokus v. Bristol Myers Squibb Co., 362 N.J. Super. 366, 370 (Law Div. 2002), aff'd o.b., 362 N.J. Super. 245, cert. denied, 178 N.J. 32 (2003).

Here, to the extent that the Appellate Division has any reservations about Appellant's arguments herein, we respectfully request that the matter be remanded to the trial court to hold a plenary hearing because there is a genuine dispute of fact as to whether Appellant knowingly and voluntarily waived her statutorily-prescribed right to trial by a jury of her peers for claims of discrimination pursuant to the NJLAD. It is beyond dispute the Agreement does not contain Appellant's physical signature. However, it is disputed as to whether the language of the Agreement clearly suggests to a layperson that they are waiving their right to sue Respondents in Superior Court for future claims of discrimination brought pursuant to the NJLAD.

Accordingly, there is a genuine dispute of material fact regarding the issue of whether Appellant actually "signed" or otherwise agreed to be bound by the purported Agreement; nevertheless, and as previously noted, we respectfully request that the matter be remanded to the trial court to hold a plenary hearing on this issue if deemed necessary by the Appellate Division.

V. CONCLUSION

Based on the foregoing, Appellant respectfully requests that this Court reverse the trial court's decision granting Respondents' Motions to Dismiss Appellant's Complaint and to Compel Arbitration. In the alternative, Appellant respectfully requests that this matter be remanded to the trial court to hold a plenary hearing as to

whether Appellant actually "signed" or otherwise agreed to be bound by the purported Agreement if deemed necessary by the Appellate Division.

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Elizabeth Murray

By: */s/ Austin B. Tobin, Esq.*
Austin B. Tobin, Esq.

Dated: October 15, 2024

ELIZABETH MURRAY Plaintiff/Appellant, v. RUTGERS CANCER INSTITUTE OF NEW JERSEY; ACTALENT SCIENTIFIC, LLC, GINETTE WATKINS-KELLER; KASSIDY GREGORY; ABC CORPORATIONS 1-5; AND JOHN DOES 1-5, Defendants/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003347-23 On Appeal From: Superior Court of New Jersey Law Division: Middlesex County Docket No. MID-L-6504-23 Sat Below: The Hon. Joseph L. Rea, J.S.C.

BRIEF OF RESPONDENTS ACTALENT SCIENTIFIC, LLC AND KASSIDY GREGORY

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TABLE OF CONTENTS

TABLE OF JUDGMENTS

TABLE OF CITATIONS

Page(s)

Cases

Rules

Statutes

PRELIMINARY STATEMENT

The trial court properly granted Respondents Actalent Scientific, LLC ("Actalent") and Kassidy Gregory's ("Gregory") (collectively, "Respondents") motions to dismiss Appellant Dr. Elizabeth Murray's ("Appellant" or "Dr. Murray") employment discrimination claims and referred the parties to private arbitration. The Mutual Arbitration Agreement, which governs the parties' decision to submit employment related claims to arbitration, is valid, unequivocal, and enforceable. Dr. Murray knowingly and voluntarily agreed to the terms of the Mutual Arbitration Agreement when she signed it during her during her onboarding process with Actalent and Rutgers. The trial court's finding that "the Mutual Arbitration Agreement, which is clearly enforceable and "valid on its face"—and its decision to grant Respondents' motions *without* prejudice and refer the parties to private arbitration—is entirely consistent with prevailing law concerning electronically signed documents containing arbitration provisions in employment contracts and was fully supported by the record evidence. Those rulings should remain undisturbed.

The appropriate standard for this Court's review is *de novo.* Dr. Murray erroneously asserts that the trial court "abdicated its duty" in ruling on and granting Respondents' motions because it should have converted them to and treated them as summary judgment motions and held a plenary hearing. Dr.

Murray misunderstands the nature of Respondents' motions as requests seeking dispositive relief based upon resolution of a fact issue. That is incorrect: Respondents never moved for summary judgment, nor did the trial court grant such relief. The trial court merely dismissed her action *without prejudice* and compelled her to pursue her claims arbitration, as she had agreed to do. There was no adjudication on the merits, and Dr. Murray's arguments relying on summary judgment principles—including that the trial court "should have treated Respondents' motions as summary judgment motions under R. 4:46"—are misplaced. Beyond this misapprehension, as described below, Dr. Murray advances two main arguments. Neither has merit.

First, Dr. Murray argues she did not sign anything agreeing to arbitrate claims arising from her employment with Actalent or Rutgers. This is demonstrably incorrect. Dr. Murray cannot and does not deny that she did, in fact, electronically sign the document containing the arbitration agreement. Instead, she maintains only that she did not do so voluntarily or knowingly . . . despite her affirmative acknowledgement to the contrary contained in the Mutual Arbitration Agreement, the concession in her certification that she "acknowledged' documents including the arbitration agreement during her onboarding process, and despite the fact that she is a highly intelligent and

experienced individual, specifically with experience in negotiating employment contracts.

Second, she argues, the arbitration agreement is unenforceable "as a matter of law" because, she claims, the "NJLAD and its remedies, including the right to a jury trial, are fundamental rights that cannot be waived." But New Jersey precedent, which Respondents provided to the trial court, squarely rejects the very argument that Dr. Murray now raises. Dr. Murray ignored that precedent and never addressed it with the trial court. She continues to ignore it even now on appeal.

As Respondents showed and supported with appropriate record evidence, Dr. Murray knowingly and voluntarily signed the Mutual Arbitration Agreement which provides that any and all disputes—explicitly including employment discrimination claims—must be pursued via private arbitration. In both procedure and substance, the trial court acted properly in granting Respondents' motions and dismissing Dr. Murray's action without prejudice and compelling her to pursue her claims in arbitration, as she agreed to do. There was no error. This Court should affirm the trial court below.

PROCEDURAL HISTORY

Respondents take no issue with Dr. Murray's recitation of the procedural history, with the exception of her improper argument contained therein—namely, where she asserts she "seeks to reverse the Superior Court's Orders erroneously dismissing Appellant's Complaint and compelling this matter to arbitration without consideration of her meritorious arguments advanced in Opposition to Respondents' motions." (Pb5–6.) The trial court fully considered Dr. Murray's arguments, as its orders reflect. (Pa000204–08.)

STATEMENT OF FACTS

Dr. Murray filed her lawsuit in July 2023, asserting employment discrimination claims under the New Jersey Law Against Discrimination (LAD) and alleging that she was wrongfully terminated as a result of a disability. (Pa000001–14.) Actalent, a Maryland limited liability company in the business of procuring temporary staffing, procured Dr. Murray's services as a Clinical Research Educator to Co-Respondent Rutgers Cancer Institute ("Rutgers"). (Pa000058, Pa000122.)

During her onboarding process, on January 4, 2022, Dr. Murray electronically signed a Mutual Arbitration Agreement ("Agreement") and agreed to privately arbitrate any claims arising out of her employment or termination. (Pa000092–94.) The Agreement specifically provides, in conspicuous bolded font, that "all disputes, claims, complaints or controversies" Dr. Murray may have then or in the future against Actalent, including her claims for wrongful termination and retaliation under the LAD, must be resolved exclusively via private arbitration:

> **Except (i) as expressly set forth in the section, "Claims Not Covered by this Agreement," all disputes, claims, complaints or controversies ("Claims") that I may have against Actalent Scientific, LLC and/or any of its subsidiaries, affiliates, officers, directors, employees, agents and/or any of its clients or customers (collectively and individually the "Company"), or that the Company may have against me, including contract claims; tort claims; discrimination and/or harassment claims;**

> **retaliation claims; claims for wages, compensation, penalties or restitution; and any other claim under any federal, state, or local statute, constitution, regulation, rule, ordinance, or common law, arising out of and/or directly or indirectly related to my application for employment with the Company, and/or my employment with the Company, and/or the terms and conditions of my employment with the Company, and/or termination of my employment with the Company (collectively, "Covered Claims"), are subject to confidential arbitration pursuant to the terms of this Agreement and will be resolved by Arbitration and NOT by a court or jury. The parties hereby forever waive and give up the right to have a judge or a jury decide any Covered Claims.**

(Pa000092.)

As the Agreement expressly reflects, it applies to any and all claims Dr. Murray may have not only against Respondent Actalent, but also against "any of its subsidiaries, affiliates, officers, directors, employees, agents and/or any of its clients or customers." (*Id.*) This included all of Actalent's fellow Respondents (which Dr. Murray tacitly recognizes in her allegation that Rutgers and Actalent were "single and joint employers of Plaintiff," and were supposedly so intertwined as to cause her to label them collectively as "Corporate Defendants"). (Pa000001–04.) Dr. Murray also alleged that Respondents Watkins-Keller and Gregory were "at all relevant times hereto" employees of "Corporate Defendants." (Pa000004.)

Under the Agreement's explicit terms, the parties consented to submit "all disputes, claims, complaints and controversies," including Plaintiff's

discrimination and retaliation claims, to JAMS in accordance with JAMS's publicly available rules and procedures. (Pa000093.) The Agreement provided that Actalent would pay any fees in excess of the filing fee. (*Id*.) The Agreement did not limit Dr. Murray's right to recover any damages to which she would be entitled if she was successful on her claim in a judicial forum. (Pa000093.)

Dr. Murray signed the Agreement electronically as part of her employment onboarding process with Rutgers. (Pa000093–94.) Immediately above Dr. Murray's electronic signature is an acknowledgment that she had "carefully read" the Agreement, that she understood its terms, and that she was entering in the Agreement "voluntarily." (Pa000093.) She further acknowledged that she was "not relying on any promises or representations . . . except those contained in" the Agreement. (*Id.*) Dr. Murray further acknowledged that she knew she was "giving up the opportunity to have Covered Claims"—i.e., those claims falling under the scope of the disputes covered by the Agreement—"decided by a court or jury," as well as that she had "been given the opportunity to discuss this Agreement with [her] own attorney" if she wished to do so. (*Id.*) Dr. Murray acknowledged that her affirmative signature would not be necessary to bind her to the Agreement and to enforce it, and that her election to proceed with employment alone would be effective and she would be "deemed to have consented to, ratified and accepted this Agreement." (*Id.*)

When Dr. Murray signed the Mutual Arbitration Agreement, she held a Bachelor of Arts and Masters' degrees in psychology and a doctorate in neuropsychology. (Pa000096–103.) Moreover, she was experienced in "participat[ing] in contract negotiations" with respect to her prior employment as a clinical research coordinator at the JFK Neuroscience Institute. (*Id.*)

Nevertheless, despite signing the Agreement, accepting its terms, and proceeding to work as a Clinical Research Educator—Dr. Murray filed her lawsuit in New Jersey state court, asserting employment discrimination claims under the LAD. (Pa000001–15.) All Respondents moved to dismiss the lawsuit under Rule 4:6-2 and compel arbitration, or alternatively to stay the proceedings pending arbitration. (*E.g.*, Pa000053–60 (Respondent Actalent's motion to dismiss)).

The parties fully briefed the trial court with opening, opposition, replies, and supporting materials. The trial court, "having considered the submissions of the parties," granted the motions and dismissed Dr. Murray's claims against Respondent Actalent *without* prejudice and referred the parties instead "to private arbitration in accordance with the Mutual Arbitration Agreement, which is clearly enforceable, and which was signed by [Dr. Murray] on 1/4/22." (Pa000204.) Shortly thereafter in subsequent orders, the trial court granted dismissal on the same terms with respect to the remaining Respondents.

(Pa000205–08.) In the last of its orders, the trial court further clarified the basis for its ruling, writing:

> This is a LAD, employment case (that does not allege sexual harassment). The order entered by the court was for a **without** prejudice dismissal. During Dr. Murray's onboarding she signed a Mutual Arbitration Agreement (MAA). Same was dated January 4, 2022. The MAA is valid on its face. Plaintiff's complaint fails to seek any declaratory relief declaring the MAA void or otherwise unenforceable.

(Pa000208.) Dr. Murray now appeals.

ARGUMENT

I. The proper standard of review in this appeal is *de novo*; principles and procedures applicable to summary-judgment proceedings are inapposite.

