

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

PJ Sloat, through her next friend, Pamela Loudon; SS, through Pam Scott his legal guardian; and Disability Rights South Carolina,

Plaintiffs,

vs.

Active Day, Inc.,

Defendant.

Civil Action No.: 3:23-cv-1518-SAL

AMENDED COMPLAINT

Plaintiff PJ Sloat, through her next friend, Pamela Loudon (“PJ”), and Plaintiff SS, through Pam Scott his legal guardian, and Plaintiff Disability Rights South Carolina (“DRSC”), by and through their attorneys, bring their Amended Complaint against Defendant Active Day, Inc. and state as follows:

INTRODUCTION

1. Plaintiffs PJ and SS are adult SSA beneficiaries who are on the Intellectual Disabilities and Related Disabilities Medicaid Home and Community-Based Waiver (ID/RD waiver). A waiver is a Medicaid program providing services in community settings so that individuals, many of whom face extraordinary health and safety risks, can avoid going into nursing homes or intermediate care facilities for those with intellectual or related disabilities (ICF/IID) while safely receiving the support services they need. ICF/IIDs are similar to nursing homes but are designed for those with Intellectual Disabilities/Related Disabilities [ID/RD].

2. Plaintiffs PJ and SS received day program services from Defendant Active Day, a private Medicaid-approved provider. Adult Day Care or Adult Day Health Care Programs include five hours a day of comprehensive care, including nursing, supervision and personal assistance, recreational activities, socialization, a hot meal, a snack, and sometimes transportation door-to-door.

3. Plaintiff PJ has no legal guardian. Pam Scott is the legal guardian for SS.

4. In March 2023, Defendant demanded Plaintiffs PJ and SS sign a binding arbitration agreement in order to keep receiving services from Defendant. Plaintiffs were told they would lose services if they did not sign the arbitration agreement. Plaintiff PJ has been a long-time recipient of services of Active Day. Plaintiff SS began receiving his services shortly after he qualified for the ID/RD waiver two-years ago.

5. Plaintiffs seek a declaration from the Court that Defendant's arbitration agreement (Exhibit A) is unconscionable and unenforceable and an injunction prohibiting Defendant from attempting to enforce the agreement. Additionally, Plaintiffs PJ and SS seek damages from Defendant's violation of the South Carolina Unfair Trade Practice Act ("UTPA").

PARTIES

6. Plaintiff PJ is a twenty-year old woman who lives at home with her mother in Charleston, South Carolina. She was diagnosed with Cerebral Palsy (CP) and Intellectual Disability at age nine months. PJ is quadriplegic, legally blind, incontinent and has significant hearing loss and a gastrostomy tube (G-Tube). PJ's mother has been her primary caregiver. PJ has been on the Intellectual Disability/Related Disabilities Waiver (ID/RD) since age three. She attends an Adult Day program run by Defendant where she receives nursing services. Transportation to the program is also provided. PJ's mother cannot safely leave her alone, so

PJ's attendance at the program allows her to stay safe and ensure her basic needs are cared for while her mother goes to work and completes errands. Without the program, PJ's mother would not be able earn money working or complete basic errands and other tasks necessary to care for herself and PJ. Plaintiff PJ is a citizen and resident of Charleston County, South Carolina.

7. Plaintiff SS is a twenty-six-year-old man with autism. His mother is his legal guardian. Approximately two years ago, Plaintiff SS started attending Hope Bridge Day Center after he qualified for services under the ID/RD waiver. Plaintiff SS is a citizen and resident of Richland County, South Carolina. For SS, the service is critical to receiving appropriate supervision, support and socialization with peers.

8. Plaintiff Disability Rights South Carolina, Inc. (DRSC) is a South Carolina nonprofit corporation with principal offices in Richland County, South Carolina. DRSC is South Carolina's Protection and Advocacy system ("P&A"), as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"), 42 U.S.C. § 15041, *et seq.*; the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. § 10801, *et seq.*; and the Protection and Advocacy of Individual Rights Act ("PAIR Act"), 29 U.S.C. § 794e, *et seq.* The DD Act authorizes P&A systems to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. *See* 43 U.S.C. § 15043(a)(2)(A)(i).

9. DRSC operates to protect and advance the legal, civil, and human rights of people with disabilities in South Carolina. Several individuals have approached DRSC seeking help from DRSC regarding the Draconian arbitration agreement that Active Day is forcing on its customers. These individuals fear being named plaintiffs in this action due to the retaliatory actions that Active Day may cause the individuals to experience. This threat is real as Active

Day has informed the individuals that Active Day will discontinue all services provided to these individuals and others if they do not sign the arbitration provision. These individuals also fear that Active Day will inform other centers that these individuals were not cooperative, and therefore, other centers should not accept these individuals as clients.

