

CASE NO. 20-1153

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TIMOTHY S. BOYKIN,

Plaintiff – Appellant,

v.

FAMILY DOLLAR STORES OF MICHIGAN, LLC,
a Virginia limited liability company and successor to
FAMILY DOLLAR STORES OF MICHIGAN, INC.,
a former Virginia corporation and successor to
FAMILY DOLLAR STORES OF MICHIGAN, INC.,
a former Michigan corporation,

Defendant – Appellee.

On appeal from the United States District Court for the Eastern District of
Michigan, District Court No. 19-cv-10755
Hon. Gershwin A. Drain

**PLAINTIFF-APPELLANT TIMOTHY S.
BOYKIN'S BRIEF ON APPEAL**

ORAL ARGUMENT REQUESTED

TISHKOFF PLLC
By: William G. Tishkoff (P45165)
And: Christopher M. Vukelich (P76420)
Attorneys for Plaintiff-Appellant
407 North Main Street
Ann Arbor, Michigan 48104
(734) 663-4077

CORPORATE DISCLOSURE STATEMENT

[Insert form into PDF here]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 20-1153

Case Name: Boykin v. Family Dollar Stores of Michigan, LLC

Name of counsel: William G. Tishkoff, Esq.

Pursuant to 6th Cir. R. 26.1, Appellant Timothy S. Boykin
Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Not affiliated with Plaintiff/Appellant. Unknown as to Defendant/Appellee.

CERTIFICATE OF SERVICE

I certify that on March 5, 2020 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/William G. Tishkoff
Tishkoff PLC, 407 N. Main Street
Ann Arbor, MI 48104

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT IN SUPPORT OF ORAL ARGUMENT vii

STATEMENT OF JURISDICTION..... viii

 A. SUBJECT MATTER JURISDICTION..... viii

 B. APPELLATE JURISDICTION..... viii

STATEMENT OF ISSUES PRESENTED FOR REVIEW ix

I. APPELLANT’S SUMMARY OF ARGUMENT 1

II. APPELLANT’S STATEMENT OF CASE/FACTUAL AND PROCEDURAL HISTORY5

 A. FACTUAL HISTORY5

 B. PROCEDURAL HISTORY.....13

III. STANDARD OF REVIEW15

 A. SUBSTANTIVE ISSUES STANDARD OF REVIEW.....15

 B. APPEAL STANDARD OF REVIEW.....17

IV. ARGUMENT—THE DISTRICT COURT’S AUGUST 28 ORDER AND JUDGMENT, AND ITS FEBRUARY 5 ORDER, SHOULD BE REVERSED.17

 A. THE DISTRICT COURT ERRED IN COMPELLING ARBITRATION WHERE APPELLANT CANNOT BE COMPELLED TO ARBITRATION WHEN HE DID NOT AGREE TO ARBITRATE HIS CIVIL RIGHTS CLAIMS AGAINST APPELLEE.....18

B. THE DISTRICT COURT ERRED IN HOLDING THAT THE QUESTION OF WHETHER APPELLANT ENTERED INTO AN ARBITRATION AGREEMENT CAN BE DECIDED BY AN ARBITRATOR.30

C. THE DISTRICT COURT’S GRANT OF DISMISSAL AND COMPELLING ARBITRATION WAS PREMATURE WHERE APPELLANT WAS ENTITLED TO CONDUCT DISCOVERY PRIOR TO THE DISTRICT COURT’S CONSIDERATION OF APPELLEE’S SECOND DISMISSAL MOTION.....33

D. THE DISTRICT COURT IMPROPERLY DENIED APPELLANT’S MOTION TO ALTER OR AMEND THE AUGUST 28 ORDER WHERE THE AUGUST 28 ORDER CONTAINED CLEAR ERRORS OF LAW AND AMENDMENT WAS NECESSARY TO PREVENT MANIFEST INJUSTICE.....35

V. CONCLUSION AND RELIEF REQUESTED41

CERTIFICATE OF COMPLIANCE.....42

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS43

TABLE OF AUTHORITIES

Page(s)

Cases

Supreme Court Opinions

BG Grp. Plc v. Republic of Arg.,
572 U.S. 25 (2014) 34, 35

First Options v. Kaplan,
514 U.S. 938 (1995) 20

Granite Rock Co v Intl Broth of Teamsters,
561 US 287, 130 S Ct 2847, 177 L Ed 2d 567 (2010) 18-19, 20, 29, 30, 31

Rent-A-Center, W., Inc. v. Jackson,
561 U.S. 63 & n.1 (2010) 30, 33

EEOC v. Waffle House, Inc.
534 U.S. 279 20

Volt Info. Sci., Inc. v. Bd. Of Trustees of Leland Stanford Junior Univ.,
489 U.S. 468, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989) 19

Sixth Circuit Opinions

Aiken v. City of Memphis,
190 F.3d 753 (6th Cir. 1999) 16

Great Earth Cos. v. Simons,
288 F.3d 878 (6th Cir. 2002) 15-16, 17, 18, 29, 34, 35

Hall v. Pacific Sunwear Stores Corporation,
2016 U.S. Dist. LEXIS 46347 (E.D. Mich., April 6, 2016) 35, 36, 37, 46

Hurley v. Deutsche Bank Trust Co. Americas,
610 F.3d 334 (6th Cir. 2010) 17, 18, 30, 35

McMullen v. Meijer, Inc.,

355 F.3d 485 (6th Cir. 2004)	17
<i>Mich. Flyer LLC v. Wayne Co. Airport Auth.</i> , 860 F.3d 425 (6th Cir. 2017)	36, 37, 40-41
<i>Nestle Waters N.A., Inc. v. Bollman</i> , 505 F.3d 498 (6th Cir. 2007)	15, 16, 28, 34
<i>Simon v. Pfizer Inc.</i> , 398 F.3d 765 (6th Cir. 2005)	4, 5, 15, 19, 34, 35
<i>Stout v. J.D. Byrider</i> , 228 F.3d 709 (6th Cir. 2000)	17, 18
Federal Court Opinions	
<i>American Heritage Life Ins. V. Lang</i> , 321 F.3d 533 (5th Cir. 2003)	20
<i>Braspetro Oil Services Company v. Modec</i> (USA), Inc., 240 Fed. App’x 612 (5th Cir. 2007) (per curiam)	16
<i>Fallo v. High-Tech Institute</i> , 559 F. 3d 874 (8th Cir. 2009)	33
<i>Guidotti v. Legal Helpers Debt Resolution, L.L.C.</i> , 716 F.3d 764 (3rd Cir. 2013)	<i>passim</i>
<i>In re Zappos.com, Inc., Customer Data Sec. Breach Litig.</i> , 893 F.Supp.2d 1058 (D.Nev. 2012)	20
<i>InterGen N.V. v. Grina</i> , 344 F.3d 134 (1st Cir. 2003)	19-20
<i>Kristian v. Comcast Corp.</i> , 446 F.3d 25 (1st Cir. 2006)	20-21
<i>Theroff v. Dollar Tree Stores, Inc.</i> , 2018 Mo. App. LEXIS 400 (W.D. Mo., April 24, 2018)	5, 32, 33, 45

United States Code

9 U.S.C. § 1 17, 43, 44-45
28 U.S.C. § 1291 viii
28 U.S.C. §§ 1331, 1343 viii
29 U.S.C. § 621 viii, 2
42 U.S.C. § 2000e viii, 2

State Statutes

MCL 37.280 *et seq.* viii, 2
MCL 423.501 *et seq.* 10, 23-24

Rules

Fed. R. App. P. 3 vi
Fed. R. App. P. 4 vi
Fed. R. App. P. 32 42
Fed. R. Civ. P. 12(b)(3) viii, ix, 16
Fed. R. Civ. P. 15(a)(1) 13
Fed. R. Civ. P. 59 viii, 36, 37, 40

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiff/Appellant Timothy S. Boykin (“Boykin”) respectfully requests oral argument be scheduled in this matter as it involves important legal issues, particularly regarding the United States District Court for the Eastern District of Michigan’s (“District Court”) erroneous holding that, *inter alia*, Boykin and Defendant/Appellee Family Dollar Stores of Michigan, LLC (“FDSM VaLLC”) entered into an agreement to arbitrate Boykin’s claims against FDSM VaLLC, notwithstanding the substantial evidence and case law to the contrary.

STATEMENT OF JURISDICTION

A. SUBJECT MATTER JURISDICTION

Boykin has brought claims against FDSM VaLLC for its violations of the 13th and 14th Amendments to the United States Constitution, and for racial discrimination and age discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended (“Title VII”), the Age Discrimination In Employment Act, 29 U.S.C. § 621, *et seq.* (the “ADEA”), and the Elliott Larsen Civil Rights Act, MCL 37.280, *et seq.* (the “ELCRA”). Federal question jurisdiction over Boykin’s claims is proper pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

B. APPELLATE JURISDICTION

Boykin is appealing the District Court’s entry of final orders, and related judgment, granting FDSM VaLLC’s motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(3) and denying Boykin’s motion to alter or amend pursuant to Fed. R. Civ. P. 59; therefore, appellate jurisdiction is proper pursuant to 28 U.S.C. § 1291. On February 18, 2020, Boykin timely filed his notice of appeal with the District Court within thirty (30) days of the entry of the District Court’s February 5, 2020 order denying Boykin’s motion to alter or amend pursuant to Fed. R. Civ. P. 59. Fed. R. App. P. 3(a)(1); Fed. R. App. P. 4(a)(1)(A); Fed. R. App. P. 4(a)(4)(v).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred by granting FDSM VaLLC's motion to dismiss Boykin's First Amended Complaint And Jury Demand ("Amended Complaint," filed 4/29/19, RE 11), pursuant to Fed. R. Civ. P. 12(b)(3), where Boykin properly pled his claims against FDSM VaLLC under Title VII, ADEA and ELCRA?

