
**IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF
FLORIDA SIXTH DISTRICT**

CASE NO.: 6D2024-2193

L.T. NO.: 2023-CA-017248

AIRPORT CHRYSLER DODGE JEEP, LLC,

Appellant,

-vs-

SCOTT MCALPIN,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE NINTH JUDICIAL
CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

**APPELLANT AIRPORT CHRYSLER DODGE JEEP LLC'S INITIAL
BRIEF**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....IV

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE AND FACTS..... 1

SUMMARY OF ARGUMENT 6

STATEMENT OF PRESERVATION..... 8

ARGUMENT 8

I. Applicable Standard of Review and Legal Standard. 8

II. Florida Principles of Contractual Interpretation Aim to Uphold Valid Contracts and the Federal Arbitration Act Requires Deference to the Parties’ Arbitration Agreement. 10

III. The Bonus Agreement Did Not Supersede the Arbitration Agreement. 12

 A. The Parties Did Not Evidence an Intent to Supersede the Arbitration Agreement..... 13

 i. The Plain Language of the Agreements in Dispute Do Not Evidence an Intent to Supersede. 14

 ii. The Two Agreements Encompassed Different Subject Matter—Therefore Preventing the Bonus Agreement from Superseding the Arbitration Agreement Without Express Intent to Do So. 24

IV. Even if the Bonus Agreement Superseded the Arbitration Agreement, the Whistleblower Claim is Not Subject to the Bonus Agreement’s Jurisdiction and Venue Clause. 30

CONCLUSION 39

CERTIFICATE OF SERVICE..... 40

CERTIFICATE OF COMPLIANCE FOR COMPUTER-GENERATED
BRIEFS 41

TABLE OF AUTHORITIES

Cases

Advantage Dental Health Plans, Inc. v. Beneficial Administrators, Inc.,
683 So. 2d 1133 (Fla. 4th DCA 1996)..... 12

Aronowitz v. Health-Chem Corp.,
513 F.3d 1229 (11th Cir. 2008)..... 12

Bahamas Sales Assoc. LLC v. Byers,
701 F.3d 1335 (11th Cir. 2012)..... 30

Bornstein v. Marcus,
275 So. 3d 636 (Fla. 4th DCA 2019)..... 12

Burlington & Rockenbach, P.A. v. Law Offices of E. Clay Parker,
160 So. 955 (Fla. 5th DCA 2015) 10

Chaudhry v. Adventist Health Sys. Sunbelt, Inc.,
305 So. 3d 809 (Fla. 5th DCA 2020)..... 34

City of Largo v. AHF-Bay Fund, LLC,
215 So.3d 10, (Fla. 2017)..... 10

Dasher v. RBC Bank,
745 F.3d (11th Cir. 2014) 25

Driftwood Hosp. Mgmt., LLC v. Centimark Corp.,
No. 14-CIV-61802, 2014 WL 4825274
(S.D. Fla. Sept. 25, 2014)..... 30, 31

Fowler v. Watts,
659 So. 2d 374 (Fla. 2d DCA 1995)..... 25

<i>Franz Tractor Co. v. J.I. Case Co.</i> , 566 So. 2d 524 (Fla. 2d DCA 1990).....	13
<i>Garcia v. Harmony Healthcare, LLC</i> , 8:20-CV-1065-WFJ-AAS, 2021 WL 1610093 (M.D. Fla. Apr. 26, 2021)	19, 24, 27
<i>Giraud v. Woof Gang Bakery, Inc.</i> , No. 817CV02442RALAEP, 2018 WL 3151689 (M.D. Fla. Apr. 4, 2018)	15
<i>Hedden v. Z Oldco, LLC</i> , 301 So.3d 1034 (Fla. 2d DCA 2019).....	21
<i>Jackson v. Shakespeare Found., Inc.</i> , 108 So. 3d 587 (Fla. 2013).....	9
<i>James v. Gulf Life Ins. Co.</i> , 66 So.2d 62 (Fla.1953).....	11
<i>Kendall Imports, LLC v. Diaz</i> , 215 So. 3d 95 (Fla. 3d DCA 2017).....	22
<i>Law v. Everglades Coll., Inc.</i> , 8:21-CV-1710-TPB-AAS, 2021 WL 4950244 (M.D. Fla. Oct. 25, 2021).....	13, 24, 25, 27
<i>Mohamed v. Uber Techs., Inc.</i> , 848 F.3d 1201 (9th Cir. 2016).....	22
<i>Ocwen Financial Corp. v. Holman</i> , 769 So. 2d 481 (Fla. 4th DCA 2000).....	12

<i>Orkin Exterminating Co. v. Petsch</i> , 872 So. 2d 259 (Fla. 2d DCA 2004).....	11
<i>Pinnacle Holding, Inc. v. Biologics, Inc.</i> , 643 So. 2d 642 (Fla. 2d DCA 1994).....	13
<i>Roma Mikha, Inc. v. S. Glazer's Wine & Spirits, LLC</i> , 822CV01187FWSADS, 2023 WL 3150076 (C.D. Cal. Mar. 30, 2023)	20, 21
<i>Ronbeck Const. Co., Inc. v. Savanna Club Corp.</i> , 592 So. 2d 344 (Fla. 4th DCA 1992).....	13, 14
<i>Running Cars, LLC v. Miller</i> , 333 So. 3d 1177 (Fla. 1st DCA 2022)	8, 10
<i>Specialized Mach. Transp., Inc. v. Westphal</i> , 872 So.2d 424 (Fla. 5th DCA 2004).....	11
<i>Sunsplash Events Inc. v. Robles</i> , 150 So. 3d 1194 (Fla. 4th DCA 2014).....	9
<i>Whitley v. Royal Trails Prop. Owners' Ass'n, Inc.</i> , 910 So.2d 381 (Fla. 5th DCA 2005).....	11
 <u>Statutes</u>	
42 U.S.C. § 120101	34
9 U.S.C. § 1	11
Fla. Stat. Ann. § 448.102	34
Fla. Stat. Ann. § 682.01	11
Fla. Stat. Ann. § 760.01	34

STATEMENT OF JURISDICTION

This is an appeal of an Order Denying Airport's Motion to Compel Arbitration. This Court has jurisdiction pursuant to Fla. R. App. 9.130(a)(3)(C)(iv).