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), as the validity of an arbitration agreement is a question of law. *Atalese v. U.S. Legal Servs. Grp., L.P.*, 219 N.J. 430, 446 (2014). This includes when the enforceability of an arbitration agreement is determined. *Goffe v. Foulke Mgmt. Corp.*, 238 N.J. 191, 207 (2019). An appellate court "need not give deference to the analysis by the trial court," *id.*, but will instead "construe

the arbitration provision with fresh eyes," *Morgan v. Sanford Brown Inst.*, 225 N.J. 289, 303 (2016).[1]

Applying the *de novo* standard should be a non-event and Dr. Murray's interjection of summary judgment principles is misplaced. (E.g., Pb26). For example, she writes: "*De novo* review is especially appropriate in evaluating a trial court's ruling on summary judgment." (*Id.* (citing *NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp.*, 421 N.J. Super. 404 (App. Div. 2011)).) But there, the trial court did not rule on a summary-judgment motion: it considered Respondents' motions to compel arbitration brought (properly) under R. 4:6-2(e). (*See* Pa000204–08); *Goffe*, 238 N.J. at 216 (resolving that the trial court properly made its ruling "based on the complaint and the certifications provided to" it). In so doing, the trial court granted only Respondents' motions to dismiss *without* prejudice and to compel Dr. Murray to arbitration instead to adjudicate her claims there, rather than in court. *NAACP* is thus inapposite because there,

[1] In light of this standard, and as discussed further (*infra* Part III(E)), Dr. Murray did not establish grounds for reversal by complaining that the trial court did not provide a sufficient statement of reasons and must have, therefore, failed to consider her arguments or her certification related to the circumstances surrounding when she signed the Agreement. (*See, e.g.*, Pb33, 36, 39, 41, 44.) These arguments all fail. Under the correct standard, this Court considers this legal issue anew and the purported lack of any explanation or reasoning below is not grounds for reversal.

the court actually had a motion for summary judgment before it, which it granted.[2]

Goffe provides another example refuting Dr. Murray's contention. There, the Supreme Court faced a similar argument and ruled that application of the summary-judgment standard and attendant proceedings was only appropriate and applicable where a party has argued and shown that there was a genuine dispute of material fact as to whether there was ever an agreement to arbitrate in the first place—e.g., a dispute as to whether a party had actually ever received the purported agreement. 238 N.J. at 214–15. The Court distinguished that from the present scenario, where a party merely challenges the enforceability of an arbitration agreement, and held that a summary judgment standard is *not* applicable where a party's signature is on the document. *Id.* at 215.

Similarly, the assertion that Respondents' motions should have been converted to motions for summary judgment under Rule 4:6-2(e) and a plenary hearing held, as is the practice with normal motions to dismiss, fails to carry the

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[2] *NAACP* is further inapposite: there were several inconsistent arbitration provisions scattered throughout "various form documents that a consumer signed in connection with her purchase of a new motor vehicle from a New Jersey dealership." 421 N.J. Super. at 409. The Appellate Division recently distinguished the circumstances in *NAACP* from those, like here, where there is "a single agreement . . . that plainly and unambiguously states plaintiff waived [her] right to a jury trial on [her] statutory claims and agreed to arbitrate those claims." *McCoy v. Arde, Inc.*, 2024 WL 4447106, at *8 (App. Div. Oct. 9, 2024) (unpublished) (Ra01-Ra07).

day. Respondents' motions sought to compel arbitration, which this Court has recognized may be brought either under Rule 4:6-2(e) or alternatively under Rule 4:6-2(a) as a motion to dismiss for lack of subject matter jurisdiction in light of the arbitration agreement. *C.G. v. Applebee's Bar & Grill, Inc.*, No. A-000171-21, 2022 WL 2821574, at *2–3 (App. Div. July 20, 2022) (unpublished) (Ra08-Ra10). In *C.G.*, this Court rejected the plaintiff's claim that a trial court erred in deciding a motion to dismiss and compel arbitration under the 4:6-2 standard and not converting the motion into a motion for summary judgment, in part because it would not have made a difference given that the plaintiff conceded she had signed the arbitration agreement, which was "dispositive." *Id.*; *see also Cohen v. Workshop/APD Architecture, D.P.C.*, No. A-0566-23, 2024 WL 3517498, at *8 (App. Div. July 24, 2024) (unpublished) (recognizing that trial courts may consider motions to compel arbitration as under Rule 4:6-2(a) for lack of subject matter jurisdiction and, in so doing, consider "matters outside the pleading without converting the motion to one for summary judgment") (Ra11-Ra19). These principles apply equally here. The proper standard of review is thus *de novo*, as that standard is applied in the context of a trial court's ruling on a motion to compel arbitration.

II. The Mutual Arbitration Agreement that Dr. Murray knowingly and voluntarily signed was valid and enforceable, and the trial court properly dismissed this action without prejudice and referred it to arbitration.

A. New Jersey law favors arbitration.

The Supreme Court of New Jersey recognized that "Congress enacted the Federal Arbitration Act (FAA), also known as the United States Arbitration Act, in 1925, to abrogate the then-existing common law rule disfavoring arbitration agreements 'and to place arbitration agreements upon the same footing as other contracts.'" *Martindale v. Sandvik, Inc.*, 173 N.J. 76, 83–84 (2002) (quoting *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24, (1991)). Section 2 of the FAA provides that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such a contract or transaction . . . shall be valid, irrevocable, and enforceable save upon grounds as exist at law or in equity for the revocation of any contract." *Id.* (quoting 9 U.S.C. § 2 (1994)).

In enacting section 2 of the FAA, "Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Id.* (citing *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984)). These principles and the FAA's coverage applies to employment-related disputes. *Id.* (citing *Circuit City Stores v. Adams*, 532 U.S. 105 (2001)).

Consistently, "[t]he New Jersey Legislature codified its endorsement of arbitration agreements in N.J.S.A. 2A:24–1 to –11," and "New Jersey courts

also have favored arbitration as a means of resolving disputes." *Id.* at 84–85 (citing *Garfinkel v. Morristown Obstetrics & Gynecology Assocs*., 168 N.J. 124, 131, (2001) (noting favored status accorded to arbitration); *Marchak v. Claridge Commons, Inc*., 134 N.J. 275, 281 (1993) (noting "arbitration is a favored form of relief" and "arbitrators function with the support, encouragement, and enforcement power of the State"); *Barcon Assocs., Inc. v. Tri–County Asphalt Corp*., 86 N.J. 179, 186 (1981) (stating that Legislature has encouraged arbitration and courts have favored arbitration because of significant advantages arbitration offers to parties); *Alamo Rent A Car, Inc. v. Galarza*, 306 N.J. Super. 384, 389 (App. Div. 1997) (recognizing "strong public policy in our state favoring arbitration as a means of dispute resolution and requiring a liberal construction of contracts in favor of arbitration"); *Yale Materials Handling Corp. v. White Storage & Retrieval Sys., Inc*., 240 N.J. Super. 370, 375 (App. Div. 1990) (reiterating that "New Jersey law [is] consonant with federal law which liberally enforces arbitration agreements"). The trial court relied on well-recognized national policy and the established State interest favoring arbitration when it determined the enforceability of the Agreement in this application for employment.

As the "NJAA 'is nearly identical to the FAA and enunciates the same policies favoring arbitration,'" *Flanzman*, 244 N.J. at 133, consistent with the

FAA, arbitration agreements may only be invalidated on "such grounds as exist at law or in equity for the revocation of any contract." *Id.*; *see also* 9 U.S.C. § 2. Courts must accordingly "order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate." N.J.S.A. § 2A:23B-7. Determinations of enforceability should "consider whether there was mutual assent, as impacted by notions of unconscionability, which vary from case to case based on the parties' sophistication and the one-sided nature of negotiations." *County of Passaic v. Horizon Healthcare Servs., Inc.*, 474 N.J. Super. 498, 502 (App. Div. 2023).[3]

B. A valid and enforceable agreement to arbitrate existed here, as the trial court properly found.

The question of whether arbitration agreements are enforceable is a matter of law. *See e.g.*, *Goffe*, 238 N.J. at 207. "In determining whether a matter should

[3] The Supreme Court of New Jersey's ruling in *Martindale* rebuffs Dr. Murray's suggestion that the Agreement is unconscionable because it was requested of her as part of the employment application process. *In Martindale*, the Court specifically observed that it does not find " determinative the fact that plaintiff was required to sign an employment application containing an arbitration agreement in order to be considered for employment." *Martindale*, 173 N.J. at 91. Arbitration agreements are not deemed unconscionable contracts of adhesion when, for example, an employer gives the plaintiff, an educated person experienced in the field of human resources, an opportunity to ask questions, further review the application, or consult with a professional. *Id.* The same is true here: Dr. Murray, a highly educated professional with contract negotiation experience, acknowledged that she was provided an opportunity to consult with her own attorney before signing the Mutual Arbitration Agreement on January 4, 2022.

be submitted to arbitration, a court must evaluate (1) whether a valid agreement to arbitrate exists, and (2) whether the dispute falls within the scope of the agreement." *Perez v. Sky Zone LLC*, 472 N.J Super. 240, 247 (App. Div. 2022). A trial court's order dismissing an action without prejudice or staying it in favor of compelling or referring to arbitration is subject to *de novo* review. *See supra*, Pt. I. In reviewing such orders, appellate courts are "mindful of the strong preference to enforce arbitration agreements, both at the state and federal level." *Hirsch v. Amper Fin. Servs., LLC*, 215 N.J. 174, 186 (2013).

An agreement to arbitrate is valid and enforceable in the employment context when it includes a "concrete manifestation of the employee's intent as reflected in the text of the agreement itself." *Skuse v. Pfizer, Inc.*, 244 N.J. 30, 48 (2020). Thus, "when a party enters into a signed, written contract, that party is presumed to understand and assent to its terms, unless fraudulent conduct is suspected." *Stelluti v. Casapenn Enters., LLC*, 203 N.J. 286, 305 (2010). With respect to contractual waiver-of-rights provisions like arbitration clauses, the agreement must reflect that the parties "agreed clearly and unambiguously" to the terms and must "explain that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute." *Flanzman*, 244 N.J. at 137. Although "no particular form of words is necessary," the arbitration agreement must, "at least in some general and sufficiently broad way," explain that

"arbitration is a waiver of the right to bring suit in a judicial forum." *Perez*, 472 N.J Super. at 248.

Here, a valid agreement to arbitrate unequivocally existed. Dr. Murray admitted that she "acknowledged"—signed—documents including the Agreement during her onboarding process. (Pa000136-137). The Agreement clearly, conspicuously, and unambiguously stated that Dr. Murray agreed to relinquish the right to have a judge or jury decide the employment discrimination claims she raised in her Complaint. The trial court's decision to grant Respondents' motions and dismiss Dr. Murray's lawsuit without prejudice in favor of private arbitration because of its finding that the Agreement was "valid on its face" and "clearly enforceable" was proper. This Court should affirm on the same rationale.

When the Appellate Division previously considered similar arbitration agreements it consistently held that broad, explicit terms like those in the Agreement are valid and enforceable. In *Antonucci v. Curvature Newco, Inc.*, for example, the Appellate Division compelled a former employee asserting LAD claims to proceed via private arbitration. 470 N.J. Super. 553, 557 (App. Div. 2022). There, an employee handbook included an arbitration agreement that required Mr. Antonucci to resolve "any and all disputes, claims or controversies," including discrimination, harassment, or retaliation claims, via

binding arbitration and advised him he waived his right to a jury trial for employment-related disputes. *Id.* at 558–59. Like the Agreement here, the arbitration agreement in *Antonucci* also explained that Mr. Antonucci's acceptance of work, even without his affirmative signature on the agreement, rendered the arbitration agreement effective and would be deemed consent to and ratification of the arbitration agreement's terms. *Id.* at 559; (*also* Pa000094). The Appellate Division ruled the arbitration agreement there was valid and enforceable because it reflected the parties' mutual assent to arbitrate employment claims and "informed [Mr. Antonucci] that his continued employment would constitute an acknowledgment of his agreement to arbitrate any employment-related disputes." *Antonucci*, 470 N.J. Super. at 563.

In *Perez*, the Appellate Division again compelled arbitration based on the clear and unambiguous language contained in a "Participation Agreement, Release and Assumption of Release" entered into by a patron of a trampoline park, with the terms there bearing striking similarity to the Mutual Arbitration Agreement here. 472 N.J. Super. 240. There, the plaintiff placed a check mark next to an arbitration provision that expressly stated he (1) was waiving his right to maintain a lawsuit against the defendants; (2) understood he would not have the right to have his claims determined by a jury; and that (3) "any dispute, claim or controversy arising out of or relating to" the plaintiff's access to or use of the

premises was to be asserted in private arbitration with JAMS within one year from the date of accrual. *See id.* at 245. That arbitration agreement was deemed "a clear and unambiguous waiver of plaintiff's right to a jury trial and to pursue his claims in a court of law and, accordingly, [was] enforceable." *Id.* at 249.