10. Defendant Active Day is a provider of Adult Day services for seniors and adults with developmental disabilities. According to their website, they are the largest network of owned and operated centers for adult day services. Upon information and belief, Defendant is headquartered in Pennsylvania and has more than 100 centers in 10 states, providing services to more than 8,000 people. Defendant Active Day is a corporation organized under the laws of the State of Delaware, with its principal place of business in Pennsylvania, and is doing business in the State of South Carolina, including locations in Richland County, among other places in the Midlands and throughout the State of South Carolina.

JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction arising under 28 U.S.C. § 1332 over the claims in this lawsuit because the parties are citizens of different states and the value of the matter in controversy exceeds the sum of \$75,000.00 and Plaintiffs seek injunctive and declarative relief.

12. This Court has personal jurisdiction because Defendant transacts business in the State of South Carolina.

13. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims brought by Plaintiffs have occurred in Richland County, Lexington County among other counties located in the Midlands which is in the Columbia Division of the District of South Carolina.

FACTS

15. Plaintiff PJ receives day program services through South Carolina's Medicaid program. In 2021, Plaintiff received services at Club Horizons, Defendant Active Day's site in North Charleston. She currently receives services from Defendant at a West Ashley location.

16. On or about Thursday, March 23, 2023, Defendant sent Plaintiff PJ's mother a copy of a Binding Arbitration Agreement (Exhibit A). Defendant told her Plaintiff would not be able to continue to attend the program if she did not sign and return the agreement.

17. Plaintiff SS also receives day program services through the state Medicaid program. SS has been attending the Hope Bridge Day Program since he qualified for the ID/RD waiver approximately two years ago. Active Day acquired Hope Bridge a few years ago.

18. In March 2023, Defendant told Pam Scott, guardian for Plaintiff SS, that she needed to sign the binding arbitration agreement (Exhibit A) presented by Defendant or lose services.

19. Other clients of DRSC have received the same proposed Binding Arbitration Agreement and been told they would be kicked out of the Active Day center if they did not sign the Binding Arbitration Agreement by March 17, 2023. (See attached letter from Active Day to DRSC's clients, attached hereto and incorporated herein as Exhibit B.)

20. Plaintiff PJ's mother signed the agreement and sent it to Defendant on or about March 31, 2023, so that Plaintiff PJ could continue to receive services. Plaintiff's mother felt she had no choice but to sign the agreement.

21. Plaintiff SS's guardian refused to sign the agreement. On or about May 3, 2023 Defendant sent a second letter renewing its demand that Plaintiff SS sign the agreement and stating failure to sign by May 5, 2023, would result in his services being "placed ON HOLD with

DISCHARGE PENDING.” As instructed in Defendant’s second letter, Plaintiff notified Defendant he still would not sign the agreement. Defendant did not respond to subsequent calls from Pam Scott. Plaintiff is not receiving Adult Day Care/Adult Day Health Care service.

22. Courts have long recognized that unconscionable arbitration agreements are not enforceable. South Carolina defines unconscionability as "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663 (2007).

23. Defendant's arbitration agreement is unconscionable.

24. First, Defendant uses duress to get clients and their families to sign the agreement. Defendant coerced Plaintiffs PJ and SS into signing the agreement by threatening to terminate their services unless they sign it. The absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process. *Simpson*, 644 S.E.2d at 669. Plaintiffs PJ and SS are adults with developmental disabilities who rely upon the day program services of Defendant. Defendant is a corporation with over 100 locations in 10 states. Due to her specific needs, Plaintiff PJ will not have day services if she cannot get them from Defendant. Plaintiff SS has no day services since he refused to sign the agreement. Defendant also demanded Plaintiffs sign and return the agreement within a very short time.

25. Second, Defendant’s arbitration agreement is one-sided. Defendant’s agreement protects Defendant from any and all claims related to their services whether for statutory, compensatory, punitive, or any other type of damages. (Exhibit A ¶ (a).) Plaintiffs are receiving the day program services under the ID/RD HCBS waiver, part of South Carolina's Medicaid program. However, the broad language in paragraph (a) of Defendant's agreement could prohibit

Plaintiffs from filing a Medicaid appeal over issues with Defendant's services. Regardless, Defendant's agreement requires all claims be submitted for arbitration.

26. Third, while Plaintiffs live and receive services in South Carolina, Defendant's agreement requires arbitration in Pennsylvania where the company is headquartered. (*Id.* ¶ (f).) If a trial or court proceeding is demanded, the agreement also requires all litigation occur in Pennsylvania. (*Id.* ¶ (r).)