2. Whether the District Court erred by granting FDSM VaLLC's motion to dismiss Boykin's Amended Complaint, pursuant to Fed. R. Civ. P. 12(b)(3), where the record establishes that there are genuine issues of material fact regarding whether Boykin entered into an agreement to arbitrate his claims against FDSM VaLLC?

3. Whether the District Court erred by granting FDSM VaLLC's motion to dismiss Boykin's Amended Complaint, pursuant to Fed. R. Civ. P. 12(b)(3), where Boykin was not permitted to conduct discovery on the issue of whether Boykin entered into an agreement to arbitrate his claims against FDSM VaLLC prior to the District Court adjudicating the motion to dismiss?

4. Whether the District Court erred by denying Boykin's motion to alter or amend the District Court's August 28, 2019 order where Boykin established that the District Court committed clear error in its August 28, 2019 order and an amendment to the August 28, 2019 order was necessary to prevent manifest

injustice?

I. APPELLANT'S SUMMARY OF ARGUMENT

The instant lawsuit arises from Defendant/Appellee Family Dollar Stores of Michigan, LLC's ("FDSM VaLLC") termination of Plaintiff/Appellant Timothy S. Boykin's ("Boykin") employment on August 7, 2018.

On July 8, 2018, Afshin Jadidnouri entered FDSM VaLLC store #2222, where Boykin was working as Store Manager. Amended Complaint, RE 11, Page ID # 89. Boykin was 69 years old at the time. *Id.* at Page ID # 87. Boykin politely informed Mr. Jadidnouri that the store closed and asked him to please make his final selection and take it to the cashier. *Id.* at Page ID # 89. Mr. Jadidnouri stated to Boykin, "Is that a Family Dollar policy or a N****er policy?" *Id.* Boykin asked Mr. Jadidnouri to leave the store and Mr. Jadidnouri told Boykin "f**k you," crumpled up one of the store's greeting cards and threw it on the floor. *Id.* at Page ID # 90. As Mr. Jadidnouri was unlawfully trespassing on the store premises and refusing to leave, Boykin ushered him out the front door of the store. *Id.*

Mr. Jadidnouri subsequently contacted "Family Dollar" and demanded that it terminate Boykin. *Id.* at Page ID # 91. Although Boykin did not violate any policies or procedures of FDSM VaLLC, and did not receive any reprimands or warnings, FDSM VaLLC acquiesced in Mr. Jadidnouri's racially motivated demands, and acted on its own racial and age discriminatory bias, in terminating

Boykin on August 7, 2018, using the above incident as pretext. *See generally*, Amended Complaint, RE 11.

On April 29, 2019, Boykin filed his amended age and race discrimination complaint (“Amended Complaint”) against FDSM VaLLC for violating Boykin’s rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended (“Title VII”), the Age Discrimination In Employment Act, 29 U.S.C. § 621, *et seq.* (the “ADEA”), and the Elliott Larsen Civil Rights Act, MCL 37.280, *et seq.* (“ELCRA”). Amended Complaint, RE 11, Page ID # 84-109.

On June 11, 2019, FDSM VaLLC filed its motion to dismiss Boykin’s Amended Complaint and compel arbitration (“Second Dismissal Motion”). Second Dismissal Motion, RE 26, Page ID # 541-639. On August 28, 2019, the United States District Court for the Eastern District of Michigan (“District Court”) entered its order (“August 28 Order”) granting FDSM VaLLC’s Second Dismissal Motion and compelling Boykin to arbitrate his claims in the instant lawsuit against FDSM VaLLC, and entered a judgment in favor of FDSM VaLLC and against Boykin (“Judgment”). August 28 Order, RE 31, Page ID # 1089-1097; Judgement, RE 32, Page ID # 1098.

Subsequently, on September 11, 2019, Boykin filed his motion to alter or amend the August 28 Order (“Alter/Amend Motion”). Alter/Amend Motion, RE 33, Page ID # 1099-1126. On February 5, 2020, the District Court entered its

opinion and order, improperly denying Boykin's Alter/Amend Motion ("February 5 Order"). February 5 Order, RE 43, Page ID # 1256-1272. The District Court's clear error in its above ruling was readily apparent during oral argument on the Alter/Ament Motion on January 30, 2020. This is particularly clear in the District Court's following statements evidencing the complete lack of evidence of the parties' agreement, with the District Court and FDSM VaLLC unable to identify which of two materially, different, arbitration provisions, with widely different forums and rules, the parties purportedly agreed to:

THE COURT: Does it matter to you which forum this case goes to in terms of JAMS versus AAA?

MS. PETROSKI: Well, I think the issue is the record evidence that's been presented establishes that he –

THE COURT: I know that, but I'm just asking you as a practical matter does it matter to you?

THE COURT: ...It was just a matter of one going to AAA and the other one going to JAMS.

Transcript of January 30, 2020 hearing on Boykin's Alter/Amend Motion ("January 30 Transcript"), RE 47, Page ID # 1313-1314, 1319. As evidenced by the District Court's above statements, the District Court did not make appropriate findings as to a specific arbitration agreement Boykin allegedly agreed to. *Id.* Indeed, the District Court asked FDSM VaLLC's counsel which arbitration

agreement that FDSM VaLLC would like to proceed under, ignoring the fact that the material issue is whether Boykin and FDSM VaLLC knowingly entered into the material terms for a specific arbitration agreement. *Id.*

As discussed below, the District Court's August 28 Order, Judgement and February 5 Order are clearly improper, and should be reversed on appeal. The evidence in the record establishes genuine issues of material fact, *inter alia*, that Boykin unequivocally denied that he reviewed, signed or acknowledged an arbitration agreement with FDSM VaLLC, and that no agreed-upon arbitration terms exist between Boykin and FDSM VaLLC. *See* Second Affidavit Of Timothy S. Boykin, dated July 2, 2019 ("Second Boykin Affidavit"), RE 29-2, Page ID # 916-977; *see also* Boykin's opposition to FDSM VaLLC's Second Dismissal Motion, RE 29, Page ID # 880-1082. Indeed, contrary to the District Court's August 28 Order and February 5 Order, Boykin did not enter into an agreement to arbitrate his claims against FDSM VaLLC, and Boykin cannot be required to arbitrate such claims were an agreement to arbitrate does not exist. *Id.*; *see also* *Simon v. Pfizer Inc.*, 398 F.3d 765, 775 (6th Cir. 2005); *Guidotti v. Legal Helpers Debt Resolution, L.L.C.*, 716 F.3d 764, 776 (3rd Cir. 2013).

Under any circumstance, the District Court improperly, and prematurely, granted FDSM VaLLC's Second Dismissal Motion where Boykin was entitled to conduct discovery on the issue of the existence of an arbitration agreement

between Boykin and FDSM VaLLC prior to the Court’s consideration of the Second Dismissal Motion. *Simon*, 398 F.3d at 775; *Guidotti*, 716 F.3d at 776. The District Court should have subsequently considered such evidence in the light most favorable to Boykin prior to making its ruling on the Second Dismissal Motion. *Id.*

Further, as discussed below and supported by the evidence in the record, FDSM VaLLC’s Second Dismissal Motion should have been denied pursuant to well-established law on this precise issue of whether Boykin entered into an agreement to arbitrate his claims against FDSM VaLLC: *Theroff v. Dollar Tree Stores, Inc.*, 2018 Mo. App. LEXIS 400, 2018 WL 1914851 (W.D. Mo., April 24, 2018) (Dollar Tree Stores, Inc.’s motion to compel arbitration denied, issues presented relating to contract formation or enforceability are not formation issues—namely, whether a contract was signed by the obligor or the obligor had authorized an agent to sign her name to the contract).

Accordingly, on *de novo* review, this Court should reverse the August 28 Order and Judgment, and the February 5 Order, and remand the instant matter back to the District Court for further proceedings.

II. APPELLANT’S STATEMENT OF CASE/FACTUAL AND PROCEDURAL HISTORY

A. FACTUAL HISTORY

Boykin is an African American male. *See* Affidavit of Timothy S. Boykin, dated April 7, 2019 (“First Boykin Affidavit”), at p. 1, RE 15-2, Page ID # 223. Boykin was born February 8, 1948, he is currently seventy (70) years old. *Id.* Boykin is a 1966 graduate of Saint Cecilia Catholic High School and received an Associate’s Degree in Business from Wayne State University in 1974. *Id.*

After gaining experience and distinguishing himself as a Store Manager for several major supermarkets, Boykin accepted an offer and commenced employment as a Store Manager with Family Dollar Stores of Michigan, Inc., a Michigan corporation (“FDSM MiInc”), on September 30, 2003, first assigned to FDSM MiInc’s Detroit location. *Id.* Between 2003 and 2016, FDSM MiInc honored and distinguished Boykin with over 20 separate awards, honors and achievement recognitions. *Id.* at pp. 2-3, Page ID # 223-224. Throughout Boykin’s 15 years of employment with FDSM MiInc, Family Dollar Store of Michigan, Inc. (a Virginia corporation; “FDSM VaInc”) and FDSM VaLLC, Boykin maintained an impeccable employment record. *Id.*

Records recently obtained from the Michigan Department Of Licensing And Regulatory Affairs (“LARA”) show that, on February 16, 2016, FDSM MiInc converted to FDSM VaInc. *See* the above LARA conversion records, RE 29-3, at Page ID # 978-983. Records filed with LARA show that, on the same day, FDSM

VaInc filed its application for certificate of authority to do business in Michigan. See the above LARA records, RE 29-4, at Page ID # 985-988.

In 2016, Boykin was transferred from FDSM VaInc's location in Taylor, Michigan (Store #4851), to its location in Ypsilanti, Michigan (Store #2222), and served there as Store Manager. First Boykin Affidavit, *supra*, at p. 3, RE 15-2, Page ID # 224. Boykin continued to serve as Store Manager for the above location (Store #2222) when FDSM VaInc converted to FDSM VaLLC in 2017. *Id.* The information provided by Boykin's employer for the period 2017 to 2018, including W-2s and paystubs, states that his employer during this period was FDSM MiInc. *Id.* Boykin's W-2s and paystubs for 2018 and 2017 are attached to the First Boykin Affidavit as Exhibit 1. *Id.* at Page ID # 229-234.