The same result should occur here. The Mutual Arbitration Agreement unambiguously stated three times in plain language that Dr. Murray was agreeing to give up the right to have a court or jury decide any of her Covered Claims (including all discrimination and retaliation claims arising out of or related to her employment), and that her conduct, even without her signature, would ratify the Arbitration Agreement:

> - **I and the Company . . . agree that . . . disputes, claims, complaints, or controversies ("Claims") that I may have . . . including . . . discrimination and/or harassment claims; retaliation claims . . . are subject to confidential arbitration pursuant to the terms of this Agreement and will be resolved by Arbitration and NOT by a court or jury.**
> - **The parties hereby forever waive and give up the right to have a judge or a jury decide any Covered Claims.**
> - **I ACKNOWLEDGE THAT . . .** I am giving up the right to have Covered Claims decided by a court or jury.
> - **I ACKNOWLEDGE THAT . . .** my affirmative signature and/or acknowledgment of this Agreement is not required for the Agreement to be enforced. If I begin working for Actalent Scientific, LLC without signing this Agreement, this Agreement will be effective, and I will be deemed to have consented to, ratified and accepted this Agreement through my acceptance of and continued employment with Actalent Scientific, LLC.

(Pa000092–94.)

The parties' mutual assent to arbitrate "any and all disputes, claims, and controversies" between Dr. Murray, Actalent, and Actalent's "client or customer" Rutgers, are clearly, unambiguously, and unmistakably delineated for Dr. Murray in the parties' Agreement. These express acknowledgments located immediately above Dr. Murray's signature affirmed that she understood she was waiving the right to have any statutory discrimination or retaliation claims be determined by a court or jury, and that she was given an opportunity to review the Mutual Arbitration Agreement with her own attorney. (*See* Pa000093–94.) The Agreement is clear and unmistakable—and valid. This Court, like the trial court, should require Plaintiff to adhere to the terms of the parties' agreement and compel her to pursue her claims in private arbitration.

C. The Agreement here covered the full scope of Dr. Murray's employment-related, LAD/discrimination claims.

Dr. Murray's claims are encompassed by the parties' arbitration agreement. The scope of an arbitration agreement "rests solely on the parties' intentions as set forth in the writing." *Martindale*, 173 N.J. at 93. "Courts have generally read the terms 'arising out of' or 'relating to' a contract as indicative of an 'extremely broad' agreement to arbitrate any dispute relating in any way to the contract." *Griffin v. Burlington Volkswagen, Inc*., 411 N.J. Super. 515, 518–19 (App. Div. 2010) (citations omitted); *Angrisiani v. Fin. Tech. Ventures, L.P*., 402 N.J. Super. 138, 149 (App. Div. 2008) (recognizing that an arbitration

provision calling for arbitration of "any and all controversies, claims or disputes arising out of or relating to this Agreement" is "extremely broad").

Broad arbitration provisions, including agreements to arbitrate "all disputes relating to [plaintiff's] employment . . . or termination thereof" will accordingly be enforced to compel arbitration even where those claims relate to claims under the LAD so long as the "wording provided plaintiff with sufficient notice at the time she signed the agreement." *Martindale*, 173 N.J. at 96; *see also Antonucci*, 470 N.J. Super. at 558–59 & n.1 (the parties agreed that the agreement to arbitrate "any and all disputes, claims or controversies arising out of or relating to . . . the employment relationship" put plaintiff on notice that he waived the right to a jury trial for any employment-related disputes).

Arbitration agreements governed by the FAA encompass discrimination and retaliation claims, such as those asserted under the LAD. *See Circuit City Stores*, 532 U.S. at 123 ("The Court has been quite specific in holding that arbitration agreements can be enforced under the FAA without contravening the policies of congressional enactments giving employees specific protection against discrimination prohibited by federal law . . . ."); *Antonucci*, 470 N.J. Super. 553. As this Court explicitly recognized in *Antonucci*, the FAA preempts several amendments to the LAD that would have interfered with parties' contractual ability to arbitrate employment-discrimination claims. 470 N.J.

Super. at 557–58. Relying on holdings from both the United States Supreme Court and the Supreme Court of New Jersey, the *Antonucci* Court affirmed that

> [w]hen a state law prohibits outright the arbitration of a particular type of claim, the conflicting state law is pre-empted by the FAA . . . . Even when the state law does not expressly single out arbitration agreements, it will be pre-empted if its application "covertly accomplishes the same objective by disfavoring contracts that . . . have the defining features of arbitration agreements."

Id. at 564–65 (internal citations omitted) (citing and quoting *Kindred Nursing Ctrs., Ltd. P'ship v. Clark*, 581 U.S 246 (2017); *Flanzman*, 244 N.J. 119).

Here, the breadth and specificity of the signed Mutual Arbitration Agreement encompasses all of Dr. Murray's claims as stated in her action. By its express terms and operation of law, the Mutual Arbitration Agreement is governed by the FAA. (Pa000093); *see also Circuit City Stores*, 523 U.S. 105 (holding employment claims governed by the FAA are arbitrable); *Flanzman*, 244 N.J. 119 (holding LAD claims are arbitrable). The Agreement is explicit in that it covers "all disputes, claims, complaints or controversies" that Dr. Murray may have against Actalent and its employees, clients, and/or customers, including any claims for discrimination, retaliation, penalties, or restitution, and any other claim under any federal, state, or local statute, constitution, regulation, rule, ordinance, or common law that arise out of or may be related, directly or indirectly, to her employment or termination with Actalent or its clients. (Pa000092.) The Agreement further confirms that Plaintiff's employment

discrimination and retaliation claims will "**be resolved by Arbitration and NOT by a court or jury**." (*Id.* (emphasis in original).)

Dr. Murray asserted two counts of employment discrimination under the LAD. (Pa000001–14.) There is no legitimate dispute that these claims are "Covered Claims" under the Agreement that Dr. Murray signed. There is a valid and enforceable agreement that commits any and all disputes—including employment discrimination claims—to arbitration. *See Perez*, 472 N.J Super. at 248. The Agreement covers the entirety of her claims and this action. The trial court correctly dismissed Dr. Murray's action without prejudice and referred her instead to arbitration, as she agreed. *See, e.g.*, *Seus v. John Nuveen & Co.*, 146 F.3d 175, 179 (3d Cir. 1998) ("If all the claims involved in an action are arbitrable, a court may dismiss the action instead of staying it."), *overruled on other grounds*, *Green Tree Fin. Corp.-Ala. v. Randolph,* 531 U.S. 79 (2000). This Court should affirm.

III. Dr. Murray's arguments for reversal all fail.

The Agreement contained clear, unequivocal, and unmistakable language reflecting the parties' knowing and voluntary decision to pursue any and all disputes only in arbitration. Dr. Murray signed the Agreement and proceeded with her employment as a Clinical Research Educator. (Pa000092-94; Pa000137-Pa000138). Nevertheless, Dr. Murray raises numerous arguments of

alleged error with the trial court's order compelling her to arbitrate her claims as she agreed. None have merit.

A. Courts have roundly rejected Dr. Murray's argument that her claims are exempt from arbitration.

Dr. Murray argues, in circular fashion, that under "New Jersey law, it is clear that an employee cannot be compelled to waive his or her right to assert claims of discrimination under the LAD because employees such as Appellant cannot, and should not, be forced to waive broad remedies under the NJLAD, including the right to a trial by a jury of Appellant's peers." (Pb25.) Beyond its circuity, her argument is simply incorrect, as New Jersey law is in fact to the contrary.

First, Dr. Murray's entire premise is flawed in her assertion that she was "forced to waive" anything. As Respondents showed and the facts fully support, and as discussed further herein, Dr. Murray's agreement to arbitrate was knowing and voluntary: she expressly acknowledged so in signing her employment documents. Her cries of forced waiver are baseless.

Second, New Jersey law allows for waiver of the right to pursue a claim—including under the LAD—in a judicial forum and before a jury so long as the waiver is knowing and voluntary. "By its very nature, an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court." *NAACP*, 421 N.J. Super. at 425. "But an average member of the public

may not know—without some explanatory comment—that arbitration is a substitute for the right to have one's claim adjudicated in a court of law." *Atalese*, 219 N.J. at 442. Directly above Dr. Murray's electronic signature was her acknowledgment that she had carefully read and understood the Agreement and entered into it voluntarily, and that she was "giving up the right to have Covered Claims decided by a court or jury." (Pa000093.) These acknowledgements also provide sufficient explanation that her agreement to arbitrate would result in any potential claim being heard in arbitration, not by a judge or jury in a court of law. *Forsyth v. First Trenton Indem. Co.*, A-5080-08T2, 2010 WL 2195996, at *6 (App. Div. May 28, 2010) ("[A] party's signature to an agreement is the customary and perhaps surest indication of assent . . . .") (unpublished) (Ra20-Ra26); *also id.* ("[A]n employee's signature on the pre-printed agreement is sufficient to effectuate such a policy.").

At the beginning of the two-page Agreement, in bold-face, which Dr. Murray acknowledges she read and understood, it stated that any claims or disputes "are subject to confidential arbitration pursuant to the terms of this Agreement and will be resolved by Arbitration and NOT by a court or jury. The parties hereby forever waive and give up the right to have a judge or a jury decide any Covered Claims." (Pa000092.) Nothing more is required—certainly not any "magical language." *Morgan*, 225 N.J. at 309. Instead, New Jersey

"courts have upheld arbitration clauses that have explained in various simple ways 'that arbitration is a waiver of the right to bring suit in a judicial forum.'" *Antonucci*, 470 N.J. Super. at 561–62 (quoting *Morgan*, 225 N.J. at 309). That is precisely what the Agreement here did—in multiple places.

On this point, *Antonucci* is particularly instructive. There, as here, the employee entered into an arbitration agreement that he reviewed and acknowledged online. 470 N.J. Super. at 558. The agreement there "stated that all disputes between Curvature and an employee would be resolved by binding and final arbitration," "that it covered all employment-related claims, including claims of wrongful termination and discrimination, harassment, or retaliation"—including "claims based on federal or state statutes"—and that "all disputes between [the company] and an employee would be resolved by binding and final arbitration." *Id.* This Court held: "The terms of the Agreement clearly stated that the parties were giving up the right to pursue all employment-related claims in court, and instead agreed to arbitrate those claims before an AAA arbitrator. In that regard, the Arbitration Agreement expressly stated that it covered discrimination claims, including statutory claims." *Id.* at 562–63. The Court thus concluded that the arbitration agreement was valid and enforceable with respect to Antonucci's LAD claim. The Agreement between Dr. Murray and Respondents is just as enforceable: it covers "all disputes, claims, complaints,

or controversies" that Dr. Murray "may have against Actalent Scientific, LLC and/or any of its subsidiaries, affiliates, officers, directors, employees, agents, and/or any of its clients or customers," including "discrimination and/or harassment claims," and " any other claim under any federal, state, or local statute, constitution, regulation, rule, ordinance, or common law." (Pa000092.)

Dr. Murray does not dispute that if the Agreement is valid and enforceable, it covers her LAD claim. *See Antonucci*, 470 N.J. Super. at 563 n.1. Instead, she argues that if "an employment arbitration provision is to be enforced in the context of a discrimination claim, there can be no dispute that the arbitration provision at issue must clearly convey to the reader that it applies to the employee's future claims of discrimination." (Pb25.) The Agreement between Dr. Murray and Respondents is virtually indistinguishable from that in *Antonucci*. It addresses specifically claims for "discrimination" and "retaliation" arising out of her employment, which, as of when she signed it, she had not yet begun. It is simply not credible or legitimate to argue that Dr. Murray did not know or should not have reasonably understood that her agreement to arbitrate would apply to any and all claims arising out of her forthcoming employment. As in *Antonucci*, the Agreement here is valid and enforceable as to Dr. Murray's claims.

Third, Dr. Murray also asserts that her LAD claim and its remedies "are fundamental rights that cannot be waived by involuntary and ambiguous arbitration agreements." (Pb22–26.) However, she conceded that her acceptance of the Agreement and its terms—including arbitration—was knowing and voluntary. (Pa000093.) Her claims of supposed ambiguity fall flat: nowhere in her brief does she identify an ambiguous provision. As shown, the Agreement tracks that in *Antonucci*, and it expressly covers the very discrimination claim she asserts and states plainly that any such claim is subject to arbitration only, and that she was knowingly and voluntarily "giving up the right to have" any such claim "decided by a court or jury." (Pa000093; *also* Pa000092.)