27. The Binding Arbitration Agreement contains the following offensive provisions:

- Provides that refusal to sign the Binding Arbitration Agreement results in the cancelation of the underlying agreement which results in the client being kicked out of the center by Active Day (*id.* ¶ (k));
- Expands the beneficiaries of the Binding Arbitration Agreement (*id.* ¶ (b));
- Attempts to shorten the applicable statute of limitations to two years and dispenses with the discovery rule applicable in South Carolina (*id.* ¶ (e));
- Allocates unfairly the fees and costs associated with arbitration (*id.* ¶ (i));
- Imposes a confidentiality clause that is unfair and against public policy as it precludes the client or a related person from communicating with federal, state, or local officials (*id.* ¶ (l));
- Creates third-party beneficiary status (*id.* ¶ (q));
- Requires a bench trial in Bucks County, Pennsylvania (should the arbitration provision be found unenforceable) with the knowledge that the clients are intellectually disabled, which is often accompanied by severe physical disabilities (*id.* ¶ (r));

- Provides that the arbitrator “shall resolve all claims, disputes and controversies” cutting off clients’ ability to seek injunctive relief (*id.* ¶ (g));
- Provides that clients have only fifteen days to cancel the arbitration and states that this 15-day window is a “sufficient opportunity” to seek counsel and have him/her opine on Binding Arbitration Agreement, knowing that fifteen days is hardly sufficient time to find counsel and have an opinion on the Binding Arbitration Agreement (*id.* ¶¶ (k), (s)).

28. Plaintiffs PJ and SS and their families and DRSC’s clients rely upon the day program services provided by Defendant. If they cannot get their services, Plaintiffs will lose the opportunity for socialization with their peers, to receive daily nursing services while outside their home, to engage in necessary therapies, and other services they receive from Defendant. Their parents’ lives are also impacted since they will lose work time, time for respite from caring for Plaintiffs, or time they use to perform errands or other tasks during the time their children are at the day program. Additionally, Defendant is the only suitable provider for Plaintiffs in the area due to Plaintiff’s service needs.

29. Without the Court’s intervention Plaintiffs PJ and SS have no meaningful choice about whether to sign an agreement with one-sided contract provisions and terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. Accordingly, Plaintiffs bring this action seeking declarative and injunctive relief, along with claims for damages, against Defendant.

30. Section 1915(c) of the Social Security Act permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization.

31. The statute sets out specific criteria regarding who may receive the waiver and under what conditions. *See* 42 U.S.C.A. § 1396; *see also* 42 C.F.R. § 441.302. The State may further define these conditions and seek approval of a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility.

32. Provision of the waiver is contingent on the State providing certain assurances, including for example, that necessary safeguards, including adequate standards for provider participation, have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services.

33. The statute and implementing regulations provide detailed rules for who may receive the services and require that the provision of the government benefit is consistent with specific financial accountability constraints and rigorous evaluations of need. They also require that a beneficiary or their legal guardian be given the choice of either institutional or home and community-based services.

34. The statute also requires the State to closely monitor providers, collecting data and providing annual reports on the impact of the waiver on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

35. South Carolina's implementation of the waiver program also sets specific requirements for who qualifies for the government benefit and regulates the selection of providers.

36. While the State is not responsible for all of Active Day's day-to-day operations, including the medical professional judgments of Active Day employees, the State is responsible

for the terms and conditions beneficiaries must agree to in order to receive the government benefit. The Social Security Act and implementing regulations give the State control over who may receive these approved community-based service programs, and setting the terms regarding receipt of a government benefit is traditionally and exclusively the prerogative of the state.

37. The South Carolina Department of Health and Human Services (SCDHHS) requires all ordering/referring physicians or other professionals providing services, under the South Carolina State Plan for Medical Assistance or under a waiver of the plan, to be enrolled as participating providers. This includes all health care providers who are HIPAA-covered individuals (e.g., physicians, nurses, dentists, chiropractors, physical therapists or pharmacists).

38. Qualified individuals must be enrolled in South Carolina Medicaid to order or refer services for Medicaid beneficiaries and/or to bill Medicaid for said services.

39. An order is required for Adult Day Care.

40. To participate in the Medicaid program a provider must be enrolled in the South Carolina Medicaid program and receive official notification of enrollment. This also applies to providers who contract with one or more of the South Carolina Medicaid Managed Care Organizations (MCOs).

41. Providers have the right to limit the number of Medicaid beneficiaries they are willing to treat within their practice; however, providers may not discriminate in selecting the Medicaid beneficiaries they will treat or services they will render. A provider may not refuse to furnish services covered under Medicaid to an eligible individual because of a third party's potential liability for the service(s). A provider who is not a part of a MCO's network may refuse service to a Medicaid MCO member.

42. Once a provider has accepted a beneficiary as a Medicaid patient, it is the responsibility of the provider to deliver all Medicaid-covered services throughout the course of treatment.

FIRST CAUSE OF ACTION
(Injunction)

43. Plaintiffs repeat and reallege the allegations in the previous paragraphs of the Complaint as if fully alleged herein.

44. Defendant is imposing an unenforceable and unconscionable arbitration agreement on intellectually disabled individuals as a condition to be able to stay at Defendant's centers. This is true even when Plaintiffs PJ, SS, and others have been attending and relying on Defendant's centers for over two and a half years and there are no available alternative services that will satisfy PJ and SS's unique medical, behavioral, and mental health needs that are critical to ensuring their physical safety and wellbeing.

45. Moreover, Defendant's actions are wrongfully depriving Plaintiffs PJ, SS, and DRSC's clients of their Medicaid benefits.