On July 8, 2018, Mr. Jadidnouri entered FDSM VaLLC store #2222, where Boykin was working as Store Manager. Amended Complaint, RE 11, Page ID # 89. Boykin was 69 years old at the time. *Id.* at Page ID # 87. Boykin politely informed Mr. Jadidnouri that the store closed and asked him to please make his final selection and take it to the cashier. *Id.* at Page ID # 89. Mr. Jadidnouri stated to Boykin, "Is that a Family Dollar policy or a N***er policy?" *Id.* Boykin asked Mr. Jadidnouri to leave the store and Mr. Jadidnouri told Boykin "f**k you," crumpled up one of the store's greeting cards and threw it on the floor. *Id.* at Page

ID # 90. As Mr. Jadidnouri was unlawfully trespassing on the store premises and refusing to leave, Boykin ushered him out the front door of the store. *Id.*

Mr. Jadidnouri subsequently contacted “Family Dollar” and demanded that it terminate Boykin. *Id.* at Page ID # 91. Although Boykin did not violate any policies or procedures of FDSM VaLLC, and did not receive any reprimands or warnings, FDSM VaLLC acquiesced in Mr. Jadidnouri’s racially motivated demands, and acted on its own racial and age discriminatory bias, in terminating Boykin on August 7, 2018, using the above incident as pretext. *See generally*, Amended Complaint, RE 11.

Records obtained from the Commonwealth Of Virginia, State Corporation Commission, Office Of The Clerk show that, on January 23, 2017, FDSM VaInc converted to FDSM VaLLC, a Virginia limited liability company. *See* the above Commonwealth of Virginia records, RE 29-5, at Page ID # 990-1015. LARA records show that, on February 2, 2017, FDSM VaInc filed with LARA its application for certificate of withdrawal from transacting business or conducting affairs in Michigan. *See* the above LARA records, RE 29-6, at Page ID # 1017-1018. LARA records show that, on February 3, 2017, FDSM VaLLC filed with the State of Michigan its application for certificate of authority to transact business in Michigan. *See* the above LARA records, RE 29-7, at Page ID # 1020-1025.

Boykin reviewed the email and prior string of emails Sara Rafal sent to Boykin's attorney William Tishkoff on March 13, 2019 at 2:37 PM ("March 13 Rafal Email"), along with its attachment, a copy of a 5-page document entitled "Mutual Agreement To Arbitrate Claims" and containing a footer stating, "Revised effective 2/1/16" ("Agreement #1"). *See* March 13 Rafal Email, RE 29-2, at Page ID # 924-925; Agreement #1, RE 29-2, at Page ID # 927-931.

Twelve days later, on March 25, 2019, counsel for FDSM VaLLC sent counsel for Boykin a letter and enclosed copy of an arbitration agreement (the letter and exhibits are referred to as the "Paxton Packet"). *See* the Paxton Packet, RE 29-8, at Page ID # 1027-1065. The arbitration agreement included in the Paxton Packet (the "Agreement #2") is entirely distinct from the Agreement #1, and Mr. Paxton contradicts Ms. Rafal in his accompanying letter, asserting that Boykin agreed to the Agreement #2, not the Agreement #1. Paxton Packet, RE 29-8, at Page ID # 1027-1065.

Boykin reviewed the Declaration Of Natalie Neely, dated April 5, 2019 ("Neely Affidavit"), along with its attached exhibits: Exhibit A ("2013 Training Slides"); Exhibit B ("Agreement #2"); and Exhibit C ("Items Printout"). *Second Boykin Affidavit*, at p. 3, RE 29-2, Page ID # 918. The Neely Affidavit and its exhibits are collectively attached as Exhibit 3 to the *Second Boykin Affidavit*. *Second Boykin Affidavit*, RE 29-2, at Page ID # 933-950. Boykin does not

recognize, nor does he have knowledge or recollection of reviewing (prior to 2019), completing, executing or acknowledging, in writing or electronically, the 2013 Training Slides. *Id.* at p. 4, RE 29-2, Page ID # 919.

Boykin is familiar with the employment practices and procedures at “Family Dollar” stores in Southeast Michigan before the termination of his employment. *Id.* Before his termination, it was standard practice at “Family Dollar” stores in Southeast Michigan for Store Managers (“SM”) and Assistant Store Managers (“ASM”) to obtain and use each other’s and other employees’ User ID number and password to log onto the in-store Kiosks. *Id.* at p. 5, RE 29-2, Page ID # 920.

It was a common occurrence for SMs and ASMs to obtain and use each other’s and other employees’ User ID number and password to enter information and data in the in-store Kiosks when an employee was not working or off-site and entry of his/her information or data into the Kiosk was time critical or needed to meet a deadline, such as an online course completion deadline for the off-site employee. *Id.* Boykin attests that District Managers or Area Operations Managers for his subject employer, when a SM was not working or off-site, directed the on-site ASM to complete, by a deadline, online courses that required the ASM’s use of the SM’s User ID and password. *Id.*

In response to his October 10, 2018 Michigan Bullard-Plawecki, Right-To-Know-Act, MCL 423.501, request for his personnel file, in late November 2018,

FDSM VaLLC mailed Boykin “all available records” regarding his employment file. *Id.* [The above document production is referred to as “RTKA Documents.”] Included in the RTKA Documents is a copy of Boykin’s weekly work schedule with FDSM VaLLC for 5/21/2013 – 7/15/2013 (“5/12/13 Weekly Work Schedule”). *Id.* at p. 6, RE 29-2, Page ID # 921; a copy of the 5/12/13 Weekly Work Schedule is attached to the Second Boykin Affidavit as Exhibit 4, RE 29-2, Page ID # 953. The 5/12/13 Weekly Work Schedule indicates that Boykin was not scheduled to work on July 15, 2013 (7/15/13). *See* 5/12/13 Weekly Work Schedule, RE 29-2, at Page ID # 953; Second Boykin Affidavit, RE 29-2, at Page ID # 921.

Included in the RTKA Documents is a performance evaluation for Boykin’s subject Store Manager position (referenced as “SM-Salaried” in the subject document) for the period August 26, 2012 through August 31, 2013 (“Performance Evaluation”). Second Boykin Affidavit, RE 29-2, at Page ID # 921; a copy of the Performance Evaluation is attached as Exhibit 5 to the Second Boykin Affidavit, RE 29-2, Page ID # 955-972.

Boykin attests that, upon completion of any of the online courses offered through his subject employment, the course program would conclude with a “Certificate of Completion,” which would state that it was for Boykin and the name of the course he completed. Second Boykin Affidavit, RE 29-2, at Page ID # 921-922; attached as Exhibit 6 to the Second Boykin Affidavit is a sample from

another employee of Certificates of Completion for three online courses for Boykin's subject employment, RE 29-2, Page ID # 974-976. Online courses, when completed, displayed a Certificate of Completion, with a completion date, which could be printed; other displays, slides, documents or parts of the online courses could not be printed. Second Boykin Affidavit, RE 29-2, at Page ID # 922.

Boykin did not receive a Certificate of Completion for a course entitled Open Door and Arbitration at Family Dollar. *Id.* A Certificate of Completion for a course entitled Open Door and Arbitration at Family Dollar was not produced by FDSM VaLLC in the RTKA documents. *Id.*

Boykin denies that he agreed to, signed or knowingly consented to the Agreement #1 or the Agreement #2. Second Boykin Affidavit, RE 29-2, at Page ID # 917. Boykin unequivocally attests that he did not consent to, sign, acknowledge or authorize any type of arbitration agreement with FDSM MiInc before, on or after July 15, 2013, or at any time. *Id.* at Page ID # 918. Boykin was not informed by FDSM MiInc, FDSM VaInc or FDSM VaLLC that he was required to enter into an arbitration agreement as a condition of his employment. *Id.* at Page ID # 919. Boykin attests that he does not have knowledge or recollection of reading, being informed, or learning, that a review, completion, execution or acknowledgement of an arbitration agreement or waiver of litigation

rights was required by his subject employer when he was hired by FDSM MiInc or at any time through the termination of his employment. *Id.* at Page ID # 917.

B. PROCEDURAL HISTORY.

On March 12, 2019, Plaintiff filed his complaint (“Complaint”) against his employer, as represented to him in his W-2s and paystubs, *inter alia*: Defendant Family Dollar Stores of Michigan, Inc. (“FDSM MiInc.”). *See* Complaint, RE 1, at Page ID # 1-23. On April 8, 2019, in lieu of filing an answer to the Complaint, FDSM MiInc. filed its motion to dismiss and compel arbitration (“First Dismissal Motion”). *See* First Dismissal Motion, RE 7, at Page ID # 31-75.

On April 29, 2019, Plaintiff timely filed his Amended Complaint.¹ Amended Complaint, RE 11, at Page ID # 84-106. On June 11, 2019, FDSM

¹ Having obtained material information regarding the identity of his former employer – contrary to the W-2s and paystubs, *inter alia*, issued by his former employer – pursuant to Fed. R. Civ. P. 15(a)(1), on April 29, 2019, Plaintiff timely filed his Amended Complaint incorporating these new facts, along with modifying his causes of action. On May 8, 2019 Plaintiff filed his corrected opposition to Defendant’s First Dismissal Motion (“First Dismissal Opposition”). First Dismissal Opposition, RE 15. On May 17, 2019, FDSM VaLLC filed its motion to extend the deadline to answer the Amended Complaint (“Answer Extension Motion”). Answer Extension Motion, RE 17. On May 21, 2019, FDSM VaLLC filed its motion for a protective order and to stay discovery (“PO Motion”). PO Motion, RE 18. On May 21, 2019, FDSM VaLLC untimely filed its reply brief in support of its First Dismissal Motion (RE 19). On May 23, 2019, FDSM VaLLC filed its motion for leave to file its reply to Plaintiff’s First Dismissal Opposition (RE 20). On May 31, 2019 Plaintiff filed its opposition to Defendant’s motion to extend the deadline to answer Plaintiff’s Amended Complaint (RE 21). On June 4, 2019, Plaintiff filed its Opposition to Defendant’s motion for protective order and to stay discovery (RE 22). On June 5, 2019, the Court entered three orders: (1)

VaLLC filed its Second Dismissal Motion and accompanying brief (FDSM VaLLC collectively filed its Second Dismissal Motion and brief as RE 26, Page ID # 541-639). On July 3, 2019, Plaintiff filed his opposition to FDSM VaLLC's Second Dismissal Motion ("Second Dismissal Opposition"). Second Dismissal Opposition, RE 29, Page ID # 880-1082.