There is no basis for this Court to deviate from its decision in *Antonucci* based on Dr. Murray's suggestion that a judicial forum is one of the "most important tools" to enforce the "strong policy against discrimination" because of the LAD's legislative history (Pb23-Pb24.) To the extent she argues or suggests that the law prohibits agreements to arbitrate discrimination claims under the LAD, she is incorrect, as *Antonucci* again shows.

In *Antonucci*, as a matter of first impression, this Court resolved that any state law that outright prohibits "the arbitration of a particular type of claim"—such as, the attempted application of N.J. Stat. Ann. § 10:5-12.7 to preclude arbitration of an LAD claim—conflicts with and is therefore preempted by the

FAA. 470 N.J. Super. at 564. As the Court explained, even "when the state law does not expressly single out arbitration agreements, it will be pre-empted if its application 'covertly accomplishes the same objective by disfavoring contracts that . . . have the defining features of arbitration agreements." *Id.* at 565 (quoting *Kindred Nursing Ctrs.*, 581 U.S. at 247). This Court's prior holding that the FAA preempts any legislative attempt to preclude agreements to arbitrate discrimination claims is directly applicable.

Dr. Murray does not cite, mention, or attempt to distinguish *Antonucci*, nor does she acknowledge N.J. Stat. Ann. § 10:5-12.7 and this Court's holding with respect to its preemption by the FAA. Instead, she refers to other portions of the statute, such as with the Legislature adding "an explicit right to a trial by jury in N.J.S.A. 10:5-13." (Pb23.) But § 10:5-13 provides no prohibition on waiver of jury trials in favor of arbitration, nor could it, as such would be preempted by the FAA, as *Antonucci* held. This Court explained in *Antonucci*: "Our Supreme Court has recognized that '[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral[,] rather than a judicial, forum.' " 470 N.J. Super. at 566 (quoting *Martindale*, 173 N.J. at 93).

Dr. Murray's arguments that her LAD claims are exempt from arbitration lack any merit, especially in light of the directly on-point holding by this Court

in *Antonucci*, which she ignores. They cannot provide the basis for reversing the trial court's proper determination that the parties' Agreement is valid and enforceable.

B. Dr. Murray's self-serving, post-fact claim she did not knowingly and voluntarily agree to arbitration does not defeat the effect of her assent to the Mutual Arbitration Agreement

Dr. Murray, a highly educated individual with contract negotiation experience, signed a valid arbitration agreement during the onboarding process of becoming a Clinical Research Educator. She acknowledged that she read, understood, and voluntarily entered into the Agreement, "giving up the right to have Covered Claims decided by a court or jury." (Pa000093). She cannot neutralize the effect of her knowing and voluntary signature on the Agreement by relying on the easily distinguishable case of *Fawzy v. Fawzy*, 199 N.J. 456 (1999), or by again proffering the self-serving, contradictory claims in her certification. (Pb27).

Fawzy, a divorce case, involved two unsophisticated individuals engaged in divorce and custody proceedings who lacked any experience in contract negotiation. 199 N.J. at 462–63 (noting the parties' backgrounds and that they were represented by counsel, without indicating sophisticated status). The *Fawzy* court emphasized that its decision hinged on the *absence* of a written arbitration agreement. *See generally Id.* "As we have said," the court wrote,

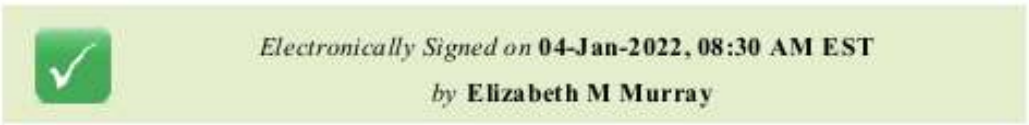
"there was no written arbitration agreement. Thus, the colloquy on the record had to establish that the parties understood their rights, knew what they were waiving, and especially that they were aware of what review was available. As is evident from the colloquy, that did not occur here." *Id.* at 483. Put differently, *Fawzy* represents the New Jersey Supreme Court's opinion that court must ensure that the parties have received an adequate explanation of the terms of the arbitration agreement when there is no written arbitration agreement. .

In contrast, here, there is a written arbitration agreement, which Dr. Murray acknowledged and signed as a sophisticated and well-educated professional. *Fawzy* is therefore inapposite. Dr. Murray's analogizing to *Fawzy* requires the Court to credit her post-fact, self-serving statements over her unequivocal, written acknowledgment that she read, understood, and voluntarily entered into the Agreement to arbitrate her employment related claims. This subverts New Jersey law: as this Court has explained, an "employee who signs but claims not to understand an arbitration agreement will not be relieved from an arbitration agreement on those grounds alone." *Roman v. Bergen Logistics, LLC*, 456 N.J. Super. 157, 175 (App. Div. 2018).

The indisputable fact remains that Dr. Murray signed the Agreement with its express acknowledgements. Her contention that the trial court or this Court must disregard those clear and unequivocal acknowledgements is made without

authority or proper support. Dr. Murray's signature created a "conclusive presumption" of her receipt of the Agreement and nothing presented below or now raises a plausible inference that she did not sign the agreement or that she did not understand and voluntarily and knowingly agree to it. *Tharpe v. Securitas Sec. Servs. USA, Inc.*, No. 20-cv-13267, 2021 WL 717362, at *3 (D.N.J. Feb. 24, 2021) (Ra27-Ra33); *also Stelluti*, 203 N.J. at 305 ("When a party enters into a signed, written contract, that party is presumed to understand and assent to its terms, unless fraudulent conduct is suspected."). Post-fact assertions that Dr. Murray did not read or understand what she acknowledged as having read and understood provide no basis to avoid arbitration. *Roman*, 456 N.J. Super. at 175; *also Goffe*, 238 N.J. at 212 (rejecting the "argument that plaintiff did not understand the import of the arbitration agreement and did not have it explained to her by" her employer as "simply inadequate to avoid enforcement of" the "clear and conspicuous agreement" that she signed). As the New Jersey Supreme Court explained, "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 was 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.

Finally, this Court can swiftly reject Dr. Murray's argument that she "never 'signed' the Arbitration Agreement and never did anything more than 'acknowledge' it by simply opening up the link to the policy through the employee portal" because "the Agreement does not contain [her] physical signature." (Pb2, 24, 38, 39; Pa000216.) The validity of electronic signatures and acknowledgments, including in the context of employment-related documents have been well-recognized by this Court and others. *See, e.g.*, *Antonucci*, 470 N.J. Super. at 559 (finding a signature valid wherein the plaintiff "did not sign the Arbitration Agreement in the space provided" but instead "electronically clicked on an 'I Accept' check box acknowledging that he had 'received and reviewed the policies and procedures' outlined in the Codes and Handbook"); *see also Forsyth*, 2010 WL 2195996, at *7 ("We have also recognized that a party may manifest assent to a contract by clicking a link on a website.")(Ra20-Ra26). Here, the Agreement unambiguously bears Dr. Murray's electronic signature and acknowledgement, along with the time-stamp of 8:30 a.m. EST, January 4, 2022:



(Pa000094.)

Despite claiming that her electronic signature and acknowledgement "required virtually no affirmative action by" her (Pb31), notably, Dr. Murray does not deny that she did in fact affirmatively act to provide her electronic signature and acknowledgement. Dr. Murray is silent as to what more she believes was or should have been required of her to affirm her assent, nor does she offer support that anything more is or should be required. The argument that Dr. Murray did not, in fact, sign the Agreement must fail. There is no legitimate basis to negate the conclusive presumption that accompanies Dr. Murray's acknowledgement and signature on the Agreement and her assent to its terms.

C. The Agreement was not unconscionable.

The Agreement to arbitrate these claims is not unconscionable. Dr. Murray suggests there was "gross procedural unconscionability" in the execution of the Agreement and, therefore, "the Arbitration Agreement should not be enforced." (Pb28.) Oddly, she continues: "Although a signature would generally signify agreement, that is not the case where the signee was induced to sign by a misrepresentation – even where the representation could have been discovered simply by reading the document and the signee was negligent in failing to do so." (Pb28–29 (citing *Rowen Petrol. Props., LLC v. Hollywood Tanning Systems, Inc.*, 2009 U.S. Dist. LEXIS 33685, at *11–12 (D.N.J. Apr. 20, 2009)).)

These arguments lack merit. An alleged misrepresentation or fraudulent representation has never been identified, as was at issue in *Rowen*. Notwithstanding, Dr. Murray's acknowledgment on the Agreement confirmed she was "not relying on any promises or representations by the Company except those contained in the Agreement." (Pa000093.) Dr. Murray does not point to any record evidence of any such fraud or misrepresentation or show where in the record she advanced this argument and preserved it for appeal (or develop her citation to and reliance on *Rowen* in any way). This newly urged fraud-based unconscionability argument is wholly unsupported, undeveloped, and unpreserved. The Court should dispense with it summarily, as it is waived. *See, e.g.*, *Nieder v. Royal Indemnity Ins. Co.*, 62 N.J. 229, 234 (1973) ("It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public justice."); *Nextel of N.Y., Inc. v. Borough of Englewood Cliffs Bd. of Adjustment*, 361 N.J. Super. 22, 45 (App. Div. 2003) ("Where an issue is based on mere conclusory statements by the brief writer, we will not consider it.").

Dr. Murray pivots, next claiming that her agreement to arbitrate was unconscionable because, supposedly, she did not have sufficient time "to read

and review the document"(Pb29)—despite her express acknowledgement that she carefully read the Agreement, understood its terms, and had been given the opportunity to consult an attorney before signing. (Pa000093); *Stelluti*, 203 N.J. at 305. She ignores on-point authority rejecting this argument. *E.g.*, *Roman*, 456 N.J. Super. at 174. As Respondents showed below, Dr. Murray's after-the-fact assertion that she subjectively felt pressured to click through the policies while she waited for a pre-hiring medical examination does not render the Mutual Arbitration Agreement unconscionable or unenforceable.

Although Dr. Murray claimed she "specifically recall[s]" Actalent representatives "pressuring her to click through a series of screens on the portal as soon as possible before [she] could begin working," (Pa000137), she did not substantiate that assertion with specific details about those interaction. Dr. Murray said nothing of whether she had other opportunities to complete the onboarding paperwork(such as after the medical examination) and has not claimed that she requested but was refused more time to review the documents before signing. Despite the unsubstantiated (and illogical) leaps required, Dr. Murray urges this Court to adopt her conclusion that, that if she "wanted to work," she "was left with simply no choice but to 'accept' the terms of the Arbitration Agreement." (Pb33). As this Court has acknowledged, this argument "falls far short" of showing an unenforceable adhesion contract." *Jones v. Dish*

Network LLC, A-2653-12T4, 2013 WL 6169215, at *4 (App. Div. Nov. 26, 2013) (unpublished) ("Plaintiff's contention that, on her first day of employment she was handed a stack of documents and told to sign them, without further explanation of their contents, falls far short of alleging either fraud or an unenforceable adhesion contract. As plaintiff readily concedes, a potential employee's need for a job does not constitute sufficient pressure to invalidate an arbitration agreement.") (Ra34-Ra38). Interestingly, Dr. Murray admitted that she did review (*and understand*) the documents presented to her through the portal, recognizing them as company policies regarding paid time off, an employee handbook, and workplace conduct policies. (Pa000137.) Dr. Murray fails to explain why she was able to review and understand those documents, but not the Mutual Arbitration Agreement presented to her and signed at the same time in the same way.

The authority Dr. Murray cites does not legitimate this contention. Those cases pertain to the unrelated context of an employee signing a retrospective release of already existing discrimination claims—*not* a prospective agreement to arbitrate any such claims that may arise in the future, as Dr. Murray signed. As this Court and the Supreme Court of New Jersey have reminded, prospective agreements to arbitrate employment claims are not unenforceable releases because "by agreeing to arbitrate a statutory claim, a party does not forgo the

substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *Antonucci*, 470 N.J. Super. at 566 (quoting *Martindale*, 173 N.J. at 93). The test applicable to evaluating the enforceability of a release of an existing claim is entirely inapplicable to determining the validity and enforceability of an agreement to arbitrate such a claim. None of the cases Dr. Murray cites establishes that retrospective and prospective arbitration agreements are interchangeable.

As to the actually pertinent case law, Dr. Murray did not distinguish this matter from *Martindale*, 173 N.J. 76, in which the Supreme Court *upheld* an arbitration agreement as valid and enforceable. (Pb31–32.) Primarily, insofar as Dr. Murray contends that the facts presented in *Martindale* are the *only* circumstances allowing a court to find a knowing and voluntary agreement to arbitrate, she is incorrect: *Martindale* drew no such bright-line. The facts here bear sufficient similarity to the circumstances in *Martindale* and in no way meaningfully differ so as to support the contention that there was no knowing and voluntary agreement to arbitrate Dr. Murray's claims.