STATEMENT OF THE CASE AND FACTS¹

Plaintiff/Appellee, Scott McAlpin ("McAlpin"), brought this lawsuit against Defendant/Appellant, Airport Chrysler Dodge Jeep LLC ("Airport"), his former employer, seeking unpaid wages, an accounting of Airport's financial records, damages based on unjust enrichment, and/or damages arising out of alleged whistleblowing activity. *See generally* [A-5]. The facts necessary to this appeal require an in-depth evaluation of the various agreements entered into by the Parties over the course of their relationship.

In 2007, McAlpin was hired as the General Sales Manager of Airport Chrysler Dodge Jeep Ram. *See* [A-6 at ¶ 7] and [A-38 at ¶ 2]. Around that time, Airport and McAlpin entered into an Arbitration

¹ Appellant has filed an Appendix consisting of one (1) volume with a master index for the Appendix. Record citations will be to the Appendix by volume number and page number, such as [AP- #].

Agreement, with the purpose of establishing “the exclusive means of resolving all Disputes, as defined [within the agreement], which may arise between them.” [A-54]. This Arbitration Agreement was the only relevant written agreement governing the Parties for several years. *See generally* [A-5] – [A-14]; [A-29]; [A-54]; and [A-56]. Disputes within the scope of the Arbitration Agreement are “all disputes between the parties which may otherwise be brought in a court...includ[ing] but ... not limited to...statutory...claim[s]...claims related to payment of wages and compensation...[and] whistleblowing activity.” [A-54 at ¶ 1(a)-(c)].

In 2010, McAlpin was promoted to General Manager of the dealership. *See* [A-6 at ¶ 7] and [A-39 at ¶ 5]. No additional written agreement was entered into until four years later in 2014—when the Parties entered into another agreement. *See* [A-56-A-67] (hereinafter the “Bonus Agreement”). The Bonus Agreement purports to outline “the terms and conditions on which McAlpin shall be employed by and provide his services to the Company.” *See* [A-56] at ‘Recital’. But, upon closer examination, the Bonus Agreement simply memorializes the already-existing basic expectations of McAlpin’s

role as General Manager of Airport. See [A-56] – [A58]. What the Bonus Agreement did add to McAlpin’s already-existing employment relationship was Restrictive Covenants [A-60] – [A-62] as well as certain potential alleged bonuses [A-59]. The Bonus Agreement’s provisions make the Parties’ intent in this respect clear. First, McAlpin was still an at-will employee. [A-56]. Second, the job duties and limitations on authority were basic and identical to the understanding the Parties operated under for the first few years McAlpin was General Manager. [A-57-A-58]. McAlpin was never an owner of Airport so he never had any actual or implied authority to act beyond the limitations of authority laid out. [A-58]. Third, his compensation was set out separately and did not change. [A-58-A-59]. Finally, and perhaps most importantly, the termination provisions were a recitation of those that exist for every at-will employee, except that they focus specifically on whether McAlpin would be entitled to the potential bonuses under the Bonus Agreement or not. [A-62] – [A-64].

Relevant to the instant Appeal of the Circuit Court’s Order Denying Airport’s Motion to Compel Arbitration, the Bonus Agreement contained the following two provisions:

22. **Jurisdiction and Venue.** The parties acknowledge that a substantial portion of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Orange County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Orange County or the United States District Court, Middle District of Florida, Orlando Division. Each party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court...

28. **Entire Agreement.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.

[A-66] – [A-67] at ¶¶ 22 & 28.

In 2017, Airport and McAlpin entered into another agreement—McAlpin’s “Compensation Plan.” [A-30]. The Compensation Plan was entered into for the specific purpose of “establish[ing] the method and amount of compensation due [to] the employee based on the established performance guidelines.” [A-30]. Additionally, the Compensation Plan provided that it forms the entire agreement and

“supersedes and replaces any and all compensation plans in effect prior to the effective date shown on this agreement...and will remain in effect unchanged until a modified or revised compensation plan is executed and expressed in writing.” [A-31].

In 2023, the Parties’ dispute over Airport’s alleged failure to pay McAlpin bonuses due began [A-7 at ¶ 13], leading to the filing of this lawsuit. *See generally* [A-5]. Following motion practice on Airport’s Motion to Dismiss, McAlpin Amended his Complaint and Airport filed its Amended Motion to Compel Arbitration and Stay this Action (“Motion”) pursuant to the Arbitration Agreement. [A-39 at ¶¶ 5-7]; *See generally* [A-5]. The Circuit Court held a hearing on Airport’s Motion on June 6, 2024. [A-69].

After oral argument on the same, the Circuit Court ordered supplemental briefing on the issue of whether Count IV of McAlpin’s Amended Complaint alleging whistleblowing activity was subject to arbitration and outside the scope of the Jurisdiction and Venue Clause of the Bonus Agreement. [A-225 – A-226 at 28:3-29:21]. Following the Parties’ supplemental briefing and oral argument on Count IV, the Circuit Court denied Airport’s request to submit any

claims within McAlpin's Amended Complaint to arbitration, including specifically Count IV. [A-272 at 8:7-25]; and [A-282].

This appeal timely followed.

SUMMARY OF ARGUMENT

The lower court erred in rejecting Airport's Amended Motion to Compel Arbitration. There are a number of agreements between the Parties (e.g., the Arbitration Agreement, the Bonus Agreement and the Compensation Plan) all of which remain in force and effect. In some instance, the Parties superseded their prior agreements (e.g., with later-executed compensation plans) and when doing so expressly stated their intentions. However, there is no clear indication that there was an intent to supersede the Arbitration Agreement by entering into the Bonus Agreement. And, as this Court is well aware, the intent of the Parties is the polestar of contractual interpretation.