On August 28, 2019, the District Court entered its August 28 Order granting FDSM VaLLC's Second Dismissal Motion and compelling Boykin to arbitrate his claims against FDSM VaLLC, and entering the Judgement in favor of FDSM VaLLC and against Boykin. August 28 Order, RE 31, Page ID # 1089-1097; Judgement, RE 32, Page ID # 1098. On September 11, 2019, Boykin filed his Alter/Amend Motion. Alter/Amend Motion, RE 33, Page ID # 1099-1126. On November 8, 2019, FDSM VaLLC filed its response to Boykin's Alter/Amend Motion (RE 40, Page ID # 1181-1240). On November 15, 2019, Boykin filed his reply in support of his Alter/Amend Motion (RE 41, Page ID # 1241-1254).

On January 30, 2020, the District Court entertained oral argument on Boykin's Alter/Amend Motion. After oral argument, the Court took Boykin's Alter/Amend Motion under advisement. *Id.* at Page ID # 1322.

order dismissing Defendant's First Dismissal Motion as moot (RE 23); (2) order granting Defendant's Answer Extension Motion (RE 24); and (3) order granting Defendant's PO Motion (RE 25).

On February 5, 2020, the District Court entered its February 5 Order denying Boykin's Alter/Amend Motion and affirming the District Court's entry of the August 28 Order. February 5 Order, RE 43, Page ID # 1256-1272. On February 18, 2020, Boykin filed his notice of appeal ("Appeal Notice"). Appeal Notice, RE 44, Page ID # 1273.

III. STANDARD OF REVIEW

A. SUBSTANTIVE ISSUES STANDARD OF REVIEW

Only when it is apparent, based on the face of a complaint, and documents relied upon in the complaint, that the claims at issue are subject to an enforceable arbitration clause, can a motion to compel arbitration be considered under a Rule 12(b)(6) standard. *Guidotti*, 716 F.3d at 776. However, if a complaint and its supporting documents are unclear regarding an agreement to arbitrate, or if the plaintiff has responded to a motion to compel arbitration with additional facts sufficient to place the agreement to arbitrate in issue, then "the parties should be entitled to discovery on the question of arbitrability before a court entertains further briefing on [the] question." *Id.*; *see also Great Earth Cos. v. Simons*, 288 F.3d 878, 889 (6th Cir. 2002).

"In order to show that the validity of an arbitration agreement is 'in issue,' the party opposing arbitration must show a genuine issue of material fact as to the validity of the agreement to arbitrate." *Great Earth Cos.*, 288 F.3d at 889. "The

required showing mirrors that required to withstand summary judgment in a civil suit.” *Id.* In reviewing a district court’s opinion on a motion to compel arbitration, the court of appeals will view all facts and inferences drawn therefrom in the light most favorable to the non-moving party, “and determine whether the evidence presented is such that a reasonable finder of fact could conclude that no valid agreement to arbitrate exists.” *Id.* (citing *Aiken v. City of Memphis*, 190 F.3d 753, 755 (6th Cir. 1999); *Braspetro Oil Services Company v. Modec (USA), Inc.*, 240 Fed. App’x 612, 615 (5th Cir. 2007) (per curiam) (When resolving a Rule 12(b)(3) motion, “the court must accept as true all allegations in the complaint and resolve all conflicts in favor of the plaintiff.”).

Legitimate disputes over an alleged agreement to arbitrate are apparent where there has been a “denial that the agreement had been made, accompanied by supporting affidavits ... [;] in most cases [that] should be sufficient to require a jury determination on whether there had in fact been a ‘meeting of the minds.’” *Guidotti*, 716 F.3d at 778.

In the instant case, FDSM VaLLC concedes that there are issues of fact and evidence which must be considered outside of the Amended Complaint and its exhibits regarding the issue of arbitration, as evidenced by FDSM VaLLC bringing its Second Dismissal Motion pursuant to Fed. R. Civ. P. 12(b)(3). Second Dismissal Motion, RE 26, at p. 1, Page ID # 541-542.

B. APPEAL STANDARD OF REVIEW

A district court's decision whether to compel arbitration under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA"), is reviewed *de novo*. *Hurley v. Deutsche Bank Trust Co. Americas*, 610 F.3d 334, 338 (6th Cir. 2010); *Stout v. J.D. Byrider*, 228 F.3d 709, 714 (6th Cir. 2000). Similarly, the district court's decisions regarding the arbitrability of a particular dispute are reviewed *de novo*. *Nestle Waters N.A., Inc. v. Bollman*, 505 F.3d 498, 502 (6th Cir. 2007) (*citing McMullen v. Meijer, Inc.*, 355 F.3d 485, 489 (6th Cir. 2004)).

IV. ARGUMENT—THE DISTRICT COURT'S AUGUST 28 ORDER AND JUDGMENT, AND ITS FEBRUARY 5 ORDER, SHOULD BE REVERSED.

As discussed below, the District Court misconstrued both the law and evidence in the instant case in granting FDSM VaLLC's Second Dismissal Motion and ordering that Boykin be compelled to arbitrate his claims against FDSM VaLLC. Indeed, the record clearly establishes genuine issues of material fact whether there was a meeting of the minds between Boykin and FDSM VaLLC regarding an agreement to arbitrate Boykin's claims against FDSM VaLLC. *Guidotti*, 716 F.3d at 776; *Great Earth Cos.*, 288 F.3d at 889; Second Boykin Affidavit, RE 29-2, Page ID # 916-977; First Boykin Affidavit, RE 15-2, at Page ID # 225-226. Further, the District Court's granting of the Second Dismissal Motion without first allowing Boykin to conduct discovery on the issues of arbitrability and the existence of an arbitration agreement between Boykin and

FDSM VaLLC was clearly erroneous. *Guidotti*, 716 F.3d at 776, 778; *Great Earth Cos.*, 288 F.3d at 889.

Under *de novo*, or any type of, review, the District Court's granting of the Second Dismissal Motion, and compelling Boykin to arbitrate his claims against FDSM VaLLC under Agreement #2, should be reversed. *Hurley*, 610 F.3d at 338; *Stout*, 228 F.3d at 714; *Nestle Waters N.A., Inc.*, 505 F.3d at 502.

A. THE DISTRICT COURT ERRED IN COMPELLING ARBITRATION WHERE APPELLANT CANNOT BE COMPELLED TO ARBITRATION WHEN HE DID NOT AGREE TO ARBITRATE HIS CIVIL RIGHTS CLAIMS AGAINST APPELLEE.

FDSM VaLLC's Second Dismissal Motion sought to compel arbitration of Boykin's employment and civil rights Amended Complaint. Second Dismissal Motion, RE 26, at Page ID # 541-639. In its Second Dismissal Motion, FDSM VaLLC makes assertions regarding the alleged existence of an arbitration agreement between the parties. *Id.* at Page ID # 552-553. However, FDSM VaLLC's motion is misplaced, particularly where Boykin denies signing an arbitration agreement with FDSM VaLLC and the issue remains whether Boykin agreed with FDSM VaLLC to arbitrate his claims. Second Boykin Affidavit, RE 29-2, Page ID # 916-977; *Great Earth Cos.*, 288 F.3d at 889; *see also Granite Rock Co v Intl Broth of Teamsters*, 561 US 287, 289, 130 S Ct 2847, 2851, 177 L

Ed 2d 567 (2010) (broad policy on arbitrability cannot force parties into arbitrating claims which they never agreed to arbitrate).

FDSM VaLLC's assertions in its Second Dismissal Motion are not supported by the materials it cites, consisting primarily of unauthenticated documents and inadmissible hearsay. Second Dismissal Motion, RE 26, at Page ID # 552-553. Indeed, in many instances, FDSM VaLLC's factual assertions are directly contradicted by FDSM VaLLC's own affidavits and personnel records. *Id.* Concurrently, FDSM VaLLC's Second Dismissal Motion is overwhelmingly contradicted by the authenticated and material records established in the record. *See* First Boykin Affidavit, RE 15-2, *supra*, and Second Boykin Affidavit, and attached exhibits, RE 29-2, *supra*, *inter alia*.

Significantly, the United States Supreme Court has not wavered from its long standing holding that arbitration "is a matter of consent, not coercion." *Volt Info. Sci., Inc. v. Bd. Of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989). Moreover, as the Sixth Circuit held in 2005, even the strong federal policy on arbitration cannot change the fact that, at its core, "arbitration is a matter of contract between the parties, and [a person] cannot be required to submit to arbitration of a dispute which [he] has not agreed to submit to arbitration." *Simon*, 398 F.3d at 775; *see also InterGen N.V. v. Grina*, 344 F.3d 134, 150 (1st Cir. 2003) (Federal policy favoring arbitration does

not extend to situations in which identity of parties is in dispute.). Any presumption in favor of arbitration disappears when the parties dispute the existence of a valid arbitration agreement. *First Options v. Kaplan*, 514 U.S. 938, 944-945 (1995); *American Heritage Life Ins. V. Lang*, 321 F.3d 533, 537-538 (5th Cir. 2003); *see also EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) (because FAA favors enforcement of private contractual agreements, court first looks at whether the parties agreed to arbitrate, not at general policy goals).