For example, in *Martindale*, the plaintiff received the arbitration agreement within her application for employment, on page four of that document, just as the Agreement in this case was included within Dr. Murray's on-boarding documents. 173 N.J. at 82. As here, the *Martindale* plaintiff was

afforded the opportunity to consult an attorney. *Id.* Like Dr. Murray, the *Martindale* plaintiff also had an opportunity to ask questions about the arbitration agreement, although she did not. *Id.* While Dr. Murray attempts to assign significance to the fact that the *Martindale* arbitration provision was in all-capital letters, the court there did not. Nevertheless, equally, the Agreement here was titled "**MUTUAL ARBITRATION AGREEMENT ('AGREEMENT')**", in bold-faced capital letters; the pivotal paragraph of the Agreement was set off in bold-face, with capital emphasis that any claims covered by the Agreement would be "subject to confidential arbitration pursuant to the terms of this Agreement and will be resolved by Arbitration and NOT by a court or jury." (Pa00092 (emphasis in original).) Dr. Murray did not establish a meaningful distinction between the manner in which the arbitration agreement was presented in *Martindale* and here.

Dr. Murray's next new argument, that Agreement is unenforceable as a "contract of adhesion" (Pb33–34), is of no effect. The Supreme Court roundly rejected similar arguments made in *Martindale*, the very case on which Dr. Murray attempted to rely just one page earlier. In *Martindale*, the plaintiff also argued that the arbitration agreement contained within her employment application was unenforceable as a contract of adhesion. 173 N.J. at 89–92. The Supreme Court began by noting that even "if the Application for Employment

in this case, including the arbitration provision, was found to constitute a contract of adhesion, that does not render the contract automatically void," adding: "The observation that a contract falls within the definition of a contract of adhesion is not dispositive of the issue of enforceability." *Id.* at 89. Rather, such a finding "is the beginning, not the end, of the inquiry," *id.*, and requires consideration of a number of factors.

Considering those factors, the *Martindale* court observed: "[v]irtually every court that has considered the adhesive effect of arbitration provisions in employment applications or employment agreements has upheld the arbitration provision contained therein despite potentially unequal bargaining power between employer and employee." *Id.* at 90 (citing cases). Addressing the facts, the *Martindale* court observed that the plaintiff there was provided the opportunity to consult an attorney, just as Dr. Murray acknowledged she had here. 173 N.J. at 91. The Court also found relevant that the plaintiff herself, like Dr. Murray, was educated and experienced in her field. *Id.* However, the Court found that "[n]othing in the record indicates that plaintiff asked to alter any terms of the application or that Sandvik would have refused to consider her for the position if she did not assent to the arbitration provision as presented." *Id.*

There is no meaningful difference between the matter presently before this Court and the factual, logical basis justifying the enforceability of the arbitration

agreement contained in *Martindale*. Dr. Murray did not identify a basis showing that she sought to alter the terms of the Agreement or that her job offer would have been rescinded for refusing to assent to arbitration. While Dr. Murray appears to urge the presence of unequal bargaining power, (Pb33–34), she fails to acknowledge *Martindale* or its holding, much less overcome it. *See also Young v. Prudential Ins. Co. of Am.*, 297 N.J. Super. 605 (App. Div. 1997) (explaining that a plaintiff must show "circumstances substantially more egregious than the ordinary economic pressure faced by every employee who needs the job" to avoid an arbitration agreement), *certif. den.*, 149 N.J. 408 (1997).

Further, as in *Martindale*, "even if the arbitration agreement could be so characterized" as a contract of adhesion, "the agreement's subject matter and the public interests affected lead to the conclusion that it should not be invalidated." 173 N.J. at 91. The New Jersey Supreme Court recognized, "courts have held on numerous occasions that agreements to arbitrate are not violative of public policy," and "the affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving disputes." *Id.* at 92 (citations omitted). Thus, the "insertion of an arbitration agreement in an application for employment simply does not violate public policy." *Id.* Dr. Murray cites numerous cases to generically explain that "contracts of adhesion

will not be enforced when contrary to public policy," (Pb34), but her failure to address *Martindale's* express holding that arbitration agreements in the employment context simply do "not violate public policy" is fatal to her contention. 173 N.J. at 92. As with her other kitchen-sink arguments, this adhesion-contract argument fails.

D. The arbitration agreement applies equally with respect to Respondents Rutgers and Watkins-Keller.

Dr. Murray's next contention that the Agreement does not extend to her claims against Co-Respondents Rutgers or Watkins-Keller, (Pb35), can also be summarily rejected. The Agreement explicitly defines "Covered Claims" to include those against not only Actalent, but also any of Actalent's "subsidiaries, affiliates, officers, directors, employees, agents, and/or any of its clients or customers." (Pa000092.) Rutgers is one of Actalent's "clients or customers"—which Dr. Murray acknowledges vis a vis her allegation that Actalent and Rutgers were her "joint employers." (Pa000003.)

New Jersey law agrees that "non-signatories of a contract . . . may . . . be subject to arbitration if the nonparty is an agent of a party or a third party beneficiary to the contract." *Hojnowski ex rel. Hojnowski v. Vans Skate Park*, 375 N.J. Super. 568, 576 (App. Div. 2005). The "principle that determines the existence of a third party beneficiary status focuses on whether the parties to the contract intended others to benefit from the existence of the contract, or whether

the benefit so derived arises merely as an unintended incident of the agreement." *Id.* (quoting *Broadway Maint. Corp. v. Rutgers, The State Univ.*, 90 N.J. 253, 259 (1982)). "[T]he real test is whether the contracting parties intended that a third party should receive a benefit which might be enforced in the courts." *Id.* (quoting *Broadway Maint. Corp.*, 90 N.J. at 259).

Here, Dr. Murray alleged such a unity among Respondents Actalent and Rutgers as to label them collectively in her complaint as "Corporate Defendants." (Pa000001–04.) She further alleged that Respondents Watkins-Keller and Gregory were "at all relevant times hereto" employees of "Corporate Defendants." (Pa000004.) She should not be heard to disavow those allegations now in order to argue that the arbitration agreement should not equally apply to the very entities and individuals that she, herself, alleged to have acted as one. Nor can she deny that the Agreement clearly manifested the parties' intent for the agreement to apply to third parties—specifically, Actalent's "subsidiaries, affiliates, officers, directors, employees, agents, and/or any of its clients or customers." (Pa000092.) Dr. Murray's effort to limit the scope of the Agreement's coverage only to Actalent cannot prevail.

E. Dr. Murray's assertion that the trial court should have provided more in its "statement of reasons" it provided as a basis for remand is without merit and unsupported.

Throughout her appeal, Dr. Murray complains that the trial court did not provide a "statement of reasons" to her satisfaction, and that it therefore must have "failed to properly consider, or consider at all, each of the arguments advanced by Appellant." (Pb1–2, 20, 35, 36.). Dr. Murray's complaints, while inconsistent with a *de novo* review, lack a sufficient basis. Dr. Murray failed to identify any legitimate support for the assertion that she was entitled to more than the statement of reasons the trial court already provided. The record does not support her accusation that the trial court failed to give Respondents' motions and her opposition due consideration—or worse, that the trial court outright "abdicated its duty," as she charges. (Pb1.) It did not.

Trial courts are tasked with "find[ing] the facts and [stating] its conclusion of law thereon. . . on every motion decided by a written order that is appealable as of right." R. 1:7-4. Trial court order which "state clearly factual findings and correlate them with relevant legal conclusions, so that parties and the appellate courts [are] informed of the rationale underlying th[ose] conclusion[s]" are sufficient. *Avelino-Catabran v. Catabran*, 445 N.J. Super. 574, 594 (App. Div. 2016) (citing *Monte v. Monte,* 212 N.J. Super. 557 (App. Div. 1986)) (alterations in original). Insufficient statements occur when, for example, a trial court produces only a guidelines worksheet without comment or merely incorporates by reference one of the parties' arguments. *Id.; see also O'Brien v. O'Brien*, 259

N.J. Super. 402 (App. Div. 1992) ("cryptic" and "enigmatic" findings without further articulation is insufficient). Reviewing courts likewise find statements insufficient when the trial court's "Statement of Reasons did not provide *any* analysis for its order . . . or explain why claims . . . were subject to binding arbitration" under an arbitration agreements. *Colon v. Strategic Delivery Sols., LLC*, 459 N.J. Super. 349, 364 (App. Div. 2019), *aff'd sub nom. Arafa v. Health Express Corp*., 243 N.J. 147 (2020).Even where a statement is not fulsome but a reviewing court can make its determinations, remand is not required. *Lakhani v. Patel,* 479 N.J. Super. 291 (App. Div. 2024) (gathering examples). Here, the trial court complied with its obligation when it explained that Dr. Murray signed the Agreement, that the Agreement was "valid on its face," that Dr. Murray failed to argue that the Agreement was void or otherwise unenforceable, that Dr. Murray did not seek a declaratory judgment invalidating the Agreement and that it was dismissing the matter without prejudice and compelling arbitration. (Pa000207–08.)

Moreover, the record created below still permits this Court to make a determination without need of a remand. *Id.* (citing *Leeds v. Chase Manhattan Bank, N.A.,* 331 N.J. Super. 416 (App. Div. 2000) ("affirming the grant of summary judgment even though order merely stated 'denied.'")). Dr. Murray further declined the opportunity to request an amended or supplemented

statement of reasons and confirmed that this issue was "Not Raised Below." *See* R. 1:7-4(b). (Pb36.) Given the record facts which this Court considers in its *de novo* review—including that Dr. Murray undeniably signed the Agreement electronically, and that the Agreement is, as the Court can see, "valid on its face" as the trial court found—Dr. Murray has failed to articulate how any alleged error in the trial court not providing a more detailed statement of reasons would amount to anything more than harmless error. *M.J. v. A.M.*, A-2065-19T2, 2020 WL 7488905, at *3 (App. Div. Dec. 21, 2020) (remanding where it was determined the trial court's statement of reasons was insufficient to inform on appeal whether its "legal conclusions [were] supported by the record" and when the standard of review was "limited," as opposed to *de novo*). (Ra39-Ra41)[4]

There is no argument or supporting basis to ask this Court to address this purported error on appeal, much less to remand. The Court should reject this

[4] Further, Dr. Murray has not challenged the sufficiency of the evidence supporting the trial court's rulings, but instead the procedure whereby the trial court arrived at and memorialized those rulings in its orders. Arguably, then, she was required to raise her complaint with the trial court and is not absolved from doing so under R. 1:7-4, but instead she has waived this argument on appeal. *E.g.*, *Nieder v. Royal Indem. Ins. Co.*, 62 N.J. 229, 234 (1973) ("It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public justice.")

argument and Dr. Murray's argument for what would be nothing more than remand for remand's sake.

F. Dr. Murray's alternative request for remand for a plenary hearing must be rejected.[5]

This Court has ample grounds to reject Dr. Murray's request for a plenary hearing. A plenary hearing is used to resolve genuine disputes of fact (and is not one of general applicability to all proceedings). *Prant v. Sterling,* 332 N.J. Supr. 369, 377 (Ch. Div. 1999), *aff'd,* 332 N.J. Super. 292 (App. Div. 2000). No such dispute exists here: Dr. Murray electronically signed the Agreement and assented to resolving her employment claims in private mediation and began working in her role as a Clinical Research Educator, which constitutes a de facto acceptance of the Agreement's terms. She concedes this outcome-determinative fact in her certification when she stated that she "acknowledged" several policies electronically during her onboarding process. (Pa000126.) Dr. Murray's vague assertion that she subjectively felt pressured or her dubious claim that she did not know what an arbitration agreement was despite her status as an experienced, educated professional does not create the need for a hearing to determine that which is already apparent and undisputed. *See Heyert v. Taddese,* 431 N.J.

[5] Dr. Murray states that this issue concerning her request for a plenary hearing was not raised below. (Pb36.) But it appears it was. (Pa000183–84.) To the extent it was not, however, such an argument is waived. *E.g.*, *Nieder*, 62 N.J. at 234.

Super. 388, 414 (App. Div. 2013) (self-serving statements alone will not create genuine issues of material fact); *also Morales v. Sun Contractors, Inc.*, 541 F.3d 218, 221 (3d Cir. 2008) ("It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained.").