Indeed, the Bonus Agreement was entered into by the Parties *seven years* after the employment relationship began. The Bonus Agreement makes no mention of the Arbitration Agreement nor does it even mention alternative dispute resolution procedures. The Bonus

Agreement also acknowledges the existence of a compensation plan but does not expressly supersede it or *any* prior agreements. In comparison, the Arbitration Agreement makes its indefinite applicability clear through defined disputes that were intended to govern for the entirety of the Parties' relationship, regardless of any subsequent promotion or change in employment position at Airport. To vindicate the Parties' intent and avoid rewriting the terms of the Parties' chosen method of dispute resolution, the entirety of the present dispute should be submitted to arbitration.

Alternatively, Count IV of McAlpin's Amended Complaint asserts wrongdoing based on Florida's whistleblower statute. Such a claim and associated allegations are not within the scope of the jurisdiction and venue clause contained within the Bonus Agreement. [A-66] at ¶ 22. In fact, the Bonus Agreement is silent regarding such statutory actions. *See* [A-56] – [A-67]. All of McAlpin's other claims in the Amended Complaint relate in at least some way to his alleged entitlement to bonuses, but Count IV is of an entirely different nature. *See generally* [A-8] – [A-13]. Because Count IV does

not arise under or relate to the Bonus Agreement itself, at the very least, Count IV should be submitted to arbitration.

STATEMENT OF PRESERVATION

The issues presented on appeal are two-fold. First, Airport asks that this Court determine whether the lower court erred in denying Airport's Amended Motion to Compel Arbitration ([A-36] – [A-68])—which would have resulted in submission of the entirety of McAlpin's Amended Complaint to arbitration. [A-282] – [A-283]. Alternatively, Airport asks that this Court determine whether the lower court, after Airport's Supplemental Briefing In Support of Its' Motion to Compel Arbitration of Count IV ([A-244] – [A-255]), erred in denying to order Count IV of McAlpin's Amended Complaint to arbitration. [A-282] – [A-283]. The standard of review for contract interpretation and for denials of a motion to compel arbitration are reviewed de novo. *Running Cars, LLC v. Miller*, 333 So. 3d 1177, *1179 (Fla. 1st DCA 2022).

ARGUMENT

I. Applicable Standard of Review and Legal Standard.

When a party moves to compel arbitration, Florida courts must consider three elements: (1) whether a valid written agreement to

arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived. *Sunsplash Events Inc. v. Robles*, 150 So. 3d 1194, *1197 (Fla. 4th DCA 2014) (quoting *Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, *593 (Fla. 2013)). The Parties presently do not dispute the following: (i) that the agreements in dispute were properly executed; (ii) that if the Arbitration Agreement was still in effect, it would apply to the subject matter of this dispute; and (iii) that Airport has not waived its right to arbitration by virtue of participation in the litigation. [A-190] at § IV(a)(plaintiff's response in opposition confirmed this point and stated: "it appears the agreements at issue were properly executed, and if it was still in force the 2007 Arbitration Agreement would apply to the instant dispute. In addition, it appears that the Defendant has not participated in this litigation to the point of waiving a right to arbitration..."); and [A-203 at 6:9-14]. Therein, the issue for the Court is whether the Arbitration Agreement is still in effect.

Specifically, the dispute lies in whether the Bonus Agreement's jurisdiction and venue clause and/or merger clause superseded the Arbitration Agreement and would thereby preclude Airport from

submitting the entirety of this dispute to arbitration. Alternatively, there is a more discrete issue as to whether the Bonus Agreement’s jurisdiction and venue clause covers Count IV of McAlpin’s Amended Complaint or whether that Count specifically is subject only to the Arbitration Agreement. Determination of these questions requires evaluation of the relevant contracts, as well as applicable contract interpretation principles and the intent of the Parties. Matters of both contract interpretation and review of a trial court’s ruling on a motion to compel arbitration are reviewed de novo. *Running Cars, LLC v. Miller*, 333 So. 3d 1177, *1179 (Fla. 1st DCA 2022).

II. Florida Principles of Contractual Interpretation Aim to Uphold Valid Contracts and the Federal Arbitration Act Requires Deference to the Parties’ Arbitration Agreement.

On the one hand, Florida jurisprudence evidences “a strong public policy favoring the freedom of contract.” *City of Largo v. AHF-Bay Fund, LLC*, 215 So.3d 10, 16 (Fla. 2017). The intent of the parties governs contract interpretation and that intent is ascertained from the plain language of the contract and the usual meaning of the words contained therein. *Burlington & Rockenbach, P.A. v. Law Offices of E. Clay Parker*, 160 So. 955, 958 (Fla. 5th DCA 2015)(citing

James v. Gulf Life Ins. Co., 66 So.2d 62, 63 (Fla.1953); *Whitley v. Royal Trails Prop. Owners' Ass'n, Inc.*, 910 So.2d 381, 383 (Fla. 5th DCA 2005)). This requires interpreting the entire contract, not just the provision at issue. *Specialized Mach. Transp., Inc. v. Westphal*, 872 So.2d 424, 426 (Fla. 5th DCA 2004). Here, there was no intent by the Parties to supersede the Arbitration Agreement. Instead, the Parties sought to add restrictive covenants to McAlpin's employment relationship and in return entitle McAlpin to additional potential bonuses. The intent of the Parties in this respect is clear and counsels against extinguishing their previously-executed Arbitration Agreement.

On the other hand, agreements to arbitrate, whether pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, or the Florida Arbitration Act, § 682.01, *et seq.*, Fla. Stat. Ann. (2024), are given significant deference by Florida courts. *Orkin Exterminating Co. v. Petsch*, 872 So. 2d 259, 263 (Fla. 2d DCA 2004)(citations omitted)("both Federal and Florida public policy favor resolving disputes through arbitration when the parties have agreed to do so"). Florida courts strive to uphold valid agreements to arbitrate disputes.