46. The Binding Arbitration Agreement violates public policy, and therefore, is unenforceable.

47. This Court should grant a Preliminary Injunction enjoining Defendant Active Day from (1) imposing the Binding Arbitration Agreement on Plaintiff PJ, Plaintiff SS or any other recipient of services in South Carolina, (2) canceling the underlying agreement allowing Plaintiffs PJ, SS and others to receive services from Active Day, (3) removing services from Plaintiffs PJ, SS and others for refusing to sign the Binding Arbitration Agreement or cancelling it.

48. In addition, the Court should grant Plaintiffs an injunction reinstating the status quo until these matters can be resolved or determined by the Court. An injunction is necessary to

restore the status quo, to prevent the irreparable injury to Plaintiffs and others receiving services in South Carolina from Defendant Active Day that will result if Active Day is allowed to proceed with its Draconian and illegal Binding Arbitration Agreement, and to allow the Court to render effective relief if the Plaintiffs prevail at trial. Plaintiffs would have no adequate remedy at law, and this Court's ability to fashion effective relief would be significantly impaired if the proposed Binding Arbitration Agreement is found to be unlawful.

49. Any harm to Defendant Active Day would be greatly outweighed by the harm suffered by Plaintiffs and others who receive services from Defendant if they are kicked out of Active Day's centers.

50. Therefore, this Court should grant a Preliminary Injunction, and then a Final Injunction enjoining Active Day from (1) imposing the Binding Arbitration Agreement on Plaintiffs PJ, SS or any other recipient of services in South Carolina, (2) canceling the underlying agreement allowing Plaintiffs PJ, SS and others to receive services from Active Day, (3) removing services from Plaintiffs PJ, AS and others for refusing to sign the Binding Arbitration Agreement or cancelling it.

SECOND CAUSE OF ACTION
(Declaratory Judgment, 28 U.S.C.A. § 2201 (West))

51. Plaintiffs repeat and reallege the allegations in previous paragraphs of the Complaint as if fully alleged herein.

52. By threatening to withhold Plaintiffs' Medicaid services, Defendant coerced Plaintiffs' family and legal guardian and DRSC's clients into signing the binding arbitration agreement attached as Exhibit A. This agreement is an unfair contract that, amongst other things, requires arbitration of any and all claims against Defendant, that such arbitration occur in Pennsylvania, and that any litigation connected with the agreement also take place in Pennsylvania.

53. The Binding Arbitration Agreement lacks consideration, and therefore, is unenforceable.

54. Additionally, the Binding Arbitration Agreement was procured under duress as it was secured by improper external pressure or influence that practically destroys the free agency of Plaintiffs and causes them to do an act or form a contract not of their own volition. Therefore, the Binding Arbitration Agreement is unenforceable.

55. The Binding Arbitration Agreement violates public policy, and therefore, is unenforceable.

56. The Court should declare Defendant's arbitration agreement invalid, unconscionable, and unenforceable and issue an order prohibiting Defendant from attempting to enforce the agreement against Plaintiffs or any other recipient of services in South Carolina.

THIRD CAUSE OF ACTION
(Violations of the South Carolina Unfair Trade Practices Act)

57. Plaintiffs repeat and reallege the allegations in previous paragraphs of the Complaint as if fully alleged herein.

58. The methods, acts, and practices alleged hereinabove are unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce and are unlawful pursuant to the South Carolina Unfair Trade Practices Act (“SCUTPA”).

59. Plaintiffs have suffered actual damages and an ascertainable loss of money, as a result of the use or employment by Active Day of an unfair or deceptive method, act, or practice declared unlawful by S.C. Code § 39-5-20. The use or employment of the unfair or deceptive method, act, or practice was a willful or knowing violation of § 39-5-20.

60. The unlawful trade practice engaged in by the Defendant has an adverse impact on the public and/or is capable of repetition and was in fact repeated.

61. Plaintiffs are entitled to their actual damages sustained and treble damages under the SCUTPA, plus reasonable attorney's fees and costs.

FOURTH CAUSE OF ACTION
(First Amendment – Petition Clause)

62. Plaintiffs repeat and reallege the allegations in previous paragraphs of the Complaint as if fully alleged herein.

63. The First Amendment provides that “Congress shall make no law . . . abridging the right of the people . . . to petition the Government for a redress of grievances.”

64. The Petition Clause guarantees individuals’ right to access the courts for the resolution of legal disputes.

65. Active Day’s decision to impose the Arbitration Agreement as a term and condition of receiving its Adult Day Services pursuant to the Intellectual Disabilities and Related Disabilities Medicaid Home and Community-Based Waiver program violates the Petition Clause because it requires recipients of the government benefit to submit claims to binding arbitration before a private arbitrator and to forfeit their right to petition courts for judicial redress in order to receive the government benefit, violating the unconstitutional conditions doctrine.

