



that this Court compel Gilliam to arbitrate and dismiss his claims or, alternatively, stay the case pending arbitration.

### **STATEMENT OF FACTS**

1. Gilliam is a Tennessee resident who has brought claims against Prince Health for alleged violations of the TCPA. (Doc. 1, ¶ 4; *see generally* Doc. 1.)

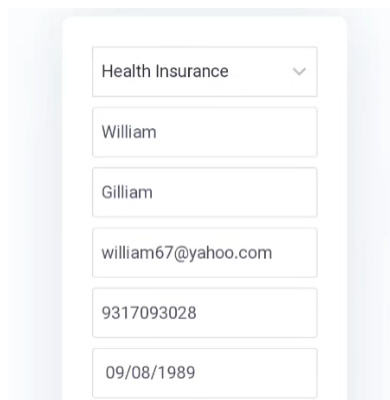
2. Prince Health, a Florida limited liability company that maintains its principal place of business in Florida, is an insurance brokerage firm that helps its clients find and enroll in affordable health insurance. (Ex. 1, ¶¶ 3–4.)

3. Techforcemedia LLC d/b/a Top American Insurance (“Top American”) is a Maryland limited liability company that operates topamericaninsurance.com, a website (the “Site”) that serves as:

a portal to facilitate insurance agents, insurance companies, lead aggregators and other similar parties (each a “Provider”) to offer for sale and to sell, insurance and other products to potential consumers who have applied through the Site to receive insurance or other authorized quotations from a Provider (each, a “Prospect”), and all Prospects and potential Prospects that use the Site are collectively called the Site’s “Users” (and hereafter may be referred to as “you” or “your”). . . .

(Ex. 2, ¶ 3; Ex. 2-1.)

4. On December 4, 2023, Gilliam entered his personal information into Top American’s Site and clicked boxes to accept the “Terms and Conditions” and the “Privacy Policy”:



Health Insurance
William
Gilliam
william67@yahoo.com
9317093028
09/08/1989

Gender  Male  
 Female

56 oak h ts

Erin

TN

37061

I've read and Agree with [TCPA](#)  
 I Accept [Privacy Policy](#),  
[Partners](#) and [Terms and Conditions](#)

(Ex. 2, ¶ 5; Ex. 2-2.)

5. Gilliam then clicked “Submit” to provide his personal information to Top American:

I've read and Agree with [TCPA](#)  
 I Accept [Privacy Policy](#),  
[Partners](#) and [Terms and Conditions](#)

**Submit**

By clicking the “Submit” button, I provide my electronic signature and represent that I am at least 18 and agree to this website's [Privacy Policy](#) and [Terms and Conditions](#). I also provide my express

(Ex. 2, ¶ 6; Ex. 2-2.)

6. Below the “Submit” button was the following disclaimer:

By clicking the “Submit” button, I provide my electronic signature and represent that I am at least 18 and agree to this website's [Privacy Policy](#) and [Terms and Conditions](#). I also provide my express written consent and authorization to the owner of this website and/or the agents of one or more of the listed [Partners](#) to contact me for marketing/telemarketing purposes such as Medicare Supplement Plans, Medicare Advantage, Prescription Drug Plans, Auto Insurance, Life or Final Expense Insurance, at the number and address provided above, including my wireless number if provided, using live operators, automated telephone dialing systems, artificial voice or pre-recorded messages, text messages and/or emails, if applicable, even if I have previously registered the provided number on any Federal or State Do Not Call Registry. I understand that my consent is not required as a condition of purchasing goods or services and can be revoked at any time

(Ex. 2, ¶ 7; Ex. 2-2; Ex. 2-3.)

7. Within Section 2 of the Terms and Conditions is an arbitration agreement that provides, in pertinent part:

## **2. Dispute Resolution By Binding Arbitration**

PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS. You agree to attempt in good faith to settle any dispute or claim that has or may arise between us, which arises out of or relates in any way to these Terms or your use of the Site or the Content, including, without limitation, any dispute or claim between you and a Provider (each, a “Claim”), by way of consultations between you and us, which consultations will be initiated upon written notice by any party to the other (the “Consultation Notice”). The Consultation Notice must describe the nature and basis of the Claim and set forth the specific relief sought (“Demand”). If such Claim cannot be resolved within thirty (30) days after the Consultation Notice is received, any party to the consultations may initiate an arbitration proceeding upon written notice to the other party in accordance with this Section 2. Any notice to us under this Section 2 should be addressed to: info@topamericaninsurance.com (“Notice Address”). **You agree to arbitrate all Claims between you and us, or any Provider, that cannot be amicably resolved in accordance with the foregoing paragraph.** This agreement to arbitrate is intended to be broadly interpreted.

It includes, but is not limited to: (a) claims arising out of or relating to any aspect of your relationship with us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; and (b) claims that could be alleged as class action Claims (and you agree to waive the right to participate in a class action in accordance with this Section 2). For the avoidance of doubt, references in this Section 2 to “Site operator,” “Provider,” “we”, “Prospect”, “you,” and “us” include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, as well as all authorized or unauthorized users or beneficiaries of the services, information or Site Content available through the use the Site. This arbitration agreement does not preclude you from bringing an individual action in small claims court if your claims qualify, and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. Further, this arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission or the Federal Trade Commission.