E.g., Advantage Dental Health Plans, Inc. v. Beneficial Administrators, Inc., 683 So. 2d 1133, 1134 (Fla. 4th DCA 1996); *Ocwen Financial Corp. v. Holman*, 769 So. 2d 481, 483 (Fla. 4th DCA 2000))(both cases discuss the broad interpretation of arbitration clauses to apply to disputes to uphold the purpose of resolving disputes outside of the courts). When construing the Bonus Agreement and the Arbitration Agreement (collectively the “Two Agreements”) against this backdrop, it is clear this dispute should be arbitrated in its entirety, or, at a minimum, Count IV is subject to arbitration.

III. The Bonus Agreement Did Not Supersede the Arbitration Agreement.

Generally, parties to a prior contract can execute a subsequent, superseding agreement by a novation. “A novation is a mutual agreement between the parties for the discharge of a valid existing obligation by the substitution of a new valid obligation.” *Aronowitz v. Health-Chem Corp.*, 513 F.3d 1229, *1237 (11th Cir. 2008). A novation completely extinguishes the prior agreement whereas a modification merely replaces some terms in the prior agreement while leaving others intact and in effect. *Bornstein v. Marcus*, 275 So. 3d 636, *639 (Fla. 4th DCA 2019). To determine whether a subsequent

agreement has entirely superseded a previous agreement (i.e. results in a novation) there are four essential elements: (1) the existence of a previously valid contract; (2) the agreement of all the parties to a new contract; (3) the intent to eliminate/supersede the original contractual obligation; and (4) the validity of the new contract. *Pinnacle Holding, Inc. v. Biologics, Inc.*, 643 So. 2d 642 *644 (Fla. 2d DCA 1994) and *Law v. Everglades Coll., Inc.*, 8:21-CV-1710-TPB-AAS, 2021 WL 4950244 *2 (M.D. Fla. Oct. 25, 2021). Although “a contract may be merged into and extinguished by a later contract concerning the same subject matter, this is not true if the new contract embraces a different subject matter without fully covering the terms of the original...it is also essential that the parties intended a merger.” *Franz Tractor Co. v. J.I. Case Co.*, 566 So. 2d 524, *525 (Fla. 2d DCA 1990). The only essential element of novation at issue here is the intent of the Parties in entering the Bonus Agreement.

A. The Parties Did Not Evidence an Intent to Supersede the Arbitration Agreement.

In Florida, “arbitration is a favored means of dispute resolution and courts indulge every reasonable presumption to uphold proceedings resulting in an award.” *Ronbeck Const. Co., Inc. v.*

Savanna Club Corp., 592 So. 2d 344, *346 (Fla. 4th DCA 1992). Because of this favorability, similar to the federal courts' interpretation of the Federal Arbitration Act, courts should "resolve all doubts about the scope of an arbitration agreement as well as any questions about waivers thereof in favor of arbitration, rather than against it." *Id.* The plain language of the Two Agreements, namely the failure of the Bonus Agreement to even mention the Arbitration Agreement, much less expressly supersede this valid and in-force agreement between the Parties, **and** the differing subject matter/purpose of the Arbitration Agreement and the Bonus Agreement, do not evidence an intent to supersede or a novation. Therefore, the Court should resolve all doubts in favor of arbitration and submit the above-captioned matter to arbitration as agreed to by the Parties.

i. The Plain Language of the Agreements in Dispute Do Not Evidence an Intent to Supersede.

The Bonus Agreement is silent as to the rights provided for in the Arbitration Agreement, and therefore, does not evidence an intent to supersede the Arbitration Agreement. "A primary consideration in determining the continued viability of an arbitration provision is []

the expressed intentions of the parties based upon a review of the terms of the agreements.” *Giraud v. Woof Gang Bakery, Inc.*, No. 817CV02442RALAEP, 2018 WL 3151689 *4 (M.D. Fla. Apr. 4, 2018). In *Giraud*, the court examined two agreements executed at two different points in time—one agreement included an arbitration clause, while the other agreement did not. *Id.* at *3. The court explained that because the second agreement contained no novation provision expressly terminating the first agreement **and** because the first agreement contained no language providing that if a new agreement is formed the first agreement would be terminated, there was no express or implied intent to supersede the first agreement. *Id.* Instead, the court held that, “it is clear, given the detail of both agreements, that the [parties] intended to be governed [by the first agreement] during the life of the agreement...and be governed by the [second agreement]...until termination...” *Id.* The same conclusion can be reached for the current agreements in dispute.

In the present case, the Bonus Agreement is entirely silent as to alternative dispute resolution. *See generally* [A-56] – [A-67]. In fact, it does not reference or even acknowledge the existence of the earlier-

executed Arbitration Agreement. *Id.* Rather, the Arbitration Agreement makes clear that it governs dispute resolution procedures for the duration of the Parties employment relationship, regardless of McAlpin's employment status or position. [A-54]. For example, the Arbitration Agreement was intended to be the "exclusive means of resolving all Disputes...which may arise between them" and include, in part, those disputes that "aris[e] out of or [are] related to the **Individual's application for employment, employment, or termination of employment with the Company**, and whether or not arising **before, during, or after any employment relationship** between the parties..." [A-54](emphasis added). This language expressly covers the employment relationship from cradle to grave. In other words, it ensures that regardless of the status of either party (whether it be as applicant – hiring company; employee – employer; or terminated employee – former employer), the Parties agreed to resolve all disputes by arbitration. Additionally, the Arbitration Agreement contemplated that the Parties might enter into separate or additional contracts relating to the employment or bonuses, as "covered disputes" include "breach of contract" actions. [A-54]. And,

the Arbitration Agreement makes no mention of a subsequent employment contract having the power to supersede the terms of the chosen method of dispute resolution. [A-54] – [A-55]. Similarly, the Bonus Agreement, as mentioned above, is entirely silent regarding the existence of or effect on the Arbitration Agreement. *See generally* [A-56] – [A-67]. Had the Parties intended for the jurisdiction and venue clause to act as a superseding mechanism, they would have expressly included such superseding language within its terms. Illustrative of this point is McAlpin’s Compensation Plan.