FIFTH CAUSE OF ACTION
(First Amendment – Free Speech Clause)

66. Plaintiffs repeat and reallege the allegations in previous paragraphs of the Complaint as if fully alleged herein.

67. The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.”

68. Active Day’s decision to impose the Arbitration Agreement as a term and condition of receiving its Adult Day Services pursuant to the Intellectual Disabilities and Related

Disabilities Medicaid Home and Community-Based Waiver program violates the Free Speech Clause because it requires recipients of the government benefit to be subject to a confidentiality clause, restricting their ability to speak about any dispute, including alleged misconduct, that is subject to the broad Arbitration Agreement. Recipients are required to forfeit their First Amendment free speech rights in order to receive critical government benefits in violation of the unconstitutional conditions doctrine.

SIXTH CAUSE OF ACTION
(Violation of Right to Article III Adjudication)

69. Plaintiffs repeat and reallege the allegations in previous paragraphs of the Complaint as if fully alleged herein.

70. Article III grants individuals a personal right to have claims properly before a federal court adjudicated by an impartial judge whose independence is protected under Article III.

71. Active Day's decision to impose the Arbitration Agreement as a term and condition of receiving its Adult Day Services pursuant to the Intellectual Disabilities and Related Disabilities Medicaid Home and Community-Based Waiver program violates Article III by requiring beneficiaries of the government benefit to waive their right to adjudication of disputes against Active Day and a host of third parties in Article III courts in order to receive the government benefit.

PRAYER FOR RELIEF

WHEREFORE, the PLAINTIFFS respectfully request this Court to:

1. Issue an injunction enjoining the Defendant from demanding other South Carolinians sign the agreement and from enforcing the order against those who have already signed it;

2. Preliminarily and permanently enjoin Defendant from enforcing the arbitration agreement in South Carolina;
3. Declare the Binding Arbitration Agreement of the Defendant unconscionable;
4. Declare the Binding Arbitration Agreement of the Defendant unenforceable;
5. Award Plaintiffs actual, treble, and punitive damages in connection with Active Day's violations of the South Carolina Unfair Trade Practices Act;
6. Award Plaintiffs attorney's fees, costs and expenses incurred in this matter; and
7. Provide any such further relief as the Court deems just and equitable.

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July 10, 2023

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Exhibit A

AMENDED COMPLAINT

Defendant's arbitration agreement

BINDING ARBITRATION AGREEMENT

THIS BINDING ARBITRATION AGREEMENT (the “Arbitration Agreement”) GOVERNS IMPORTANT LEGAL RIGHTS. SIGNING THIS ARBITRATION AGREEMENT MEANS THAT THE MEMBER, THE MEMBER’S LEGAL REPRESENTATIVE, AND THE RESPONSIBLE PARTY (individually each, a “Party” and collectively the “Parties”) HAVE CHOSEN BINDING ARBITRATION AS THE EXCLUSIVE MEANS TO RESOLVE ALL DISPUTES (as defined in Paragraph (a) below) AND THIS ARBITRATION AGREEMENT WILL BECOME BINDING, PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT (SC Code Sec. 15-48-10 et seq.).

By agreeing to this Arbitration Agreement, the Parties are giving up and waiving their right to have any claim decided in a court of law before a judge and/or jury. **The Parties expressly agree that any dispute covered by this Arbitration Agreement, will be resolved *outside* of the court system except for the limited rights of review provided under the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.**

Arbitration is a cost effective and time saving method of resolving disputes without involving the courts. In arbitration proceedings, the disputes are heard and decided by a private individual called an arbitrator. Neither the Parties nor the company whose signature appears at the end of this Arbitration Agreement (the “Company”) is waiving their right to assert an available claim or seek available legal remedies by agreeing to arbitrate disputes within the scope of this Arbitration Agreement. However, the dispute will not be heard by a judge or jury and the decision of the arbitrator shall be final and binding on the Parties and Company (individually each, the “Signatory” and collectively, the “Signatories”) in accordance with the terms of this Arbitration Agreement.

The Parties acknowledge that they are being requested to execute this Arbitration Agreement in order to, among other things, allow the Company to control its expenses and maintain an appropriate level of care for all of its Members and that the execution of this Arbitration Agreement is a material inducement for the Company to provide services to the Member.

(a) Scope of Disputes Subject to Arbitration. Any and all claims, disputes or controversies between the Signatories arising out of, connected with or **in any way** relating to: (1) the Request for Admission and Enrollment Agreement and all Attachments referenced therein (collectively, the “Underlying Agreement”), (2) any other agreement the Signatories enter into in the future, (3) any stay(s) at the Center (as defined in the Underlying Agreement), (4) any alleged negligence, inadequate care/service, personal injury and property damage, (5) any services provided by the Company, and/or (6) any other cause or reason; including, but not limited to, those regarding the making, execution, validity, enforceability, severability, scope, arbitrability or interpretation of

this Arbitration Agreement, or waiver, duress, preemption or any other defense to the enforceability of this Arbitration Agreement, whether arising out of State or Federal law, whether existing now or arising in the future, whether for statutory, compensatory, punitive or any other type of damages, and whether sounding in breach of contract, tort or breach of statutory or common law duties (including, without limitation, any claim, dispute or controversy based on unpaid charges), irrespective of the basis for the duty or of the legal theories upon which the claim, dispute or controversy is asserted, shall be submitted to binding arbitration.