The United States Supreme Court in 2010 clearly directed that, before sending disputes to arbitration, a court must be satisfied that formation of arbitration agreement and its enforceability or applicability to the dispute are not at issue. *Granite Rock Co.*, 561 U.S. at 299-300; *First Options*, 514 U.S. at 944-945; *EEOC*, 534 U.S. at 294. The law remains that, unless the parties had a meeting of the minds on an agreement to arbitrate, such agreement is invalid. *American Heritage Life Ins.*, 321 F.3d at 538; *see also In re Zappos.com, Inc., Customer Data Sec. Breach Litig.*, 893 F.Supp.2d 1058, 1063-1064 (D.Nev. 2012) (no meeting of the minds when “browsewrap” agreement to arbitrate, which binds user by virtue of a website, was a highly inconspicuous hyperlink buried among numerous other links when users has no knowledge or constructive notice of agreement). When the dispute is whether a party agreed to enter into an arbitration

agreement, courts have held that any ambiguities must be resolved against the drafter. *Kristian v. Comcast Corp.*, 446 F.3d 25, 35 (1st Cir. 2006).

In the instant case, after Boykin filed his Complaint, at 2:37 PM on March 13, 2019, an attorney purporting to be acting on behalf of the defendant identified in the Complaint, Sara Rafal, sent an email and prior string of emails to Boykin's attorney William Tishkoff, along with an attached a copy of Agreement #1. March 13 Rafal Email, RE 29-2, Page ID # 924-925; Agreement #1, RE 29-2, Page ID # 927-931. Ms. Rafal represents in the above emails that Mr. Boykin electronically entered into Agreement #1 when he was hired. March 13 Rafal Email, RE 29-2, Page ID # 924-925.

However, Boykin was hired by FDSM MiInc on September 30, 2003. Second Boykin Affidavit, RE 29-2, at Page ID # 917. Boykin was not required to, and did not sign or acknowledge, any arbitration agreement when he was hired by FDSM MiInc. *Id.* at Page ID # 917-919. The Agreement #1 is not signed by Boykin. *Id.* The Agreement #1 is signed by Gary Philbin as President of Dollar Tree, Inc and is not signed by FDSM VaLLC. Agreement #1, RE 29-2, Page ID # 927-931. The counterparty to Dollar Tree, Inc. on the signature page for the Agreement #1 is identified as "ASSOCIATE (signed electronically at the time of hire)." *Id.* at Page ID # 931. The Agreement #1 is bereft of any date for the

signature of Dollar Tree, Inc. or of the date of a purported ASSOCIATE hire or ASSOCIATE electronic acknowledgement. *Id.* at Page ID # 927-931.

Twelve days later, on March 25, 2019, Mr. Paxton, counsel for FDSM VaLLC in the instant case, emailed and mailed Boykin's counsel the Agreement #2, representing and asserting that Boykin entered into this arbitration agreement electronically and contradicting the above facts asserted by Ms. Rafal as to the Agreement #1. Paxton Packet, RE 29-8, Page ID # 1027-1065. Also, in direct contradiction to Ms. Rafal's above representations, FDSM VaLLC filed the Neely Affidavit, along with its attached exhibits, which included the Agreement #2. Neely Affidavit, RE 29-2, Page ID # 933-950.

Boykin denies that he agreed to, signed or knowingly consented to the Agreement #1 or the Agreement #2. Second Boykin Affidavit, RE 29-2, at Page ID # 917. Boykin unequivocally attests that he did not consent to, sign, acknowledge or authorize any type of arbitration agreement with FDSM MiInc before, on or after July 15, 2013, or at any time. *Id.* at Page ID # 918. As attested to in his affidavits, Boykin does not recognize, nor does he have knowledge or recollection of reviewing (prior to 2019), executing or acknowledging, in writing or electronically, the Agreement #1 or the Agreement #2. *Id.* at Page ID # 917-919; First Boykin Affidavit, RE 15-2, at Page ID # 225-226.

Nor does Boykin recognize, or have knowledge or recollection of reviewing (prior to 2019), completing, executing or acknowledging, in writing or electronically, the 2013 Training Slides. Second Boykin Affidavit, RE 29-2, at Page ID # 919; First Boykin Affidavit, RE 15-2, at Page ID # 225. Boykin also does not have knowledge or recollection of reviewing, completing, executing or acknowledging, in writing or electronically, an arbitration agreement or waiver of litigation rights, when Boykin was hired by FDSM MiInc or at any time prior to 2019. Second Boykin Affidavit, RE 29-2, at Page ID # 917-919; First Boykin Affidavit, RE 15-2, at Page ID # 225-226. Boykin does not have knowledge or recollection of reading, being informed, or learning, that a review, completion, execution or acknowledgement of an arbitration agreement or waiver of litigation rights was required by his employer when Boykin was hired by FDSM MiInc or at any time prior to 2019. *Id.*

In further confirmation of the non-existence of an agreement to arbitrate entered into by the parties, in response to Boykin's RTKA Request, in late November 2018, FDSM VaLLC mailed Boykin "all available records" regarding Boykin's employment file. Second Boykin Affidavit, RE 29-2, at Page ID # 920-921, 952-972; First Boykin Affidavit, RE 15-2, at Page ID # 226-227. No arbitration agreements were produced to Boykin in the RTKA and FDSM VaLLC is precluded from using them to attempt to compel arbitration or in defense of

Boykins' claims pursuant to the s Michigan Bullard-Plawecki, Right-To-Know-Act, MCL 423.501 *et seq.*² Second Boykin Affidavit, RE 29-2, at Page ID # 921; First Boykin Affidavit, RE 15-2, at Page ID # 227.

The Performance Appraisal that FDSM VaLLC produced in the RTKA Documents shows that Boykin was a Store Manager on July 15, 2013. Second Boykin Affidavit, RE 29-2, at Page ID # 921, 954-972. FDSM VaLLC has not produced evidence that Boykin was working on July 15, 2013 and could have completed an online course at the on-site Kiosk as required.

Boykin attested that a Certificate of Completion is issued for any online course completed at Boykin's subject employment, Boykin did not receive such a certificate for an Open-Door course, and FDSM did not produce a Certificate of Completion for an Open-Door course in the RTKA Documents. Indeed, the work schedule of Boykin FDSM produced in the RTKA Documents does not show Boykin working on July 15, 2013. *Id.* at Page ID # 921-922.

Contrary to the Items Printout that purportedly has an entry for electronical acknowledgement of a course completed on July 15, 2013, FDSM VaLLC's own

² MCL 423.501 provides, in pertinent part:

Personnel record information which was not included in the personnel record but should have been as required by this act shall not be used by an employer in a judicial or quasi-judicial proceeding. ***
Material which should have been included in the personnel record shall be used at the request of the employee.

records show that Boykin was not working on that day. Indeed, Boykin's weekly work schedule with FDSM VaLLC for 5/21/2013 – 7/15/2013 ("5/12/13 Weekly Work Schedule") is included in the RTKA Documents. Second Boykin Affidavit, RE 29-2, at Page ID # 921; a copy of the 5/12/13 Weekly Work Schedule is attached to the Boykin Affidavit as Exhibit 4, at Page ID #953. The 5/12/13 Weekly Work Schedule indicates that Mr. Boykin was not scheduled to work on 7/15/13. *Id.*

In FDSM VaLLC's previously filed reply brief, it argued that the 5/12/13 Weekly Work Schedule did not accurately reflect Boykin's work schedule because he was a Performance Manager on 7/15/13. *See* the Declaration of Jennifer Steffens ("Steffens Affidavit"), RE 29-9, at Page ID # 1066-1073. The Steffens Affidavit alleges that the 5/12/13 Weekly Work Schedule, housed by Kronos, only keeps track of schedules for associates at the Store Manager level and below. *Id.* at Page ID # 1068. Interestingly, FDSM VaLLC chose not to include the Steffens Affidavit in the Second Dismissal Motion. Second Dismissal Motion, RE 26, Page ID # 541-639. The Steffens Affidavit raises several material inconsistencies and material issues that should be the subject of discovery. Steffens Affidavit, RE 29-9, at Page ID # 1066-1073.

According to the Steffens Affidavit, Boykin's schedule as a Performance Manager wouldn't have shown up on the 5/12/13 Weekly Work Schedule. *Id.* at

Page ID # 1068. However, FDSM VaLLC's records do not show that Boykin was acting as a Performance Manager on July 15, 2013. To the contrary, FDSM VaLLC's records show that, on July 15, 2013, Boykin's position was Store Manager. Included in the RTKA Documents is the performance evaluation of Mr. Boykin for the period August 26, 2012 through August 31, 2013 for his position as Store Manager (specifically, a "SM-Salaried" position). Second Boykin Affidavit, RE 29-2, at Page ID # 921, 954-972.

The Neely Affidavit asserts Ms. Neely is with Family Dollar Management, LLC. Neely Affidavit, RE 29-2, Page ID # 934. Family Dollar Management, LLC is not FDSM VaLLC or any entity that employed Boykin. Second Boykin Affidavit, RE 29-2, at Page ID # 917, 919. Moreover, the Neely Affidavit conflates the entities that operate "Family Dollar stores," improperly and ambiguously referring to undefined and unknown entities as a collective "Family Dollar," which does not exist. Neely Affidavit, RE 29-2, Page ID # 934-937. The Neely Affidavit does not provide a connection between Family Dollar, Inc., the counterparty to the Agreement #2, and Mr. Boykin's employer on July 15, 2013: FDSM VaLLC.³ FDSM VaLLC recently filed its corporate disclosure in a 2018

³ In its Second Dismissal Motion, FDSM VaLLC improperly characterizes the material facts by citing Ms. Neely's Affidavit for the proposition that "Family Dollar, Inc. is the parent company of Family Dollar Stores of Michigan, LLC." Second Dismissal Motion, RE 26, at Page ID # 562. This representation is simply

lawsuit against it by the EEOC, representing to this Court that FDSM VaLLC is wholly-owned by Family Dollar Stores, Inc., which is wholly owned by Dollar Tree, Inc. Defendant, Family Dollar Stores Of Michigan LLC's Rule 7.1 Corporate Disclosure Statement, filed October 29, 2018, Case No. 4:18-cv-13030, RE 29-10, at Page ID # 1075-1076. The above corporate disclosure supports the fact that Family Dollar, Inc. is not within the chain of ownership of entities that employed Boykin from 2003 to 2018, nor is it listed as a parent, subsidiary, partner, division, affiliated entity, predecessor or assign. *Id.*; Neely Affidavit, RE 29-2, at Page ID # 933-937.