In addition to laying out McAlpin’s potential bonuses and restrictive covenants, the Bonus Agreement contains McAlpin’s pay plan, including terms governing his compensation. [A-58] – [A-59]. However, in 2017, the Parties entered into another contract, McAlpin’s Compensation Plan, which had the “sole purpose of establish[ing] the method and amount of compensation due to the employee based on the established performance guidelines”. [A-30] – [A-31]. Contained within this Compensation Plan was an express provision superseding all prior agreements:

This agreement forms the entire agreement and supersedes and replaces any and all compensation plans

in effect prior to the effective date shown on this agreement or on the date of its signing shown below, whichever is later, and will remain in effect unchanged until a modified or revised compensation plan is executed and expressed in writing.

[A-31]. The language contained within the Compensation Plan displays the ability of the Parties to expressly supersede a previous agreement by expressing an intent to do so. In fact, the Parties included language within the Compensation Plan that it remains in effect “unchanged until a modified or revised compensation plan is executed and expressed in writing.” [A-31]. As a result of this Compensation Plan, therefore, the previous Exhibit A detailed in the Bonus Agreement was clearly superseded.

There is no such clear expression of intent as it relates to the Arbitration Agreement. The Bonus Agreement makes no mention whatsoever of the Arbitration Agreement, nor does it contain language expressly superseding the same. In fact, the Bonus Agreement does not expressly supersede any agreements. While it is true that the Bonus Agreement contains a jurisdiction and venue clause **and** a limited merger clause, neither of these provisions lead

to the conclusion that the Parties intended for the Bonus Agreement to supersede the Arbitration Agreement.

First, the Bonus Agreement’s merger clause does not evidence an intent to supersede the Arbitration Agreement. The merger clause within the Bonus Agreement provides that the Parties agree that the Bonus Agreement represents “the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other **negotiations, understandings, and representations**” between the parties. [A-67] at ¶ 28. The Bonus Agreement’s merger clause makes no mention of superseding other “agreements” or any agreement for that matter—rather, this merger clause appears designed to prevent the introduction of parole evidence and/or any oral discussions between the parties regarding employment. *See Garcia v. Harmony Healthcare, LLC*, 8:20-CV-1065-WFJ-AAS, 2021 WL 1610093, *4 (M.D. Fla. Apr. 26, 2021)(“a boilerplate merger clause does not evidence a clear expression of intent to extinguish a separate and distinct written contract”). Compare this language with that of the Compensation Agreement, which expressly supersedes not only a certain category of information

but a specific agreement that the Parties no longer wished to be governed by. *Compare* [A-31] *with* [A-67] at ¶ 28. There is no such intention in regards to the alternative dispute resolution procedures from the earlier-executed Arbitration Agreement.

Second, the Bonus Agreement’s jurisdiction and venue clause does not evidence an intent to supersede the Arbitration Agreement—as it is possible to read this provision in harmony with the terms of the Arbitration Agreement. In *Roma*, the court was presented a question of whether an entire agreement was invalidated because of conflicting venue provisions—one provision contained an arbitration clause stating: “any claim, dispute, or controversy...between you and us arising from or relating in any way to your purchase of products through the website will be resolved exclusively and finally by binding arbitration”; and the other provision contained a forum selection clause requiring “any legal suit, action, or proceeding arising out of or related to these terms of use or the website [or the terms of sale] shall be instituted exclusively in the federal courts of the United States or the courts of the State of Florida...” *Roma Mikha, Inc. v. S. Glazer's Wine & Spirits, LLC*, 822CV01187FWSADS, 2023 WL

3150076 *1 (C.D. Cal. Mar. 30, 2023). The court found that the arbitration and governing law section were “complementary” and read the documents in an effort to “harmonize all contractual provisions” rather than invalidate the entirety of the agreement. *Id.* at *6. The court explained that the language of the governing law section varied “meaningfully” from the arbitration clause. *Id.* Specifically, the arbitration provision stated: “[a]ny *claim, dispute, or controversy...*” whereas the forum selection clause provided that “[a]ny *legal suit, action, or proceeding arising out of or related to these terms of use...*” *Id.* The court found that:

the use of the words ‘legal suit, action, or proceeding’ in the forum-selection provisions, instead of the broader terms ‘dispute, controversy, or claim,’ indicate that the forum-selection provisions apply ‘if the parties litigate, not that litigation is required. Thus, the terminology demonstrates the provisions work in tandem: the arbitration provisions ‘designate[] the procedure for resolving disputes, i.e., arbitration, and the forum-selection provisions ‘designate[] the venue of litigation should any become necessary.

Id. (citing *Hedden v. Z Oldco, LLC*, 301 So.3d 1034, 1039 n.1 (Fla. 2d DCA 2019)). Other courts have similarly harmonized forum-selection and arbitration provisions. *Id.* (citing “*Hedden*, 301 So.3d at 1039 (“Even parties who wish to arbitrate any disputes arising from or

relating to a contract might still find it prudent to designate in what court to bring any litigation that might become necessary—for example, litigation regarding arbitrability.”); *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1209 (9th Cir. 2016)(“It is apparent that the venue provision here was intended for these purposes, and to identify the venue for any other claims that were not covered by the arbitration agreement. That does not conflict with or undermine the agreement's unambiguous statement identifying arbitrable claims and arguments”); *Kendall Imports, LLC v. Diaz*, 215 So. 3d 95 (Fla. 3d DCA 2017)(reconciling two arbitration clauses, one within a Purchase Order and the other in the Financing Agreement and explaining “the presence of additional dispute resolution provisions will not, *per se* create an irreconcilable conflict if the terms can be read in a complementary fashion”). Alternatively, Florida’s public policy favoring the freedom to contract and the deference provided by the Courts to the enforceability of arbitration agreements through both the Federal Arbitration Act and Florida’s Arbitration Act favors the harmonized interpretation of the agreements as presented by Airport.