(b) Binding on Parties and Others. It is the intention of the Signatories that this Arbitration Agreement shall inure to the direct benefit of and bind the Company, its parents, affiliates, subsidiaries, management companies, directors, administrators, trustees, owners, officers, partners, principals, shareholders, members, representatives, medical directors, nurses, physicians, employees, servants, managers, consultants, successors, assigns, agents, attorneys and insurers and any entity or person that provided any services, supplies, or equipment related to any stay at the Center, this Arbitration Agreement, the Underlying Agreement and/or any other agreement the Signatories enter into in the future, and shall inure to the direct benefit of and bind the Parties, his/her successors, spouses, children, next of kin, guardians, administrators, legal representatives, responsible parties, assigns, agents, attorneys, health care proxies, health care surrogates, attorneys-in-fact, designees, third party beneficiaries, insurers, heirs, trustees and representatives, including, but not limited to, the personal representatives of the executor of his/her estate, any person whose claim is derived through or on behalf of any of the Parties, any person who assumed responsibility for providing the Member with necessary services such as food, shelter, clothing, or medicine, etc., and any person who executed the Underlying Agreement or any other agreement between any of the Signatories. The Parties acknowledge that they have been given copies of this Arbitration Agreement and the Underlying Agreement.

(c) Federal Arbitration Act. The Signatories hereby expressly agree that the Underlying Agreement and any stay(s) at the Center involve interstate commerce based upon, among other things, the Company operating Centers in multiple states and engaging in various interstate commercial activities to facilitate said operations. The Signatories also stipulate that the Federal Arbitration Act (“FAA”) in effect as of September 1, 2012 shall apply, and that the FAA shall preempt any inconsistent state law and shall not be reverse preempted.

(d) Demand for Arbitration. Demand for arbitration shall be made by any of the Signatories (the “Claimant”) in writing and served upon the other party (the “Respondent”) at the address listed in this Arbitration Agreement via certified mail, return receipt requested. Service shall be deemed to be made upon receipt. If service is refused, service shall be deemed to be made on the date it was refused.

(e) Time Limitation for Arbitration. To the fullest extent permitted by law, any demand for arbitration must be served prior to the earliest of (i) the expiration of two (2) years from the date on which the event giving rise to the claim, dispute or controversy

first occurred (and for any alleged continuous event or harm, the date on which the initial event or harm giving rise to the claim, dispute or controversy occurred) or (ii) expiration of the applicable statute of limitations of the State in which the Center is located from the date on which the event giving rise to the claim, dispute or controversy first occurred (and for any alleged continuous event or harm, the date on which the initial event or harm giving rise to the claim, dispute or controversy occurred). The failure to serve a demand for arbitration within the designated time period set forth in the preceding sentence shall operate as a bar to any subsequent demand for arbitration, or for any claim for relief or a remedy or to any action or legal proceeding of any kind or nature, and the Signatories shall be forever barred from arbitrating or litigating any such claim, dispute or controversy. As noted in this Arbitration Agreement, the Signatories acknowledge that the Arbitration Agreement is the sole mechanism for resolution of disputes between them.

(f) **Location of the Arbitration.** The arbitration shall be conducted at the Company's headquarters which are presently located in Trevose, Bucks County, Pennsylvania.

(g) **Selection and Powers of Arbitrator.** If the Signatories cannot reach an agreement on the selection of the Arbitrator (as hereinafter defined) within twenty (20) calendar days after the demand for arbitration, then on the 25th calendar day after the receipt of the demand, each affected Signatory shall select one arbitrator. Within ten (10) calendar days after each affected Signatory selects his/her arbitrator, those selected arbitrators shall choose the ultimate arbitrator who will then serve as the sole arbitrator for the dispute (the "Arbitrator"). All arbitrators shall not have any involvement or interest in the claims, disputes or controversies submitted to arbitration or any potential decision rendered by the Arbitrator. All arbitrators shall have at least five (5) years experience in alternative dispute resolution. The Arbitrator is empowered to, and shall resolve all claims, disputes and controversies including, but not limited to, any regarding the making, execution, validity, enforceability, severability, scope, arbitrability or interpretation of this Arbitration Agreement, and waiver, duress, preemption or any other defense to the enforceability of this Arbitration Agreement, as well as resolve the Signatories' underlying claims, disputes and controversies as it is their intent to completely avoid involving the court system. The Arbitrator shall have full power to make such awards, determinations, directions, orders and other decisions as he/she deems appropriate in accordance with the provisions of this Arbitration Agreement.