As explained above, also unhelpful is Dr. Murray's contention that this matter should have been subject to the "standards articulated in *Brill*." (Pb37.) The *Brill* standard is used "when deciding a motion for summary judgment under Rule 4:46-2," and distinguishes between a "genuine" dispute of material fact and an "insubstantial" one. *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 523, 530 (1995). Respondents did not bring, and the trial court did not consider, motions for summary judgment under R. 4:46-2. (Pa000053–54, 000107–08.) The fact that Dr. Murray submitted a certification and that Respondents submitted the Agreement itself (which is foundational to Dr. Murray's Complaint) does not require conversion of Respondents' R. 4:6-2 motions into motions for summary judgment, nor does it require a plenary hearing, nor detailed findings of fact and conclusions of law. *See Goffe*, 238 N.J. at 216; *Myska v. New Jersey Mfrs. Ins. Co.*, 440 N.J. Super. 458, 482 ("In evaluating motions to dismiss, courts consider allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the

basis of a claim.'") (internal citations omitted); *C.G. v. Applebee's Bar & Grill, Inc.*, 2022 WL 2821574, at *2–3 (Ra08-Ra10). *See also supra*, Part I.

This Court can, and should, find as a matter of law that Dr. Murray's claims must be compelled to arbitration, as numerous other courts have done on similar procedural postures. *See, e.g.*, *Goffe*, 238 N.J. at 195, 216–17 (finding that a summary judgment standard was not appropriate and that the trial court properly compelled to arbitration the plaintiff's claims based on consideration of just the complaint and the certifications provided to it); *McCoy*, 2024 WL 4447106, at *1, *7 (Ra01-Ra07) (affirming trial court ruling compelling the plaintiff's LAD claims to arbitration based on a single, enforceable agreement that the plaintiffs agreed to); *Antonucci*, 470 N.J. Super. at 557–58 (finding that LAD claims were properly considered and compelled to arbitration on a motion to dismiss, although instructing that such dismissal should be, as here, without prejudice). Indeed, that is precisely what the Supreme Court determined was proper in *Goffe*, wherein the court wrote that, even without having a plenary hearing, but solely "based on the complaint and the certifications provided to the trial court, it is apparent to us that the parties' claims are subject to an enforceable arbitration agreement." 238 N.J. at 216.

Dr. Murray's request for a plenary hearing ostensibly to determine "whether [she] actually 'signed' or otherwise agreed to be bound by the

purported Agreement," (Pb38–39), cannot avoid the enforceability of the parties' arbitration agreement. Respondents have conclusively shown and Dr. Murray admitted that she affixed her electronic signature to the Mutual Arbitration Agreement, and that she ratified the Agreement by beginning her employment with Rutgers. There was, and is, nothing for a plenary hearing to resolve.

CONCLUSION

Presented with a clearly valid and enforceable arbitration agreement that Appellant Murray acknowledged she knowingly and voluntarily electronically signed, the trial court did exactly as it should have—dismissed the action without prejudice and compelled her to arbitration for her claim. There was no procedural or substantive error. This Court should therefore affirm the trial court's rulings in full.

Respectfully submitted,

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CERTIFICATIONS OF SERVICE

I hereby certify that on December 20, 2024, I served a copy of Brief of Respondents Actalent Scientific, LLC and Kassidy Gregory on all counsel of record via the Court's electronic filing system.

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ELIZABETH MURRAY, Plaintiff-Appellant, vs. RUTGERS CANCER INSTITUTE OF NEW JERSEY; ACTALENT SCIENTIFIC, LLC; GINETTE WATKINS-KELLER; KASSIDY GREGORY; ABC CORPORATIONS 1-5 (fictitious names describing presently unknown business entities) and JOHN DOES 1-5 (fictitious names describing presently unidentified individuals), Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY: APPELLATE DIVISION Docket No.: A-003347-23 CIVIL ACTION On Appeal from the Superior Court of New Jersey, Middlesex County, Law Division Docket No. MID-L-6405-23 Sat Below: Hon. Joseph L. Rea, J.S.C.

BRIEF OF DEFENDANTS-RESPONDENTS RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY AND GINNETTE WATKINS-KELLER

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TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS

TABLE OF AUTHORITIES

PAGE(S)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

Plaintiff Elizabeth Murray ("Plaintiff") was assigned by Actalent Scientific, LLC ("Actalent"), a staffing agency retained by Rutgers, The State University of New Jersey ("Rutgers"), to perform services at the Rutgers Cancer Institute of New Jersey ("CINJ"). Prior to her assignment, Plaintiff, a highly educated individual, executed a Mutual Arbitration Agreement ("MAA") on or about January 4, 2022, whereby she agreed to submit certain claims against Actalent, and/or its client Rutgers, to confidential arbitration in exchange for employment with Actalent. Nevertheless, despite executing this agreement, Plaintiff subsequently filed a Complaint in the New Jersey Superior Court, Law Division alleging violations of the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1, et seq. Actalent, Kassidy Gregory, Rutgers (improperly plead as "Rutgers Cancer Institute of New Jersey"), and Ginnette Watkins-Keller (collectively, "Defendants") moved to enforce the MAA, and the trial court granted Defendants' motions for the reasons set forth by Defendants in their briefing.

On appeal, Plaintiff maintains she did not agree to pursue her claims in arbitration and asserts that she can avoid the MAA because Defendants did not take certain steps above and beyond presenting her with an explicit and clear agreement for her review and execution prior to her employment with Actalent. As will be set forth in more detail below, Plaintiff's arguments are contrary to the well-established

case law in New Jersey regarding enforceable arbitration agreements and should be rejected.

First, an examination of the four corners of the MAA shows that Plaintiff agreed to pursue any potential claims arising out of her employment with Actalent and/or her assignment at CINJ through confidential arbitration. The MAA clearly defined the type of claims that fall within its scope and expressly waives a jury trial as to those claims. Plaintiff also agreed to the MAA's terms as evidenced by both her signature and her acceptance of employment with Actalent. Plaintiff has not pointed to a single fact that establishes that the MAA was anything other than clear and unambiguous as to these issues.

Second, Rutgers is a "client or customer" of Actalent as plainly defined in the MAA, and thus, Rutgers, as well as Actalent, is entitled to enforce the MAA. Plaintiff does not actually dispute that Rutgers meets the definition of client or customer within the MAA, and even if she did, the MAA itself evidences that Rutgers was an intended third-party beneficiary to the agreement. Plaintiff, therefore, must litigate her alleged claims against both Actalent and Rutgers in arbitration.

Third, while Plaintiff attempts to cast doubt on both the voluntariness and her knowledge of her electronic signature on the MAA, Plaintiff's Certification supporting her opposition to arbitration in this case is devoid of any genuine

allegation that her acceptance of and continued employment with Actalent was either the product of fraud or is otherwise insufficient to evidence her consent to and acceptance of the MAA.

PROCEDURAL HISTORY

On or about July 27, 2023, Plaintiff filed a Complaint in the New Jersey Superior Court, Law Division, Monmouth County, asserting several claims arising under the NJLAD, including disability discrimination, failure to accommodate, failure to engage in the interactive process, and retaliation. (Pa01 – Pa15). Venue was transferred to the New Jersey Superior Court, Law Division, Middlesex County, on November 17, 2023, on Rutgers' motion. (Pa49 – Pa50; Pa51 – Pa52).

On or about December 11, 2023, Actalent and individual defendant Kassidy Gregory (together "Actalent") filed a motion to dismiss Plaintiff's Complaint pursuant to Rule 4:6-2 and seeking an order compelling arbitration pursuant to the MAA that Plaintiff had executed in connection with her employment by Actalent. (Pa53 – Pa106). Rutgers and individual defendant Ginnette Watkins-Keller (together "Rutgers") filed a similar motion on December 15, 2023, seeking the entry of an Order pursuant to Rule 4:6-2 to dismiss Plaintiff's Complaint and compel arbitration pursuant to the MAA. (Pa107 – Pa114). Plaintiff opposed the Defendants' motions. (Pa115 – Pa185).

On May 24, 2024, the Hon. Joseph L. Rea, J.S.C., entered an order stating, "Plaintiff's Complaint and all claims against Actalent Scientific, LLC are hereby **DISMISSED** without prejudice and the parties are referred to private arbitration in accordance with the Mutual Arbitration Agreement, which is clearly enforceable, and which was signed by the plaintiff on 1/4/22." (Pa204) (bolding and capitalization in original). Judge Rea entered another similar order on June 20, 2024, which granted Rutgers' companion motion. (Pa205 – Pa206).

Seeking to appeal the May 24, 2024 Order and the June 20, 2024 Order, Plaintiff filed her Notice of Appeal on June 20, 2024. On July 2, 2024, Judge Rea added the following statement of reasons to the May 24, 2024 Order:

> This is a LAD, employment case (that does not allege sexual harassment). The order entered by the court was for a **without** prejudice dismissal. During Dr. Murray's onboarding, she signed a Mutual Arbitration Agreement (MAA). Same was dated January 4, 2022. The MAA is valid on its face. Plaintiff's complaint fails to seek any declaratory relief declaring the MAA void or otherwise unenforceable.

(Pa207 – Pa209) (emphasis in original).

STATEMENT OF FACTS

At some point in or around January 2022, Plaintiff accepted employment with Actalent, a staffing agency. (Pa58). Actalent procured Plaintiff's services with the intent of assigning Plaintiff to CINJ. (Pa58). According to Plaintiff, prior to her

assignment at CINJ and as part of her onboarding with Actalent, she received a link to and could access Actalent's online portal, and she understood she was required to "electronically acknowledge a number of . . . Actalent's policies and procedures" governing her employment by Actalent through the online portal. (Pa136 – Pa137). On January 4, 2022, Plaintiff completed the required forms "on [her] cell phone" outside of the presence of any Actalent agents or employees. (Pa137). These forms included an MAA whereby she agreed to pursue any claims that may arise out of her employment or termination in private arbitration. (Pa58).

The opening paragraph of the MAA expressly stated that Plaintiff agreed to submit certain claims to confidential arbitration and that Plaintiff's execution of the MAA was done in consideration "for [her] application for and/or [her] employment with Actalent Scientific, LLC." (Pa92). More specifically, by executing the MAA, Plaintiff agreed that certain "Covered Claims," were subject to arbitration:

> . . . including contract claims; tort claims; **discrimination and/or harassment claims; retaliation claims**; claims for wages, compensation, penalties, or restitution; and any other claim under any federal, state, or local statute, constitution, regulation, rule, ordinance, or common law, arising out of and/or directly or indirectly related to my application for employment with the Company, and/or my employment with the Company, and/or the terms and conditions of my employment with the Company, and/or **termination of my employment with the Company** (collectively, "Covered Claims").

(Pa92) (emphasis added). Importantly, "covered claims" included not only claims against Actalent, but also claims against any of Actalent's "subsidiaries, affiliates, officers, directors, employees, agents, and/or **any of its clients or customers**." (Ibid.) (emphasis added).

Additionally, the acknowledgement at the end of the MAA provided:

I ACKNOWLEDGE THAT:

- I have carefully read this Agreement, understand the terms of this Agreement, and am entering into this Agreement voluntarily;
- I am not relying on any promises or representations by the Company except those contained in this Agreement;
- I am giving up the right to have Covered Claims decided by a court or jury;
- I have been given the opportunity to discuss this Agreement with my own attorney if I wish to do so; and
- My affirmative signature and/or acknowledgment of this Agreement is not required for the Agreement to be enforced. If I begin working for Actalent Scientific, LLC without signing this Agreement, this Agreement will be effective, and I will be deemed to have consented to, ratified and accepted this Agreement through my acceptance of and continued employment with Actalent Scientific, LLC.

(Pa93). Plaintiff electronically signed the MAA on January 4, 2022. (Pa93-Pa95).

STANDARD OF REVIEW

Pursuant to Rule 2:2-3(a), orders compelling arbitration are deemed final for purposes of appeal. See also GMAC v. Pittella, 205 N.J. 572, 587 (2011). Appellate courts consider de novo a trial court's determinations regarding the enforceability of contracts, including arbitration agreements. Hirsch v. Amper Fin. Servs., LLC, 215

N.J. 174, 186 (2013). Appellate courts "construe the arbitration provision with fresh eyes," Morgan v. Sanford Brown Inst., 225 N.J. 289, 303 (2016), and are also "mindful of the strong preference to enforce arbitration agreements, both at the state and federal level." Hirsch, 215 N.J. at 186 (citations omitted); see also Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 133 (2020) (explaining "the affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving disputes" (quoting Martindale v. Sandvik, Inc., 173 N.J. 76, 92 (2002))).

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD AFFIRM THE TRIAL COURT'S ORDER COMPELLING ARBITRATION BECAUSE THE MAA IS VALID ON ITS FACE. (Pa205-Pa209).