The same rationale / reading can be applied to the Arbitration Agreement and the Bonus Agreement entered into by the Parties. In the present case, the jurisdiction and venue clause provide that “any civil action or legal proceeding” shall be brought in the court whereas, the Arbitration Agreement broadly submits “all disputes between the parties” regardless of whether or not it arises out of or is related to McAlpin’s employment. *Compare* [A-66] at ¶ 22 *with* [A-54]. Therein, the Arbitration Agreement designated the forum in which covered disputes, to the extent they arise, must be brought in front of (i.e. before an arbitrator in arbitration). Whereas, the jurisdiction and venue clause govern any subsequent litigation that may arise because of arbitration and/or disputes not within the scope of the arbitration agreement—for example, whether disputes of arbitrability must be brought in front of the court or the arbitrator.

Based on the above, the plain language of the Two Agreements leads to only *one* logical conclusion—that the Parties fully intended to have the Arbitration Agreement govern throughout the pendency of the employment relationship **and therefore** the Bonus Agreement did not supersede the Arbitration Agreement.

ii. The Two Agreements Encompassed Different Subject Matter—Therefore Preventing the Bonus Agreement from Superseding the Arbitration Agreement Without Express Intent to Do So.

The subsequent execution of the Bonus Agreement did not affect the alternative dispute resolution procedures in the Arbitration Agreement because the Two Agreements cover entirely different subject matters. A new contract will supersede a prior agreement only if there is an intention to do so, which is evidenced not only by the language of the agreement itself, but evidenced by looking to whether the terms of the prior agreement are within the scope of the new agreement's subject matter or are inconsistent with the final agreement's terms. *Garcia v. Harmony Healthcare, LLC*, 8:20-CV-1065-WFJ-AAS, 2021 WL 1610093, *4 (M.D. Fla. Apr. 26, 2021)(“a merger clause in an integrated contract will not supersede a prior agreement that embraces a separate and distinct written contract”) and *Law v. Everglades Coll., Inc.*, 8:21-CV-1710-TPB-AAS, 2021 WL 4950244 *2 (M.D. Fla. Oct. 25, 2021))(holding that the later employment agreement did not supersede the earlier arbitration agreement because “nothing in the [Employment Agreement] suggests the parties intended to supersede the prior, binding

arbitration agreement...there are two agreements addressing different subjects related to plaintiff's employment—an independent agreement addressing arbitration and a later employment agreement governing hours, training, instructional support”).

In *Law*, the court was tasked with analyzing whether an employment agreement, that was silent as to arbitration, superseded the terms of an earlier entered arbitration agreement. *Law*, 2021 WL 4950244 at *1. The court held that the arbitration agreement was *not* superseded and distinguished *Dasher v. RBC Bank*, 745 F.3d 1111 (11th Cir. 2014) and *Fowler v. Watts*, 659 So. 2d 374 (Fla. 2d DCA 1995) explaining that both *Dasher* and *Fowler* came out the way it did as “each of those cases involved a later agreement **of the same type and addressing the same subject matter as an earlier one.**” *Law*, 2021 WL 4950244 at *1. Whereas the agreements before the court “address[ed] different subjects related to [p]laintiff's employment – an independent agreement addressing arbitration and a later employment agreement governing hours, training, instructional support, etc.” *Id.* Because that employment agreement: (i) was not a new version of the old arbitration agreement, (ii)

addressed different subject matters; (iii) stated it only superseded “any prior offer or letter or discussion”; (iv) says nothing suggesting or implying it was intended to supersede the prior agreement as to arbitration; and (v) the arbitration agreement contemplated the existence of the employment agreement stating it could coexist, defendant was able to enforce arbitration. *Id.* at *2. The same rationale applies with equal weight to the present disputed agreements.

First, the Bonus Agreement is not a new version of the Arbitration Agreement. The Arbitration Agreement expressly provides that “this is not a contract of employment, but a contract to arbitrate Disputes” and is “intended to provide the exclusive means of resolving all disputes, as defined [], which may arise between them.” [A-54]. Whereas, the Bonus Agreement was entered for the purpose of adding additional restrictive covenants to McAlpin’s employment relationship in exchange for potential bonuses. [A-59] – [A-62]. While there is a jurisdiction and venue clause, as argued above, such clause does not explicitly make reference to nor does it evidence an intent to replace the Arbitration Agreement.

Second, the Bonus Agreement and Arbitration Agreement address different subject matters. The Arbitration Agreement, like the provision in *Law*, is an independent agreement that addresses arbitration and the disputes that should be subject to arbitration—its sole purpose is to establish the default forum for resolving legal disputes arising from or related to McAlpin’s employment relationship with Airport. [A-54]; *Compare Garcia v. Harmony Healthcare, LLC*, No. 8:20-CV-1065-WFJ-AAS, 2021 WL 1610093 (M.D. Fla. Apr. 26, 2021)(holding that a subsequent agreement did not supersede an arbitration clause in the previous agreement—as the two agreements pertained to different subject matter). On the other hand, the Bonus Agreement governs McAlpin’s potential bonuses and concomitant restrictive covenants. *See generally* [A-56] – [A-67]. This was the actual intent and aim of the Bonus Agreement. To wit, all the other language in the Bonus Agreement simply reinforces McAlpin’s already-understood duties. For example, McAlpin was required to maintain accurate records, comply with applicable federal, state and local laws and regulations governing the business’ operations; avoid deceptive advertising; not violate Airport’s

“Dealer Agreements”; etc. [A-57]. McAlpin’s authority was also limited because he was simply General Manager of Airport, not an owner, so he could bind the company in its day-to-day operations but not in any extraordinary manner. [A-58]. Similarly, McAlpin’s compensation was set separately, he maintained his benefits, he got reimbursed for expenses incurred on behalf of the business. [A-58] – [A-60]. McAlpin remained an at-will employee [A-56] and he could be terminated for any reason or no reason at all, with the only difference being whether he got his potential bonuses. [A-62] – [A-64]. Thus, the Bonus Agreement was not about McAlpin’s employment or disputes related to the same, but instead was limited to restrictive covenants and alleged potential bonuses.