(h) **Procedural Rules and Substantive Law.** Except as otherwise stated in this Arbitration Agreement, the arbitration shall be held in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") which are in effect at the time the demand for arbitration is served. A copy of the Rules may be obtained online at <http://www.aaa.org>. To the extent of any conflicts between the terms of this Arbitration Agreement and the Rules, the terms of this Arbitration Agreement shall govern. In order to minimize the expense of arbitration, the arbitration shall not be administered by the American Arbitration Association and the arbitrators need not be approved by the American Arbitration Association. Rather, the arbitration

shall be administered by the Arbitrator. Also, the Arbitrator shall apply, and the arbitration award shall be consistent with, the State substantive law for the State in which the Center is located, except as may otherwise be stated in this Arbitration Agreement, or where preempted by the FAA. Any award by the Arbitrator shall be final subject only to vacation, modification, correction and appeal pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 10, 11, 12 and 16 and may be confirmed pursuant to the Federal Arbitration Act, 9 U.S.C. § 9.

(i) **Allocation of Fees, Costs and Expenses for Arbitration.** The Arbitrator's fees, costs and expenses associated with the arbitration shall be divided equally among the parties to the arbitration and they shall bear their own attorneys' fees, costs and expenses in relation to participation in the arbitration, preparation for and attendance at the arbitration hearing and post-arbitration hearing activity, unless the Arbitrator concludes that the law provides otherwise. Notwithstanding the foregoing and to the fullest extent permitted by law, any Signatory who opposes arbitrating any claims, disputes or controversies and/or opposes enforcement of the terms of this Arbitration Agreement and unsuccessfully challenges its enforcement shall be required to pay the prevailing Signatories' attorneys' fees, costs and expenses incurred to enforce this Arbitration Agreement (for example, and not by way of limitation, a Motion to Compel Arbitration or for any other means reasonably undertaken to enforce this Arbitration Agreement).

(j) **Refusal to Arbitrate.** To the fullest extent permitted by law, any Signatory who refuses to proceed with arbitration hereby acknowledges that the Arbitrator will proceed with the arbitration hearing and render a binding decision without the participation of the Signatory opposing arbitration or despite their absence at the arbitration hearing.

(k) **Right to Change Your Mind.** Each Party has the right to have an attorney review the Underlying Agreement and this Arbitration Agreement within fifteen (15) calendar days of his/her date of execution. The Underlying Agreement and this Arbitration Agreement may be cancelled by any Signatory by written notice sent certified mail, return receipt requested, to the Center within fifteen (15) calendar days of the affected Signatory's date of execution. Any Signatory's timely cancellation of the Arbitration Agreement (i.e., cancellation within fifteen (15) calendar days of the affected Signatory's date of execution), constitutes contemporaneous cancellation of the Underlying Agreement as to all Signatories. Under no circumstances may any Signatory cancel the Arbitration Agreement but not cancel the Underlying Agreement within the fifteen (15) calendar day cancellation period. If alleged acts or omissions underlying the claim, dispute or controversy are committed prior to the cancellation date, the Underlying Agreement and this Arbitration Agreement shall be binding with respect to said alleged acts and omissions. If not timely cancelled (i.e., if not cancelled within fifteen (15) calendar days of the affected Signatory's date of execution), the Underlying Agreement and this Arbitration Agreement shall be binding on said Signatory and all of the Member's stays at the Center without any need for further renewal.

(l) **Confidentiality.** The arbitration proceeding shall remain confidential in all respects, including all arbitration filings, deposition transcripts, correspondence, documents produced or obtained in discovery and other materials provided by or exchanged between the Signatories and/or the Arbitrator and the Arbitrator's findings of fact, conclusions of law, and award, except as otherwise necessary to seek to vacate, modify, correct, appeal, confirm and/or enforce the award in accordance with this Arbitration Agreement. In addition, following receipt of the Arbitrator's award, each Signatory agrees to return to the producing party within thirty (30) calendar days the original and all copies of documents exchanged in discovery and at the arbitration hearing.

(m) **Severability.** Any term, phrase, provision or part thereof contained herein is severable, and in the event any of them shall be found to be void, invalid or unenforceable for any reason, said term, phrase, provision or part shall be re-written in such a way as to be enforceable to the fullest extent permitted by law and the remaining provisions of this Arbitration Agreement and the Underlying Agreement shall not be affected by such determination and shall remain in full force and effect. This Arbitration Agreement shall not fail because any term, phrase, provision or part hereof is found to be void, invalid or unenforceable.

(n) **Waiver, Binding Arbitration.** If a Signatory files a claim in a court of competent jurisdiction, the Signatories expressly agree that participation in cooperative general discovery while a motion to compel arbitration is pending shall not constitute evidence of a waiver of the right to arbitrate.