Without chain of custody, authentication or completeness evidence, FDSM VaLLC asserts there is a one-page Items Printout from 2013 that indicates Boykin completed a training module called the "Open Door & Arbitration at Family Dollar." Neely Affidavit, RE 29-2, at Page ID # 934-937. However, this one-page Items Printout: does not indicate that the Open Door & Arbitration at Family Dollar course is for employment with FDSM VaLLC or FDSM MiInc; is not self-authenticated or authenticated by a creator of the record; has no chain of custody whatsoever; lacks a foundation for its maintenance, completeness or accuracy; and is not shown to be a reliable business record created and maintained by FDSM

incorrect and was not attested to in Ms. Neely's Affidavit. Neely Affidavit, RE 29-2, at Page ID # 933-937.

VaLLC. This Items Printout is inadmissible evidence that cannot be linked by non-hearsay evidence to the separate 2013 Training Slides, the separate Agreement #1 or the separate Agreement #2. *Id.*

Conversely, Boykin attested that: before his termination, it was standard practice at “Family Dollar” stores in Southeast Michigan for SMs and ASMs to obtain and use each other’s and other employees’ User ID number and password to log onto the in-store Kiosks; it was a common occurrence for SMs and ASMs to obtain and use each other’s and other employees’ User ID number and password to enter information and data in the in-store Kiosks when an employee was not working or off-site and entry of his/her information or data into the Kiosk was time critical or needed to meet a deadline, such as an online course completion deadline for the off-site employee; and Boykin’s has knowledge that District Managers or Area Operations Managers for my subject employer, when a SM was not working or off-site, directed the on-site ASM to complete, by a deadline, online courses that required the ASM’s use of the SM’s User ID and password. Second Boykin Affidavit, RE 29-2, at Page ID # 919-920.

FDSM VaLLC’s proffered evidence and affidavits are contradictory and inconsistent on multiple, material and critical fact issues, including: which unsigned and inconsistent arbitration form FDSM VaLLC claims was acknowledged by Boykin; what position Boykin had, and whether he was working

and had access to an in-store Kiosk, on July 15, 2013; whether FDSM VaLLC or FDSM MiInc offered a training module called Open Door & Arbitration at Family Dollar on July 15, 2013; whether Boykin's ASM or anyone at the proffered "Family Dollar University" entered Boykins User ID and password as had occurred when course completion deadlines approached; whether the 2013 Training Slides on July 13, 2013 would display an Agreement #2 form, an Agreement #1 form or some other form; why a Certificate of Completion for the subject course does not exist for Boykin; and whether in 2013 an acknowledgement option was required before the next option where both are provided in the 2013 Training Slides.

Accordingly, as shown above, where the record to date establishes that there are genuine issues of material fact evidencing that Boykin did not agree with FDSM VaLLC to arbitrate his claims, FDSM VaLLC's Second Dismissal Motion should be denied. *Granite Rock Co.*, 561 U.S. at 299-300; *Great Earth Cos.*, 288 F.3d at 889; Second Boykin Affidavit, RE 29-2, Page ID # 916-977; First Boykin Affidavit, RE 15-2, *supra*. The above genuine issues of material fact that Boykin did not agree to arbitrate his claims against FDSM VaLLC is further evidenced by the fact that that the District Court could not even identify which arbitration agreement the parties had agreed to, Agreement #1 or Agreement #2, and asked FDSM VaLLC's counsel if it mattered which arbitration agreement the Court

compelled Boykin to proceed under. *Id.*; *see also* January 30 Transcript, RE 47, Page ID # 1313-1314, 1319.

Where the record clearly establishes there are genuine issues of material fact whether Boykin entered into an agreement to arbitrate his claims against FDSM VaLLC, the August 28 Order and Judgment should be reversed under *de novo* review. *Id.*; *Hurley*, 610 F.3d at 338; *Nestle Waters N.A., Inc.*, 505 F.3d at 502; *Granite Rock Co.*, 561 U.S. at 299-300; Second Boykin Affidavit, RE 29-2, Page ID # 916-977; First Boykin Affidavit, RE 15-2, *supra*.

B. THE DISTRICT COURT ERRED IN HOLDING THAT THE QUESTION OF WHETHER APPELLANT ENTERED INTO AN ARBITRATION AGREEMENT CAN BE DECIDED BY AN ARBITRATOR.

In August 28 Order, the District Court improperly held that the threshold issue of arbitrability of Boykin’s claims in his Amended Complaint should be decided by an arbitrator. August 28 Order, at Page ID # 1093-1094. However, the District Clearly erred in holding that the arbitrability of Boykin’s claims in the instant matter should be decided by an arbitrator, particularly where there is not “clear and unmistakable” evidence that the parties agreed to do so. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68-69 & n.1 (2010) (The standard for submitting questions of arbitrability to an arbitrator will only be met if there is “clear and unmistakable” evidence that the parties agreed to do so.).

In the instant case, no discovery has occurred and it is undisputed that FDSM VaLLC's Second Dismissal Motion does not present "clear and unmistakable" evidence that the parties agreed to arbitration. *Id.* Moreover, a recent Missouri Court of Appeals case provides an excellent summary of the governing federal law providing that the question of whether an arbitration agreement is signed or entered into is nonarbitral:

"[B]ecause arbitration is a matter of consent, not coercion, a court must be satisfied that the parties have 'concluded' or formed an arbitration agreement before the court may order arbitration to proceed according to the terms of the agreement." *Id.* (internal quotation and internal citation omitted) (citing *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 299, 130 S. Ct. 2847, 177 L. Ed. 2d 567 (2010); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 441 n.1, 126 S. Ct. 1204, 163 L. Ed. 2d 1038 (2006)). "Questions concerning whether an arbitration agreement was ever concluded are therefore, 'generally nonarbitral question[s].'" *Id.* (quoting *Granite Rock*, 561 U.S. at 296-97). "Issues as to whether a contract has been 'concluded' include whether: a contract was signed by the obligor, a signor lacked authority to sign a contract to commit a principal, or a signor lacked the mental capacity to sign a contract." *Id.* at 49 n.9 (citing *Buckeye*, 546 U.S. at 444 n.1). "The issue of the contract's validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded." *Buckeye*, 546 U.S. at 444 n.1. *** "[W]hen the very existence of such an [arbitration] agreement is disputed, a [trial] court is correct to refuse to compel arbitration until it resolves the threshold question of whether the arbitration agreement exists." *Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99, 112 (3rd Cir. 2000) (explaining it is for courts to decide whether the signor lacked authority to commit the alleged obligor under the arbitration agreement in question). See also *Sphere Drake Ins. Ltd. v. All Am. Ins. Co.*, 256 F.3d 587, 591 (7th Cir. 2001) ("[A] person who has not consented (or authorized an agent to do so on his behalf) can't be packed off to a private forum . . . because the

parties do control the existence and limits of an arbitrator's power. No contract. No power.”). [Footnotes omitted.]

Theroff v. Dollar Tree Stores, Inc., 2018 Mo. App. LEXIS 400, 2018 WL 1914851, RE 29-11, at Page ID # 1078-1082.

The *Theroff* court of appeals was presented with a situation where the former employee of Dollar Trees Stores, Inc. testified to the trial court that she had not signed, or authorized an agent to sign, Dollar Trees Stores, Inc.’s Mutual Agreement To Arbitrate Claims, notwithstanding the evidence offered by Dollar Trees Stores, Inc. that the former employee was required to digitally sign Dollar Trees Stores, Inc.’s Mutual Agreement To Arbitrate Claims and one of the documents reflected that the former employee digitally signed Dollar Trees Stores, Inc.’s Mutual Agreement To Arbitrate Claims. *Id.* at *1, *7, Page ID # 1080, 1082. After reviewing this evidence, the *Theroff* court of appeals denied upheld the lower court’s denial of Dollar Tree Stores, Inc.’s motion to compel arbitration, noting:

While existing precedent is somewhat unclear as to what constitutes contract “formation,” our Missouri Supreme Court has identified certain relevant factual disputes that are not formation issues—namely, whether a contract was signed by the obligor or the obligor had authorized an agent to sign her name to the contract

Theroff, 2018 Mo. App. LEXIS 400, fn 3, at *5, Page ID # 1081-1082. Similarly, in the instant case, whether or not a delegation clause exists in one of the two proffered arbitration agreements, the factual question regarding whether Boykin

signed or acknowledged an arbitration agreement with FDSM VaLLC cannot be determined by an arbitrator.

Further, FDSM VaLLC's reliance on *Rent-A-Center* and *Fallo v. High-Tech Institute*, 559 F. 3d 874 (8th Cir. 2009), was misplaced. In *Rent-A-Center*, unlike the instant case, the plaintiff signed the subject arbitration agreement on February 24, 2003, and the plaintiff's agreement to the arbitration contract was not at issue. *Rent-A-Center*, 561 U.S. at 65. In *Fallo*, also unlike the instant case, the plaintiffs entered into an enrollment agreement that contained an arbitration clause and whether the parties entered into the subject agreement was not at issue. *Fallo*, 559 F. 3d at 876.