Third, the merger clause within the Bonus Agreement states only that it supersedes “all other negotiations, understandings and representations (if any) made by and between such parties.” [A-67]. This merger clause makes no mention of **arbitration agreements** or **agreements** more generally—rather, as discussed *supra*, such chosen language of ‘negotiations, understandings, and representations’ by its plain meaning target oral conversations

between the parties prior to the entry of the Bonus Agreement. Had the Parties wished to include the Arbitration Agreement within this merger clause or had the Parties intended to change the chosen dispute resolution procedures, they would have done so expressly. Fourth, and similarly, the Bonus Agreement is entirely silent as it relates to the Arbitration Agreement. *See generally* [A-56] – [A-67]. And lastly, the Arbitration Agreement itself contemplates the existence of an accompanying Bonus Agreement. The Arbitration Agreement not only mentions that breaches of contract are a covered dispute, but also provides that McAlpin was not to construe the Arbitration as a contract for employment—but as a “contract to arbitrate disputes.” [A-54].

Based on the above, it is clear that the Bonus Agreement was intended to govern separate events and/or categories of the Parties relationship that do not include the Arbitration Agreement. Therefore, the Bonus Agreement did not supersede the Arbitration Agreement.

IV. Even if the Bonus Agreement Superseded the Arbitration Agreement, the Whistleblower Claim is Not Subject to the Bonus Agreement’s Jurisdiction and Venue Clause.

At a minimum, Count IV of McAlpin’s Amended Complaint relating to alleged “whistleblowing” is not subject to the jurisdiction and venue provision of the Bonus Agreement because it does not “arise out of or relate to” the Bonus Agreement. To determine whether a claim falls within the scope of a jurisdiction and venue provision, courts must look to the language of the clause. *Bahamas Sales Assoc., LLC v. Byers*, 701 F.3d 1335 (11th Cir. 2012))(applying Florida law). The Jurisdiction and Venue Clause within the Bonus Agreement provides, in part, that: “any civil action or legal proceeding arising out of or relating to **this Agreement** shall be brought in the courts of record in the State of Florida...” [A-66] at ¶ 22. “A claim relates to a contract when the dispute occurs as a fairly direct result of the performance of contractual duties,” however, just because a dispute would not have arisen **but for** an agreement—does not mean that the dispute “relates to” an agreement. *Driftwood Hosp. Mgmt., LLC v. Centimark Corp.*, No. 14-CIV-61802, 2014 WL 4825274, *2 (S.D. Fla. Sept. 25, 2014). If there was no such limitation on this

language, then theoretically, claims could extend to the “furthest stretch of its indeterminacy, it would have no limiting purpose because really, universally, relations stop nowhere.” *Id.* Similar to “relates to”, the terms “arise under” have identifiable boundaries—namely, “a dispute does not ‘arise out of or in connection with’ a contract just because the dispute would not have arisen if the contract had never existed.” *Id.*

The language of the jurisdiction and venue clause does not purport to cover all disputes that arise from or relate to McAlpin’s **employment**—rather it makes expressly clear that it is only covering civil actions or legal proceedings “arising out of or relating to ‘**this Agreement.**’ [A-66] at ¶ 22. In light of the broad terms of the Arbitration Agreement, such language is understandably read as covering disputes that do not fall within the Arbitration Agreement’s grasp and necessarily require evaluation under the Bonus Agreement’s express terms. Put differently, claims that do not require reference to and/or evaluation of the terms of the Bonus Agreement itself, cannot fall within the scope of the jurisdiction and venue clause. *See Driftwood*, 2014 WL 4825274 at *2 (explaining that courts

outside of the Eleventh Circuit have found that “contract-related tort claims involving the same operative facts as a parallel claim for breach of contract should be heard in the forum selected by contracting parties”). Furthermore, courts have also looked beyond “the Complaint to the nature of the action and the remedies sought in order to ascertain whether the forum selection clause is applicable.” *Id.* In the present case, the allegations involving whistleblowing activity do not necessitate an evaluation of “**this** [Bonus] Agreement.”

Counts I-III and V of McAlpin’s Amended Complaint are globally based on allegations that Airport failed to pay McAlpin monies that were otherwise due under the Bonus Agreement’s Compensation / Bonus Provisions **and** under the Compensation Plan entered into by the Parties in 2017. *See generally* [A-6] – [A-8] at ¶¶ 7-22 (“over the years Defendant has failed to pay bonuses and commissions as required by the [] Agreement”). Each of the factual allegations contained within the Amended Complaint were designed to support such allegation by: (i) detailing specific terms of the Bonus Agreement and the Compensation Plan; (ii) laying out the specific monies missed

out on; (iii) recounting the demand McAlpin made for the unpaid compensation; and (iv) concluding with detailing the events leading to the termination of McAlpin. [A-6] – [A-8] at ¶¶ 7-22. The nature of Counts I-III and V seek repayment of the monies that were allegedly owed to McAlpin under the Bonus Agreement and Compensation Plan and therefore require looking at the specific terms of the same. See [A-9] at Count I (“...relating to the commission and bonus calculations under the Bonus Agreement and Compensation Plan...”); [A-10] at Count II (relating to the commission and bonus calculations under the Bonus Agreement and Compensation Plan...damages in the amount of all unpaid wages owed to Plaintiff...); [A-10-A-11] at Count III (“...Plaintiff worked for Defendant, and is currently paid pursuant to the Bonus Agreement and Compensation Plan. Plaintiff has earned monthly commissions...for which he has not been paid...granting damages...”); and [A-13] at Count V (“...granting damages for breaches of the Bonus Agreement and a Monthly Compensation Plan...”). Based on the express mention of breaches of those agreements and the requisite evaluation of the same that such

claims necessitate, the very nature of Counts I-III and Count V are contractual.