(o) **Survival and Integration.** The terms and conditions recited herein shall survive and remain in full force and effect notwithstanding the termination, cancellation or natural expiration of the Underlying Agreement or any other agreement between the Signatories. The terms and conditions recited herein shall also survive and remain in full force and effect notwithstanding the death of any of the Signatories or the discontinuation of operations at the Center. This Arbitration Agreement represents the Signatories' entire agreement regarding claims, disputes and controversies, and supersedes all prior negotiations, promises, representations, statements, communications and/or agreements, written or oral. The Parties acknowledge that they are not relying upon any negotiations, promises, representations, statements, communications and/or agreements, written or oral, made by the Company, its agents, representatives or employees, except as set forth in this Arbitration Agreement. The Parties also acknowledge that the Company's agents, representatives and employees do not have the authority to modify this Arbitration Agreement or to make any oral negotiation, promise, representation, statement, communication and/or agreement inconsistent with or contrary to the terms of this Arbitration Agreement. There are no terms to this Arbitration Agreement which are not set forth herein. This Arbitration Agreement may only be changed in a writing signed by the Signatories.

(p) **Health Care Decision.** The Parties agree and stipulate that the acceptance of this Arbitration Agreement constitutes part of the decision to obtain health care for the Member.

(q) **Third Party Beneficiary.** The parties stipulate that to the extent the Member does not sign this Arbitration Agreement (i.e., an adult family member, friend or representative signs on the Member's behalf), or the Member does sign him/herself, but the legality of the Member's signature is challenged, then the Signatories stipulate that the Member is an intended third party beneficiary of the Arbitration Agreement and the Underlying Agreement because the purpose of both is to directly benefit the Member.

(r) **Bench Trial.** If it is determined that the Signatories' agreement to arbitrate is void, invalid or unenforceable, then the Signatories make clear their express desire to waive a jury trial and resolve their disputes against each other exclusively in: (i) the State Court located in the County where the Company's headquarters exist which is presently Bucks County, Pennsylvania, solely before a judge (i.e., Bench Trial) or (ii) the United States District Court with jurisdiction encompassing the County where the Company's headquarters exist which is presently Bucks County, Pennsylvania, solely before a judge (i.e., Bench Trial).

(s) **Right to Consult with Attorney.** The Parties acknowledge that they have been directed to, and have been given sufficient opportunity to, read this Arbitration Agreement very carefully and ask any questions about it before accepting this Arbitration Agreement. The Parties further acknowledge that they have the right to consult with an attorney of their choice before accepting this Arbitration Agreement.

SIGNATURES:

Member: _____ **Date:** _____
Print Name: _____

Member's Legal Representative: _____ **Date** _____
Print Name: _____
Relationship to Member: _____
Initial all that apply:

- _____ Attorney-in-Fact (provide written Power of Attorney)
- _____ Guardian (provide Court Order or other satisfactory evidence)
- _____ Other: Describe: _____
(provide copies of all relevant documents)

Responsible Party: _____ **Date:** _____
Print Name: _____

Company: _____ **Date:** _____
Print Name: _____
Print Title: _____

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

PJ Sloat, through her next friend, Pamela Loudon; SS, through Pam Scott his legal guardian; and Disability Rights South Carolina,

Plaintiffs,

vs.

Active Day, Inc.,

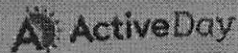
Defendant.

Civil Action No.: 3:23-cv-1518-SAL

Exhibit B

AMENDED COMPLAINT

Letter from Active Day to DRSC's clients



Greetings Active Day HopeBridge Members and Families,

Change is all around! Just this week in South Carolina, you could see the purple, pink and white blooms on trees along the roads and Robins searching for worms in freshly green sprigs of grass. You could hear bees buzzing and even a lawnmower motor or two humming in the distance. You could glare at the yellow dust that had settled on the hoods of cars and wonder how it could possibly be that time of the year already! And all of that while still in the month of February!

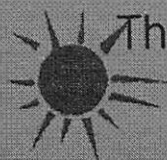
It's been no different here at the HopeBridges and Cayce programs. And we thank you for your loyalty and patience as we continue to make a successful transition to ActiveDay. We hope what hasn't changed is the trust you place in us to care for you and your loved one and to continue providing quality day health programming services with lots of HEART!

You are receiving this packet containing forms that are part of Active Day's standard enrollment and admissions procedure for its members. It is very important for us to update our records with this paperwork for you and/or your loved one to remain enrolled. Please read the **BINDING ARBITRATION AGREEMENT** and initial at the bottom of each page and complete the final page with the information and signatures requested. In addition, we will need copies of SS Cards, ID's (if available) and Insurance cards (such as Healthy Connections). If you have Not already provided copies of POA and/or Guardianship, please do so at this time, along with any Advanced Directives (HCPOA, 5 wishes, or Living Will). If there is a DNR order in place, it is very important that you notify us so that we can ensure the proper paperwork is in the member's file.

Please return the completed paperwork and requested documents no later than March 17th to secure your enrollment status and ensure that your care is managed according to your personalized plan for yourself and your loved ones. If you have questions or concerns, please contact someone from our Case Management team: Latasha Jennings@803-791-3256, Carol Roberson@803-791-3255, or Cynthia Blakely @864-992-8149.

Sincerely,

Your Care Teams at Active Day HopeBridge (Hollies and Oaks) and Active of Cayce



The Brighter Side Of Caring