In the instant case, where there is an absence of clear and unmistakable evidence that the parties agreed to delegate the issue of the arbitrability of Boykin's claims against FDSM VaLLC in his Amended Complaint, the District Court erred in holding the same in its August 28 Order, and issuing the Judgment; the August 28 Order and Judgment should be reversed. *Theroff*, 2018 Mo. App. LEXIS 400, fn 3, at *5, Page ID # 1078-1082.

C. THE DISTRICT COURT'S GRANT OF DISMISSAL AND COMPELLING ARBITRATION WAS PREMATURE WHERE APPELLANT WAS ENTITLED TO CONDUCT DISCOVERY PRIOR TO THE DISTRICT COURT'S CONSIDERATION OF APPELLEE'S SECOND DISMISSAL MOTION.

As Boykin did not enter into an agreement to arbitrate and the parties have not conducted discovery on the issue, the instant proceedings should have been stayed. *Guidotti*, 716 F.3d at 776; *Great Earth Cos.*, 288 F.3d at 889. However, the District Court improperly denied Boykin the opportunity to conduct discovery on the issue of whether the parties entered into an arbitration agreement, and instead, entered the August 28 Order granting FDSM VaLLC's Second Dismissal Motion, compelling Boykin to arbitrate his claims against FDSM VaLLC, and entering the Judgment. *Id.*; August 28 Order, RE 31, Page ID # 1089-1097; Judgment, RE 32, Page ID # 1098.

In the instant case, Boykin was clearly entitled to conduct necessary and material discovery on his claims in the Amended Complaint and the matters raised by FDSM VaLLC in the Second Dismissal Motion, particularly the issue as to whether the parties agreed to arbitrate their disputes. *Guidotti*, 716 F.3d at 776; *Great Earth Cos.*, 288 F.3d at 889; *BG Grp. Plc v. Republic of Arg.*, 572 U.S. 25, 34 (2014) (An issue is a “question of arbitrability” (also referred to as a “gateway” or “threshold” dispute) if it relates to whether the parties to a dispute have agreed to submit that dispute to arbitration); *Simon*, 398 F.3d at 775 (“A longstanding principle of this [Sixth] Circuit is that no matter how strong the federal policy favors arbitration, ‘arbitration is a matter of contract between the parties, and one cannot be required to submit to arbitration a dispute which it has not agreed to

submit to arbitration.’’ [Internal citations omitted.]). However, the District Court improperly disregarded the above precedence and, prior to any discovery being conducted, granted FDSM VaLLC’s Second Dismissal Motion. August 28 Order, RE 31, Page ID # 1089-1097; Judgement, RE 32, Page ID # 1098.

On *de novo* review, where Boykin is clearly entitled to conduct necessary and material discovery on his claims in the Amended Complaint, this Court should reverse the August 28 Order, Judgement and February 5 Order. *Hurley*, 610 F.3d at 338; *Nestle Waters N.A., Inc.*, 505 F.3d at 502; *Guidotti*, 716 F.3d at 776; *Great Earth Cos.*, 288 F.3d at 889; *BG Grp. Plc.*, 572 U.S. at 34; *Simon*, 398 F.3d at 775.

D. THE DISTRICT COURT IMPROPERLY DENIED APPELLANT’S MOTION TO ALTER OR AMEND THE AUGUST 28 ORDER WHERE THE AUGUST 28 ORDER CONTAINED CLEAR ERRORS OF LAW AND AMENDMENT WAS NECESSARY TO PREVENT MANIFEST INJUSTICE.

In its August 28 Order, the District Court ruled that the material facts in the instant case were governed by *Hall v. Pacific Sunwear Stores Corporation.*, 2016 U.S. Dist. LEXIS 46347 (E.D. Mich., Apr. 6, 2016). August 28 Order, RE 31, at Page ID # 1095-1097. The District Court ruled, in pertinent part:

This case is similar to the circumstances in *Hall*. Here, the Plaintiff completed an online arbitration module in which he did not physically type an electronic signature to acknowledge acceptance. However, as a part of the arbitration module, Plaintiff was required to download the arbitration agreement and acknowledge that he read and accepted the terms. This process is a valid form of electronic signature pursuant to Michigan law. The arbitration agreement that Plaintiff acknowledged states that

employment claims related to termination of employment must be submitted to arbitration.

August 28 Order, RE 31, at Page ID # 1096-1097 (emphasis in original).

However, the August 28 Order contains a clear error of law in applying *Hall* as controlling authority for the material facts in the instant case. Fed. R. Civ. P. 59(e); *Mich. Flyer LLC v. Wayne Co. Airport Auth.*, 860 F.3d 425, 431 (6th Cir. 2017). Unlike the facts in *Hall*, where there was an admission by the plaintiff that she acknowledged the agreement at issue in that case, such admission does not exist in the instant case, and there are multiple issues of material fact regarding whether Plaintiff reviewed or acknowledge Agreement #1, the **different** Agreement #2 subsequently proffered by FDSM VaLLC or any arbitration agreement. See Second Boykin Affidavit, RE 29-2, and First Boykin Affidavit, RE 15-2, *inter alia*.

Pursuant to Fed. R. Civ. P. 59(e), a party may file a motion to alter or amend a judgment within twenty-eight (28) days of the entry of the judgment deciding the motion. Fed. R. Civ. P. 59(e). “A Rule 59 motion should be granted if there was (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” *Mich. Flyer LLC*, 860 F.3d at 431.

In *Hall*, the plaintiff unequivocally admitted to the Court that she electronically acknowledged the subject arbitration agreement, the terms of which

were not in dispute. *Hall*, 2016 U.S. Dist. LEXIS 46347, at *12, RE 33-2, at Page ID # 1125. The *Hall* plaintiff then attempted to argue that her acknowledgement did not constitute her signature of the subject arbitration agreement. *Id.* Unlike in *Hall*, in the instant case, Boykin disputes the issue of whether he electronically reviewed Agreement #1, the **different** Agreement #2 subsequently proffered by FDSM VaLLC or any arbitration agreement. *Cf., id., with* Second Boykin Affidavit, RE 29-2, at Page ID # 917-922. Indeed, Boykin clearly and directly denied executing or knowingly authorizing Agreement #1, the **different** Agreement #2 subsequently proffered by FDSM VaLLC or any arbitration agreement. Second Boykin Affidavit, RE 29-2, at Page ID # 917-922. The August 28 Order clearly erred as a matter of law in disposing of all of Boykin's claims in the instant case under *Hall*, a case with materially different and inconsistent facts than those established in the record of the instant case. *Id.*; Fed. R. Civ. P. 59(e); *Mich. Flyer LLC*, 860 F.3d at 431.

In addition to the above clear error, the District Court's August 28 Order should have been altered or amended regarding the relief it granted to prevent manifest injustice. *Mich. Flyer LLC*, 860 F.3d at 431. The August 28 Order's relief terms direct the parties to an unspecified private arbitration, stating:

[Boykin] signed a valid arbitration agreement agreeing to arbitrate his employment claims. Therefore, this Court will dismiss [Boykin]'s action and compel the parties to arbitrate *** The Court will require . . . the parties to submit to arbitration...

August 28 Order, RE 31, at Page ID # 1097. However, the August 28 Order's terms did not provide any identification of which contract/private arbitration agreement actually was agreed (Agreement #1 or Agreement #2), which agreement is to be followed (Agreement #1, Agreement #2 or other), or which of the contradictory terms that parties are compelled to proceed under for a private arbitration with an unspecified private arbitrator. *Id.*

Indeed, in the instant case, the August 28 Order states that it is compelling the parties to conduct a private arbitration but, significantly and with severe ramifications of injustice, does not identify what contract/private arbitration agreement the record evidence established was agreed by the parties, or is to be followed (Agreement #1, Agreement #2 or other); nor does the August 28 Order identify how the parties are to following agreed contractual terms in proceeding to and with a private arbitration. *Id.*; August 28 Order, RE 31, at Page ID # 1096-1097.

There are two inconsistent arbitration agreements represented by Defendants as entered into by the parties: Agreement #1 and Agreement #2. Neither agreement is attached, connected or associated by any admissible evidence to the proffered, speculative and unauthenticated electronic course printout with an asserted (but not established) open door module. *See generally*, Second Dismissal Motion, RE 26, *supra*. Nor are Agreement #1 or Agreement #2 or any other

arbitration agreements attached, connected or associated by any admissible evidence to the slides proffered as speculative and unauthenticated print-outs attached to the Neely Affidavit. *Id.*; Neely Affidavit, RE 29-2, Page ID # 933-950.

The relief set forth in the District Court's August 28 Order cannot be reasonably complied with, and will clearly cause manifest injustice if not altered or amended, where Agreement #1 and Agreement #2 contain materially, contradictory terms and procedures, including their terms for how the parties are to conduct arbitration, how to initiate, or make a claim for, private arbitration, what private arbitration agency is to be used, and how the private arbitrator is to be selected. *Cf.* Agreement #1, at pp. 2-3, RE 29-2, Page ID # 927-931, *with* Agreement #2, at pp. 1-3, RE 29-2, Page ID # 947-949.

Indeed, under Agreement #1, the arbitration process is started by sending a written notice to initiate arbitration to the "Company" at: Dollar Tree Arbitration Program c/o the Chief Legal Officer, 500 Volvo Parkway, Chesapeake, VA 23320. Agreement #1, at p. 2, RE 29-2, at Page ID # 928. Conversely, Agreement #2 states that the Plaintiff is to make a "Written Request for Arbitration" and send it to the "home office" at: Arbitration Intake, Family Dollar, PO Box 1017, Charlotte, NC 28201. Agreement #2, at pp. 1-2, RE 29-2, at Page ID # 947-948. Further, Agreement #1 provides that "[u]nless the Parties mutually agree to select a non-JAMS affiliated arbitrator, the arbitration will be administered by JAMS."