In contrast, Count IV of McAlpin's Amended Complaint asserts a statutory violation of § 448.102 of the Florida Statutes. [A-11 – A-12] at ¶¶ 43-48. Such violation is based on the assertion that Airport took retaliatory action against McAlpin based on his reporting of allegedly illegal activities under several statutes such as the Americans with Disabilities Act (42 U.S.C. § 120101, *et seq.*) and the Florida Civil Rights Act (§ 760.01, *et seq.*, Fla. Stat. Ann. (2024)). [A-11] at ¶ 45. Section 448.102 of the Florida Statutes provides that it is a violation of the statute, in part, for an employer to take any retaliatory personnel action against an employee because the employee: “objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.” § 448.102, Fla. Stat. Ann. (2024). To establish a prima facie case for retaliation under this statute, the plaintiff is required to demonstrate: “(1) he engaged in protected activity; (2) he suffered an adverse employment action; and (3) there is a causal relation between the two events.” *Chaudhry v. Adventist Health Sys. Sunbelt*,

Inc., 305 So. 3d 809, 814 (Fla. 5th DCA 2020). In contrast to the contractual claims, the prima facie showing required by Florida’s whistleblower’s claim is statutory in nature rather than contractual. Indeed, the existence of the Bonus Agreement is entirely irrelevant and inconsequential to the evaluation of the whistleblowing claim (a/k/a Count IV).

To illustrate, establishing a prima facie case for retaliation under this statute does not require that McAlpin have a written Bonus Agreement nor does it require the Court/the Parties to evaluate the terms of the same to determine an entitlement to recovery. McAlpin was hired in 2007 “*without a written [] Agreement.*” [A-38] at ¶ 2. Had McAlpin engaged in a protected activity from 2007 through 2014 (i.e. the years without a written Bonus Agreement) and had Airport taken an alleged adverse employment action against McAlpin because of said activity—Count IV would remain entirely unchanged. Therein, such claim is dependent on neither the Bonus Agreement nor its terms. This demonstrates that Count IV does not arise out of or relate to the Bonus Agreement, as the jurisdiction and venue clause requires.

Moreover, McAlpin alleges that the adverse action Airport took against him was his termination. [A-12] at ¶ 48. Again, nothing within the Bonus Agreement requires analysis of its terms to adjudicate Count IV nor support an assertion that McAlpin's allegedly wrongful termination arose from or related to the terms of the Bonus Agreement. In fact, the sections of the Bonus Agreement dealing with termination do not expressly address violations of law, whistleblowing activity, or discrimination by Airport. [A-62] – [A-64]. They simply govern whether upon termination McAlpin will receive the potential bonuses available under the Bonus Agreement (i.e., McAlpin's damages, not his claim). And, since those termination provisions do not address any allegedly wrongful (a/k/a unlawful) terminations of the type McAlpin claims, the terms of Bonus Agreement are inconsequential to Count IV because whistleblowing activity does not arise out of or relate to the Bonus Agreement in the least. Indeed, the termination provisions of the Bonus Agreement do not provide McAlpin with any additional protection beyond what exists at law. [A-62] – [A-64]. To wit, McAlpin expressly remains an at-will employee despite the execution of the Bonus Agreement. [A-

56]. The actions and events that are up for evaluation under Count IV are entirely independent from the claims based on an alleged breach of the terms of the Bonus Agreement itself and are thus not subject to the jurisdiction and venue clause.

Lastly, the Bonus Agreement does not regulate Airport's conduct or activities, rather it was intended to regulate McAlpin's conduct relating to potential bonuses and post-employment restrictive covenants. By its express terms, the Bonus Agreement's focus is McAlpin's potential bonuses and concomitant restrictive covenants. [A-56]. All the applicable terms in the Bonus Agreement control the behaviors of McAlpin. [A-56] – [A-67]. Therefore, in reading the jurisdiction and venue clause, which applies to disputes arising out of or related to 'this Agreement', such a provision necessarily means disputes arising out of or relating to the individual actions of McAlpin, not Airport. The unilateral terms of the Bonus Agreement should be contrasted with the terms of the Arbitration Agreement—which expressly covers any and all disputes, regardless of which party engaged in the allegedly wrongful behavior. *Compare* [A-56] – [A-67] *with* [A-54] – [A-55]. For example, the Arbitration

Agreement covers, in part, the following disputes: wrongful termination (applicable to Airport), breach of contract (either Airport or McAlpin), retaliation (applicable to Airport), and any other statutory or contractual claim (either Airport or McAlpin). [A-54] at §§ 1(a)-(b). In fact, Count IV's claim is a defined dispute within the Arbitration Agreement: "...any claims of discrimination or harassment prohibited by applicable law, including statutory...claims of discrimination or harassment on the basis of age...disability...[and] whistleblowing activity..." [A-54] at § 1(b). Such express inclusion of these *specific* causes of action indicates the Parties intent to submit the same to arbitration, rather than to the courts. Whereas, the Bonus Agreement makes no such reference to these activities / events.

Thus, for the reasons stated above, McAlpin's Whistleblower claim (Count IV) is not fairly encompassed within the scope of the jurisdiction and venue clause within the Bonus Agreement. Instead, it is the intent of the Parties to have disputes related to discrimination and whistleblowing activity to be submitted to arbitration.

CONCLUSION

Based on the above, Airport respectfully requests that this Court reverse the trial court's denial of Appellant's Amended Motion to Compel Arbitration in its' entirety—as there is no evidence of intent that the Bonus Agreement superseded the Arbitration Agreement. Alternatively, Airport respectfully requests that this Court reverse the trial court's denial of Appellant's Amended Motion to Compel Arbitration in regards to Count IV of the McAlpin's Amended Complaint—as claims relating to or arising out whistleblowing activity do not fall within the scope of the jurisdiction and venue clause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been furnished this 4th day of December, 2024 via electronic mail to the following:

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