The Order dismissing Plaintiff's Complaint and compelling arbitration should be affirmed because, as the trial court correctly determined, the MAA is "valid on its face." (Pa207-Pa209). It is well established under New Jersey law that arbitration agreements are subject to customary contract law principles. Atalese v. U.S. Legal Servs. Grp., LP, 219 N.J. 430, 442 (2014). Consequently, courts "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 (2003).

A. Plaintiff's Waiver of Her Right to a Jury Trial was Knowing and Voluntary.

Consistent with traditional contract law principles, to determine the validity of an arbitration agreement, courts "consider[] the intentions of the parties as reflected in the four corners of the written instrument." Leodori, 175 N.J. at 302. Because arbitration provisions involve the waiver of rights, to enforce an agreement to arbitrate claims in employment settings, courts require "some concrete manifestation of the employee's intent as reflected in the text of the agreement itself." Id. at 300. Accordingly, when a contract is presented for signature, the presence of a signature or some other explicit indication that the employee intended to abide by the provision "is a significant factor in determining whether the two parties mutually have reached an agreement." Id. at 305.

As a threshold matter, Plaintiff's emphasis on the remedial purpose of the NJLAD is misplaced. Contrary to her assertions, by agreeing to arbitration, Plaintiff is not being "forced to waive" the remedies available to her under the NJLAD; rather, she is merely pursuing those same remedies in an agreed upon alternative forum. Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 131 (2001) ("In addition to furthering the strong aims of the LAD, our jurisprudence has recognized arbitration as a favored method for resolving disputes."); Antonucci v. Curvature Newco, Inc., 470 N.J. Super. 553, 566 (App. Div. 2022) (stating that by

agreeing to arbitrate a statutory claim, litigants "do not forgo the substantive rights afforded by statute; [they] only submit[] to their resolution in an arbitral rather than a judicial forum").[1]

As to the actual content of the MAA, Plaintiff does not dispute that on its face, the MAA includes a waiver of her right to a jury trial on the NJLAD claims asserted in her Complaint and an agreement to arbitrate those claims. See, generally, Pb22-Pb25. Rather, Plaintiff, without citing supporting case law, seemingly advocates that for the waiver to be valid in the context of discrimination claims, the waiver must withstand a more heightened scrutiny than other contracts. See Pb25 ("Unless an employee is explicitly aware of and informed of the very specific rights they are waiving as a result of agreeing to an arbitration provision, it cannot be enforced as a matter of law."). But this position is contrary to well-established law. See, e.g.,

[1] Plaintiff, without supporting case law, appears to erroneously suggest agreements to arbitrate discrimination claims arising under the NJLAD are per se unenforceable and against public policy. (Pb25) ("Under New Jersey law, it is clear than an employee cannot be compelled to waive his or her right to assert claims of discrimination under the NJLAD because employees . . . cannot, and should not, be forced to waive the broad remedies available under the NJLAD, including the right to a trial by jury . . . ."). But this suggestion is flatly contradicted by well-established precedent. Martindale, 173 N.J. at 92 ("… it is well established that an employee may be bound by an agreement to waive his or her right to pursue a statutory claim in a judicial forum in favor of arbitration."); Flanzman, 244 N.J. at 138 (upholding a waiver of an employee's right to pursue an age discrimination cause of action under the LAD before a judge or a jury in favor of an arbitration forum).

Skuse v. Pfizer, Inc., 244 N.J. 30, 61 (2020) (holding that an employee's failure to review the content of an email announcing the company's arbitration agreement did not invalidate the arbitration agreement); Morgan, 225 N.J. at 309 (stating that "[n]o magical language is required to accomplish a waiver of rights in an arbitration agreement" and explaining that "[o]ur courts have upheld arbitration clauses that have explained in various simple ways that arbitration is a waiver of the right to bring suit in a judicial forum") (internal citation omitted); Martindale, 173 N.J. at 81–82 (upholding an arbitration clause stating that "all disputes relating to [the party's] employment . . . shall be decided by an arbitrator" and that the party had "waiv[ed] [her] right to a jury trial"). And Plaintiff's position seemingly ignores the fact that Plaintiff electronically signed the MAA or otherwise manifested her intent to be bound by its provisions. [2]

Plaintiff's argument that an employer bears the burden of ensuring that an employee "actually understand[s]" the employee's waiver similarly lacks foundation

[2] To the extent Plaintiff is challenging her electronic signature, even in the absence of her signature, the MAA would still be valid because her employment with Actalent evinced an unmistakable indication that she affirmatively agreed to arbitrate her claims. Skuse, 244 N.J. at 50-52; Jaworski v. Ernst & Young U.S. LLP, 441 N.J. Super. 464, 474 (App. Div. 2015); see also Martindale, 173 N.J. at 88-89 ("[I]n New Jersey, continued employment has been found to constitute sufficient consideration to support certain employment-related agreements." (citing Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252, 265 (App. Div.), certif. den., 165 N.J. 527 (2000)).

in our jurisprudence. (Pb26 – Pb28). Initially, Plaintiff's reliance on Fawzy v. Fawzy, 199 N.J. 456 (2009) is misplaced. Unlike in the present matter, there was no written agreement to arbitrate in Fawzy, which prompted the trial court to place a colloquy on the record to establish that the parties understood their rights and what they were waiving. Id. at 483.

Further, Plaintiff mischaracterizes Fawzy's holding when she states that "an agreement to arbitrate will not be enforced . . . unless [both parties] actually understand what they were told regarding arbitration." (Pb27). The Court in Fawzy examined the discrete issue of "whether child-custody and parenting-time issues can be resolved by arbitration" given the court's parens patriae obligation to assure the best interests of the child. Id. at 466, 472. After resolving this issue in favor of allowing parties to submit such issues to arbitration, the Court examined the colloquy that occurred between the trial court and the Fawzys during which the Fawzys agreed to arbitration. Id. at 482-83. While the trial court explained certain aspects of arbitration to the parties, the trial court, among other things, erroneously suggested arbitrator bias would not be a basis on which to challenge an arbitration award and failed to allude to the standards that would warrant judicial intervention. Id. at 483. Given the court's parens patriae obligation and because the colloquy did not provide a basis on which the court could conclude the parties understood the

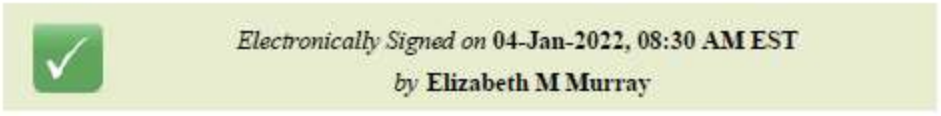
consequences of removing their custody dispute from court to arbitration, the Court reversed the arbitration award. Id. at 483.

Here, unlike in Fawzy, the MAA itself provides a basis on which a court can conclude that Plaintiff understood or should have understood the consequences of her decision to pursue any potential claims in arbitration had she reviewed the MAA. For example, the first paragraph of the MAA contains bolded font that plainly provides "Covered Claims" "**will be resolved by Arbitration and NOT by a court or jury. The parties hereby forever waive and give up the right to have a judge or jury decide any Covered Claims**." (Pa92) (emphasis in original). The MAA goes on to identify claims not covered by the agreement, the procedures for arbitration, and the allocation of the fees and costs associated with arbitration. (Pa92-Pa93). Finally, to the extent Plaintiff still claims she did not understand the agreement, the acknowledgment section again alerted her that she was "giving up the right to have Covered Claims decided by a court or jury" and that she had the opportunity to "discuss this Agreement with [her] own attorney if [she] wish[ed] to do so." (Pa93). Because the law imposes a presumption that a party has read and

understood a contract that they sign,[3] Plaintiff, therefore, cannot claim that she did not understand she was waiving her right to a jury trial. Mannion v. Hudson & M. R. Co., 125 N.J.L. 606, 607 (Sup. Ct.), aff'd, 127 N.J.L. 230 (1941) ("From the written execution of a release flows the presumption that the party signing the same read, understood and assented thereto"); Vincent v. Campbell, 140 N.J. Eq. 140, 142 (Ch. 1947) ("The complain[an]t was not illiterate. He signed the statement which included the transfer of the bank stock to the defendant. From the written execution of the statement flows the presumption that the party signing it, read, understood and assented thereto.").

Indeed, while Plaintiff maintains that despite the unambiguous language of the MAA, she did not agree to waive her right to a jury trial, recent case law examining employee assent to arbitration agreements expressly highlights that "[a]s a general rule, one who does not choose to read a contract before signing it cannot later relieve [her]self of its burdens. The onus [is] on plaintiff to obtain a copy of

[3] While Plaintiff, throughout her brief, repeatedly characterizes her signature as an alleged mere acknowledgment, (Pb2, Pb15, Pb16, Pb30, Pb31), it is undisputable that, as reproduced below, the MAA was electronically signed, not merely acknowledged:



(Pa93-Pa94).

the contract in a timely manner and to ascertain what rights it waived by beginning the arbitration process." Skuse, 244 N.J. at 53 (internal quotations omitted) (quoting Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 22, 238 (App. Div. 2008)); see also Roman v. Bergen Logistics, LLC, 456 N.J. Super. 157, 174 (App. Div. 2018) ("An employee who signs but claims not to understand an arbitration agreement will not be relieved from an arbitration agreement on those grounds alone."). Likewise, case law dictates that neither Actalent nor Rutgers can be faulted for failing to ask Plaintiff if she understood the terms of the MAA or whether she wished to consult an attorney about the same. Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 212 (2019) ("[T]he argument that [a] plaintiff did not understand the import of the arbitration agreement and did not have it explained to her by the [employer] is simply inadequate to avoid enforcement of [the] clear and conspicuous arbitration agreement[] that [she] signed."); Stelluti v. Casapenn Enters., 203 N.J. 286, 305 (2010) ("When a party enters into a signed, written contract, that party is presumed to understand and assent to its terms unless fraudulent conduct is suspected."); Young v. Prudential Ins. Co. of Am., 297 N.J. Super. 605, 619 (App. Div.) certif. den., 149 N.J. 408 (1997) (holding that defendant had "[n]o . . . obligation [to alert plaintiff to an arbitration clause in a contract] . . . where the provision is not hidden").

To the extent Plaintiff also claims she should have been "specifically advised to speak with an attorney" regarding the content of the MAA, the acknowledgment

section of the MAA—just above Plaintiff's signature—sets forth that Plaintiff agreed that she had been "given the opportunity to discuss the [MAA] with [her] own attorney if [she] wish[ed] to do so." (Pa93). The plain text of the MAA, therefore, put Plaintiff on notice of her opportunity to consult with legal counsel if she desired. (Ibid.). Her decision to forego that option does not impact the enforceability of the MAA. Roman, 456 N.J. Super. at 174 (rejecting an argument to invalidate a signed arbitration agreement on the grounds that, among other things, the plaintiff was not informed of her right to consult counsel, because the plain language of the agreement provided that the plaintiff had sufficient time to consult with counsel of her choice); see also Fave v. Neiman Marcus Grp., No. A-1805-13T2, 2014 WL 1884337, at *5 (App. Div. May 13, 2014) (explaining that the fact that the employer did not encourage the plaintiff-employee to seek legal advice regarding an arbitration agreement was not a basis for avoiding enforcement). Accordingly, Plaintiff has not demonstrated that the MAA is invalid on its face or that she did not expressly assent to its terms.

B. Plaintiff Cannot Demonstrate That The Terms Of The MAA Are Unconscionable.

Plaintiff's contention that the adhesive nature of the MAA renders it unconscionable must also be rejected. (Pb33-Pb34). As New Jersey courts have repeatedly held, that a contract is one of adhesion does not mean that the agreement

is automatically unenforceable; rather, "[t]he determination that a contract is one of adhesion . . . 'is the beginning, not the end, of the inquiry' into whether a contract, or any specific term therein, should be deemed unenforceable based on policy considerations." Muhammad v. County Bank of Rehobeth Beach, 189 N.J. 1, 15 (2006), cert. denied, 549 U.S. 1338 (2007) (quoting Rudbart v. Water Supply Com'm., 127 N.J. 344, 354, cert. denied, 506 U.S. 871 (1992)).