Agreement #1, at pp. 2-3, RE 29-2, at Page ID # 928-929. Agreement #1 also provides that “[t]he arbitration shall be held in accordance with the then-current JAMS Employment Arbitration Rules & Procedures.” *Id.* However, Agreement #2 provides that if an arbitrator is not mutually agreed upon by the parties, the arbitration “will be held under the auspices of the American Arbitration Association (‘AAA’), and except as provided in this Agreement, shall be in accordance with the then current Employment Arbitration Rules of the AAA.” Agreement #2, at p. 2, RE 29-2, at Page ID # 928. Agreements #1 and #2 have completely different arbitration forums and rules, and the District Court clearly erred in determining that it was immaterial that no evidence exists of the parties’ mutually agreement on one set of material terms for the forum and rules of arbitration to be submitted to and followed.

The District Court’s August 28 Order’s lack of provision for evidence establishing a contract/arbitration agreement agreed to by the parties, or what arbitration forum and procedures were agreed to by the parties to initiate and conduct a private arbitration, coupled with the material and significant differences in Agreement #1 and Agreement #2, required that the August 28 Order must be altered or amended to prevent a manifest injustice. August 28 Order, at p. 9, RE 31, at Page ID # 1097; Agreement #1, at pp. 1-2, RE 29-2, at Page ID # 927-928; Agreement #2, at pp. 1-3, RE 29-2, at Page ID # 947-949; Fed. R. Civ. P. 59(e);

Mich. Flyer LLC, 860 F.3d. at 431.

Under *de novo* review, the District Court's February 5 Order, declining to alter or amend the August 28 Order, should be reversed. *Id.*

V. CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Boykin respectfully requests this Court enter an order providing the following relief:

- A. Reversing the District Court's August 28 Order and Judgment, and its February 5 Order, and remanding the instant case to the District Court for further proceedings consistent with the above reversal; and
- B. Providing such other relief that this Court deems just and proper.

Respectfully submitted,

Tishkoff PLC

/s/ William G. Tishkoff

By: William G. Tishkoff (P45165)

And: Christopher M. Vukelich (P76420)

Attorneys for Plaintiff/Appellant

Timothy S. Boykin

407 North Main Street

Ann Arbor, Michigan 48104

(734) 663-4077

July 1, 2020

CERTIFICATE OF COMPLIANCE

The foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the foregoing brief contains 11,197 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

The foregoing brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the foregoing brief has been prepared in a proportionally spaced typeface in a 14-point Times New Roman font.

Respectfully submitted,

Tishkoff PLC

/s/ William G. Tishkoff

By: William G. Tishkoff (P45165)

And: Christopher M. Vukelich (P76420)

Attorneys for Plaintiff/Appellant

Timothy S. Boykin

407 North Main Street

Ann Arbor, Michigan 48104

(734) 663-4077

July 1, 2020

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

DESCRIPTION OF DOCUMENT	DATE FILED	DOCUMENT NUMBER	PAGE ID RANGE
Plaintiff's Complaint And Jury Demand	03/12/2019	1	1-16
EEOC Charge of Discrimination	03/12/2019	1-1	17-19
EEOC Dismissal and Notice of Rights	03/12/2019	1-2	20-23
Defendant's Motion To Dismiss And Compel Arbitration, and exhibits	04/08/2019	6	31-75
Plaintiff's First Amended Complaint And Jury Demand, and exhibits	04/29/2019	11	84-109
Plaintiff's Opposition To Defendant's Motion To Dismiss Pursuant To 12(b) And 9 U.S.C. 1, <i>et seq.</i> , and exhibits	05/07/2019	14	119-198
[Corrected] Plaintiff's Opposition To Defendant's Motion To Dismiss Pursuant To 12(b) And 9 U.S.C. 1, <i>et seq.</i> , and exhibits	05/08/2019	15	199-357
Affidavit of Timothy S. Boykin, dated May 7, 2019, and exhibits	05/08/2019	15-2	222-267
Michigan Department of Licensing and Regulatory Affairs documents for Family Dollar Stores of Michigan, Inc.	05/08/2019	15-3	268-274
Michigan Department of Licensing and Regulatory Affairs documents for Family Dollar Stores of Michigan, Inc.	05/08/2019	15-4	275-279
Records obtained from the Commonwealth Of Virginia, State Corporation Commission, Office Of The Clerk	05/08/2019	15-5	280-306
Michigan Department of Licensing and Regulatory Affairs documents for Family Dollar Stores of Michigan, Inc.	05/08/2019	15-6	307-308

Michigan Department of Licensing and Regulatory Affairs documents for Family Dollar Stores of Michigan, LLC	05/08/2019	15-7	309-315
Letter from Thomas R. Paxton, Esq. to William G. Tishkoff, Esq., dated March 25, 2019, and exhibits	05/08/2019	15-8	316-354
Defendant's Rule 7.1 Corporate Disclosure Statement filed in the matter titled, <i>Equal Employment Opportunity Commission v. Family Dollar Stores of Michigan, LLC</i> , Case No. 4:18-cv-13030	05/08/2019	15-9	355-357
Defendant's Statement of Disclosure of Corporate Affiliations and Financial Interest filed in the instant matter	05/10/2019	16	358
Defendant's Motion For Protective Order And To Stay Discovery, and exhibits	05/21/2019	18	378-421
Plaintiff's Opposition To Defendant's Motion For Protective Order And To Stay Discovery, and exhibits	06/04/2019	22	498-534
Order Granting Defendant's Motion For Protective Order And To Stay Discovery [#18], dated June 5, 2019	06/05/2019	25	539-540
Defendant's Motion To Dismiss Plaintiff's First Amended Complaint And Compel Arbitration, and exhibits	06/11/2019	26	541-639
Plaintiff's Opposition To Defendant's Motion To Dismiss Plaintiff's First Amended Complaint And To Compel Arbitration Pursuant To 12(b) and 9 U.S.C. 1, <i>et seq.</i> , and exhibits	07/02/2019	28	641-879
Corrected Plaintiff's Opposition To Defendant's Motion To Dismiss Plaintiff's First Amended Complaint And To Compel Arbitration Pursuant	07/03/2019	29	880-1082

To 12(b) and 9 U.S.C. 1, et seq., and exhibits			
Second Affidavit of Timothy S. Boykin, dated July 2, 2019, and exhibits	07/03/2019	29-2	915-976
Michigan Department of Licensing and Regulatory Affairs documents for Family Dollar Stores of Michigan, Inc.	07/03/2019	29-3	977-983
Michigan Department of Licensing and Regulatory Affairs documents for Family Dollar Stores of Michigan, Inc.	07/03/2019	29-4	984-988
Records obtained from the Commonwealth Of Virginia, State Corporation Commission, Office Of The Clerk	07/03/2019	29-5	989-1015
Michigan Department of Licensing and Regulatory Affairs documents for Family Dollar Stores of Michigan, Inc.	07/03/2019	29-6	1016-1018
Michigan Department of Licensing and Regulatory Affairs documents for Family Dollar Stores of Michigan, LLC	07/03/2019	29-7	1019-1025
Letter from Thomas R. Paxton, Esq. to William G. Tishkoff, Esq., dated March 25, 2019, and exhibits	07/03/2019	29-8	1026-1065
Declaration of Jennifer Steffens, and exhibits	07/03/2019	29-9	1066-1073
Defendant's Rule 7.1 Corporate Disclosure Statement filed in the matter titled, Equal Employment Opportunity Commission v. Family Dollar Stores of Michigan, LLC, Case No. 4:18-cv-13030	07/03/2019	29-10	1074-1076
<i>Theroff v. Dollar Tree Stores, Inc.</i> , 2018 Mo. App. LEXIS 400, 2018 WL 1914851 (W.D. Mo., April 24, 2018)	07/03/2019	29-11	1077-1082

Defendant's Reply In Support Of Defendant's Motion To Dismiss Plaintiff's First Amended Complaint And Compel Arbitration	07/15/2019	30	1083-1088
Order Granting Defendant's Motion To Dismiss Plaintiff's First Amended Complaint And Compel Arbitration [#26], dated August 28, 2019	08/28/2019	31	1089-1097
Judgment, dated August 28, 2019	08/28/2019	32	1098
Plaintiff's Motion To Alter Or Amend The Order Granting Defendant's Motion To Dismiss Plaintiff's First Amended Complaint And Compel Arbitration [#26], and exhibits	09/11/2019	33	1099-1126
<i>Hall v. Pacific Sunwear Stores Corporation</i> , 2016 U.S. Dist. LEXIS 46347 (E.D. Mich., April 6, 2016)	09/11/2019	33-1	1121-1126
Defendant's Response To Plaintiff's Motion To Alter Or Amend The Order Granting Defendant's Motion To Dismiss Plaintiff's First Amended Complaint And Compel Arbitration, and exhibits	11/08/2019	40	1181-1240
Plaintiff's Reply To Defendant's Response To Plaintiff's Motion To Alter Or Amend The Order Granting Defendant's Motion To Dismiss Plaintiff's First Amended Complaint And Compel Arbitration [#26], and exhibit	11/15/2019	41	1241-1254
Opinion And Order Denying Plaintiff's Motion To Alter Or Amend The Court's August 28, 2019 Order [#33], dated February 5, 2020	02/05/2020	43	1256-1272
Plaintiff's Notice of Appeal	02/28/2020	44	1273
Transcript of the August 26, 2019 hearing before the District Court	04/22/2020	46	1275-1301
Transcript of the January 30, 2020 hearing before the District Court	04/22/2020	47	1302-1322

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2020, I electronically filed Plaintiff/Appellant Timothy S. Boykin's Brief On Appeal using the Court's ECF system, which will send notification to all parties who have appeared in this case.

Respectfully submitted,

Tishkoff PLC

/s/ William G. Tishkoff
By: William G. Tishkoff (P45165)
And: Christopher M. Vukelich (P76420)
Attorneys for Plaintiff/Appellant
407 North Main Street
Ann Arbor, Michigan 48104
(734) 663-4077
July 1, 2020