A plaintiff attempting to establish unconscionability of an arbitration provision in the context of an employment agreement cannot rely solely on the fact that the agreement, to some degree, is a contract of adhesion because there is no public policy reason not to enforce a properly drafted arbitration agreement in an employment contract. Garfinkel, 168 N.J. at 135. Given the fact that our courts view arbitration as a "favored . . . means of resolving disputes," Martindale, 173 N.J. at 84, mere inequality in bargaining power is not sufficient to render a facially valid arbitration agreement unenforceable. Young, 297 N.J. Super. at 621. In fact, "[v]irtually every court that has considered the adhesive effect of arbitration provisions in employment applications or employment agreements has upheld the arbitration provision contained therein despite potentially unequal bargaining power between employer and employee." Martindale, 173 N.J. at 90-91. Likewise, to avoid an arbitration clause, a plaintiff must show "circumstances substantially more

egregious than the ordinary economic pressure faced by every employee who needs the job." Young, 297 N.J. Super. at 621.

Here, Plaintiff offers nothing to support her unconscionability argument other than "[i]f [she] wanted to work, she was required to agree to arbitrate her claims of discrimination" and thus she "was left with simply no choice but to 'accept' the terms of the [MAA]." (Pb33).[4] This reason, standing alone, is wholly insufficient to support a challenge to the validity of the MAA as a matter of established law. Martindale, 173 N.J. at 90. Even if Plaintiff failed to carefully read what she was signing, her action or lack thereof does not now render the MAA an unenforceable contract of adhesion. Jones v. Dish Network LLC, No. A-2653-12T4, 2013 WL 6169215, at *4 (App. Div. Nov. 26, 2013) ("Plaintiff's contention that, on her first day of employment she was handed a stack of documents and told to sign them, without further explanation of their contents, falls far short of alleging either fraud or an unenforceable adhesion contract."). Because Plaintiff does not and cannot

[4] Plaintiff's argument in her brief that "she was instructed to login on her cell phone so she could complete [the onboarding forms] immediately while she was in the waiting room for a doctor's appointment" lacks support in the record, and, in fact, is contradicted by Plaintiff's Certification which provides that Plaintiff, herself, made the decision to complete the onboarding forms on her cell phone while waiting for her pre-hiring health examination because Actalent urged her to complete onboarding "as soon as possible." (Pa137 at ¶¶ 10-12).

demonstrate that the MAA is manifestly unfair or oppressive, the MAA must be enforced as written.

POINT II

THE TRIAL COURT PROPERLY COMPELLED ARBITRATION BECAUSE THE CLAIMS AGAINST RUTGERS ARE EXPRESSLY COVERED BY THE MAA AND/OR RUTGERS IS AN INTENDED THIRY PARTY BENEFICIARY. (Pa205-Pa209).

The order compelling arbitration should be affirmed for the additional reason that the trial court correctly determined Rutgers was covered by the express terms of the MAA. Moreover, even if Rutgers were not incorporated into the MAA by its express terms **(which it is)**, Rutgers would still be entitled to the benefit of the MAA because it is an intended third-party beneficiary under traditional principles of contract law.

A. The MAA Expressly Covers Rutgers, a Client of Actalent.

By acknowledging the MAA, Plaintiff agreed that the following claims, defined as "Covered Claims," were subject to arbitration:

> . . . including contract claims; tort claims; discrimination and/or harassment claims; retaliation claims; claims for wages, compensation, penalties, or restitution; and any other claim under any federal, state, or local statute, constitution, regulation, rule, ordinance, or common law, arising out of and/or directly or indirectly related to my application for employment with the Company, and/or my employment with the Company, and/or the terms and

> conditions of my employment with the Company, and/or termination of my employment with the Company (collectively, "Covered Claims").

(Pa92). Importantly, the MAA defined not only claims against Actalent as "Covered Claims," but also claims against any of Actalent's "subsidiaries, affiliates, officers, directors, employees, agents, and/or any of its **clients or customers**." (Ibid.) (emphasis added). Given the undeniable business relationship between Rutgers and Actalent, Plaintiff does not dispute on appeal that Rutgers is Actalent's client or customer. (Pa57; Pb35). As a result, based upon the definition of "Covered Claims" in the MAA, Plaintiff's claims against Rutgers must, consistent with the unequivocal terms of the MAA, be submitted to arbitration.

B. Even if Rutgers Were Not Covered by the Express Terms of the MAA, Rutgers is an Intended Third-Party Beneficiary Under Traditional Principles of Contract Law.

Equally important, while the definition of covered claims includes Plaintiff's claims against Rutgers, our courts have also recognized that "'traditional principles' of state law allow a contract to be enforced by or against nonparties to the contract through '. . . incorporation by reference, third party beneficiary theories . . . .'" Hirsch, 215 N.J. at 188–89 (quoting Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 631 (2009) (quoting 21 Williston on Contracts § 57:19, at 183 (4th ed. 2001))). Most pertinent here, "[n]on-signatories of a contract . . . may . . . be subject to arbitration if the nonparty is an agent of a party or a third-party beneficiary to the contract."

Hojnowski ex rel. Hojnowski v. Vans Skate Park, 375 N.J. Super. 568, 576 (App. Div. 2005) aff'd 187 N.J. 323 (2006); see also Crystal Point Condo. Inc. v. Kinsale Ins. Co., 466 N.J. Super. 471, 482 (App. Div. 2021), rev'd on other grounds, 251 N.J. 437 (2022) ("Non[-]signatories of a contract . . . may compel arbitration or be subject to arbitration if the nonparty is . . . a third[-]party beneficiary to the contract.") (second alteration in original) (quoting Mut. Benefit Life Ins. Co. v. Zimmerman, 783 F. Supp. 853, 865 (D.N.J. 1992)). A party's third-party beneficiary status depends on "whether the parties to the contract intended others to benefit from the existence of the contract, or whether the benefit so derived arises merely as an unintended incident of the agreement." Ibid. (quoting Broadway Maint. Corp. v. Rutgers, 90 N.J. 253, 259 (1982)). The test to determine third-party beneficiary status, therefore, "is whether the contracting parties intended that a third party should receive a benefit which might be enforced in the courts." Ibid.

Here, the case that Rutgers was an intended third-party beneficiary of the MAA is compelling. The MAA itself clearly states that Plaintiff agrees to arbitrate all claims and controversies against Actalent and any of its **clients or customers**, which necessarily encompasses Rutgers, and which Plaintiff herself does not dispute. Further, the MAA includes "clients and customers" in the defined term of "Company" and states that the agreement sets forth mutual promises between Plaintiff and the "Company." Because the language of the MAA expressly

evidences an intent for third-party customers and clients to benefit from it, Rutgers is unequivocally a third-party beneficiary to the contract.

POINT III

PLAINTIFF DOES NOT RAISE A GENUINE ISSUE OF MATERIAL FACT TO WARRANT A PLENARY HEARING. (Pa205-Pa209).

Finally, Plaintiff's alternative request for a plenary hearing should be rejected because she has failed to present a single material fact in dispute regarding her acceptance of the MAA that would either warrant a plenary hearing or avoid entry of an order compelling arbitration.

In a final effort to avoid arbitration, Plaintiff contends that a factual dispute exists between certain statements she presented in her Certification in support of her opposition to Defendants' motions, and the ostensible assent she provided to be bound by the MAA, but, as Plaintiff concedes on appeal, a dispute of fact must be of a substantial nature (outcome determinative) to warrant a plenary hearing. Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 4:46-2 (2024) (explaining that disputed facts "of an unsubstantial nature" cannot thwart summary judgment); Prant v. Sterling, 332 N.J. Super. 369, 377 (Ch. Div. 1999), aff'd, 332 N.J. Super. 292 (App. Div. 2000) (holding that under New Jersey's Brill standard, "a disputed issue of fact of an insubstantial nature should not preclude the grant of summary judgment"); (Pb36-Pb38). For the reasons set forth in Section I, above,

and based on New Jersey's well-established law, Plaintiff cannot genuinely dispute that she agreed to be bound by the terms of the MAA, and the MAA is valid on its face.

Thus, the only remaining source of purportedly disputed fact is Plaintiff's Certification. Her Certification, alone, however, and the statements contained therein, are not sufficient to create a genuine issue of material fact. See Heyert v. Taddese, 431 N.J. Super. 388, 414 (App. Div. 2013) (stating that self-serving statements, standing alone, are insufficient to create a genuine issue of material fact). In fact, even if Plaintiff's Certification were to be considered, it does not demonstrate a material dispute that would warrant a plenary hearing because Plaintiff contradicts her own self-serving statements. Specifically, while Plaintiff alleges that

- The documents were "presented to [her] in a way that indicated that they were nothing more than company policy" (Pa138 at ¶ 17);
- She "did not actually sign any documents, physically or electronically" and she "did not even type [her] name into any signature box" (Pa138 at ¶ 20);
- Despite being highly educated, she "had no idea what arbitration even meant" (Pa139 at ¶ 22); and
- "If [she] had known that by simply opening up the policies on [her] cell phone [she] waived [her] right to a jury trial, [she] would not have opened up the alleged arbitration agreement or, at the very least, [she] would have asked for a physical copy of the document to review with an attorney" (Pa139 at ¶ 23),

Plaintiff also admits that

- She received a link to and could access Actalent's online portal (Pa136 at ¶ 9, 12);
- She understood she was required to "electronically acknowledge a number of . . . Actalent's policies and procedures" through that "online portal" (Pa136 at ¶ 9);
- She completed the required forms "on [her] cell phone" outside of the presence of any Actalent agents or employees (Pa137 at ¶ 12);
- The online portal provided Plaintiff with the ability to save the policies she reviewed (Pa137 at ¶ 16); and
- Any pressure to complete the agreement was subjective because the only instruction she received from Actalent was a generalized request "to complete the employee onboarding process as quickly as possible so there would be no delays in starting [her] job following the health screen and other onboarding procedures" (Pa138 at ¶ 18).

Contradictions aside, none of the statements in Plaintiff's Certification about the circumstances under which she executed the MAA comes close to rising to the level of fraud or misrepresentation that would invalidate a contract. Martindale, 173 N.J. at 91; Young, 297 N.J. Super. at 617-18 (rejecting a plaintiff's challenge to the enforcement of an arbitration clause where, among other things, the plaintiff alleged he was presented with the agreement containing the arbitration provision without sufficient time to read it carefully; that he did not notice the arbitration provision and thought the document was only an application to take an exam; his employer failed

to call his attention to the arbitration provision; and he was never given a copy of the document that he signed).

Tellingly, Plaintiff's statements reflect only that she chose not to carefully read what she was signing, which is not a legally cognizable basis for avoiding a contract. Skuse, 244 N.J. at 53; Rudbart, 127 N.J. at 353 (quoting Fivey v. Pa. R.R. Co., 67 N.J.L. 627, 632 (E. & A. 1902)) ("A party who enters into a contract in writing, without any fraud or imposition being practiced upon him, is conclusively presumed to understand and assent to its terms and legal effect."); Morales v. Sun Constructors, Inc., 541 F.3d 218, 221 (3d Cir. 2008) ("It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained.") (quoting Upton v. Tribilcock, 91 U.S. 45, 50 (1875)).

Even if Plaintiff's statements regarding the validity of her electronic signature rendered the signature questionable, which they do not, as set forth above, because the MAA unambiguously provided that the MAA would become effective upon an employee's "acceptance of and continued employment with Actalent Scientific, LLC," the MAA should nevertheless be enforced. (Pa93). Skuse, 244 N.J. at 50-51 (explaining New Jersey contract law recognizes that conduct can constitute contractual assent and finding that the plaintiff's continued employment after the

effective date of the arbitration policy constituted acceptance of the policy's terms). In fact, the Acknowledgment above Plaintiff's signature provided, in relevant part:

> My affirmative signature and/or acknowledgment of this Agreement is not required for the Agreement to be enforced. If I begin working for Actalent Scientific, LLC without signing this Agreement, this Agreement will be effective, and I will be deemed to have consented to, ratified and accepted this Agreement through my acceptance of and continued employment with Actalent Scientific, LLC.

(Pa93).

Critically, nowhere in Plaintiff's Certification does Plaintiff dispute that she accepted employment with Actalent in or around January 2022, which triggered her ratification and acceptance of the MAA. Nor does she challenge the fact that her acceptance of and continued employment with Actalent beginning in or around January 2022 was sufficient to evidence her consent to and ratification and acceptance of the MAA. Thus, Plaintiff has failed to present a single material fact in dispute regarding her acceptance of the MAA, and under these facts, a plenary hearing is not warranted.

CONCLUSION

For all the foregoing reasons, this Court should affirm the trial court's grant of Defendants-Respondents' motion to dismiss and to compel arbitration.

DATE: December 20, 2024

WALSH PIZZI O'REILLY FALANGA LLP

By: 

Attorneys for Defendants-Respondents Rutgers, The State University of New Jersey and Ginnette Watkins-Keller