.....

**DO NOT USE THIS SITE IF YOU DO NOT AGREE TO THE FOREGOING BINDING ARBITRATION PROVISIONS**

(the “Arbitration Agreement”). (Ex. 2-1, Sec. 2.)

8. Gilliam delegated the question of enforceability and the scope of the Arbitration Agreement by agreeing: “All issues are for the arbitrator to decide, including, without limitation, issues relating to the applicability and enforceability of this arbitration agreement” (the “Delegation Provision”). (Ex. 2-1, Sec. 2.)

9. The Arbitration Agreement provides that Gilliam waived his right to a trial by jury and to participate in a class action as follows:

You agree that, by entering into this arbitration agreement, you and we are each waiving our respective rights to a trial by jury or to participate in a class or representative action, and that arbitration of disputes pursuant to this Section 2 shall be in your individual capacity. THIS MEANS YOU ARE LIMITING YOUR RIGHT TO APPEAL AND ARE WAIVING YOUR RIGHTS TO OTHER AVAILABLE RESOLUTION PROCESSES, SUCH AS A COURT ACTION. THE ARBITRATOR MAY NOT CONSOLIDATE, COMBINE, OR JOIN THE CLAIMS OF OTHER PARTIES WHO MAY BE SIMILARLY SITUATED OR OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. . . .

(the “Class Action Waiver”) (Ex. 2-1, Sec. 2.)

10. Furthermore, the Arbitration Agreement allowed Gilliam to opt-out “by written notice to [Top American] at the Notice Address (info@topamericaninsurance.com) within thirty (30) days of [his] acceptance of this agreement, which notice shall include [his] name, address, and a clear statement that [he did] not wish to resolve disputes with us through arbitration.” (Ex. 2-1, Sec. 2.)

11. Top American did not receive a written opt-out notice from Gilliam within thirty (30) days of him agreeing to the Terms and Conditions. (Ex. 2, ¶ 9.)

12. The Arbitration Agreement further provides that, “[n]otwithstanding anything to the contrary in these Terms, Providers shall be third party beneficiaries of the rights to dispute resolution and arbitration set forth in this Section 2, and each Provider shall have the right to enforce this Section 2 against Users as if such Provider were a party to the agreement set forth in

this Section 2 in the event of any dispute or claim between you and such Provider based on or relating to any transaction or interaction between you and such Provider that is enabled by or arises in connection with your use of the Site.” (Ex. 2-1, Sec 2.)

13. The Terms and Conditions end by stating: “This arbitration agreement includes claims related to our clients, vendors, and Marketing Partners, which are third party beneficiaries of this arbitration agreement.” (Ex. 2-1.)

14. As part of the Terms and Conditions, Gilliam agreed that Top American “may, with [his] authorization, collect certain information (a “Lead”) about [him] and sell the Lead to a Provider.” (Ex. 2-1, Sec 2.)

15. Top American provided Gilliam’s personal information including his name and phone number (i.e., the “Lead”) to JLN CORP d/b/a P1 Solutions (“P1 Solutions”), which provided the Lead to Prince Health. (Ex. 1, ¶¶ 5–7; Ex. 2, ¶¶ 11–12.)

### **STANDARD OF REVIEW**

The Federal Arbitration Act (“FAA”), 9 U.S.C. § 2, embodies “a liberal federal policy favoring arbitration agreements.” *Masco Corp. v. Zurich Am. Ins. Co.*, 382 F.3d 624, 626 (6th Cir. 2004) (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). See generally *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). The FAA provides that “[a] written provision in . . . a contract . . . to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. In light of the presumption in favor of arbitration, courts should resolve “any doubts concerning the scope of arbitrable issues . . . in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a defense to arbitrability.” *Moses H. Cone Mem’l Hosp.*, 460 U.S. 1, 24 (1983). Finally, courts should compel arbitration of a particular

grievance “unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.” *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986) (citing *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582–83 (1960)).

### **LAW AND ARGUMENT**

Gilliam’s claims are subject to the Arbitration Agreement in the Terms and Conditions. All arbitration provisions dealing with transactions involving interstate commerce are subject to the FAA. *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 273–74 (1995). Courts broadly construe the FAA so that the smallest connection between an arbitration agreement and interstate commerce is sufficient to bring the agreement within the FAA’s purview. 9 U.S.C. § 1; *see Dobson*, 513 U.S.at 268 (1995).

The Arbitration Agreement is governed by the FAA, because this agreement involves interstate commerce as an online agreement between Top American, a Maryland limited liability company that owns and operates a Site for comparing insurance across all States (Ex. 2, ¶¶ 2–5), and its User Gilliam, a Tennessee resident. (Doc. 1, ¶ 4.) Federal courts consistently hold that the internet itself is an instrumentality and channel of interstate commerce. *See Freedom Banc Mortg. Servs., Inc. v. O’Harra*, No. 2:11-CV-01073, 2012 WL 3862209, at \*6 (S.D. Ohio Sept. 5, 2012); *United States v. Jeffries*, No. 3:10-CR-100, 2011 WL 13186518, at \*15 (E.D. Tenn. May 24, 2011); *see also United States v. Sutcliffe*, 505 F.3d 944, 952–53 (9th Cir. 2007) (“[A]s both the means to engage in commerce and the method by which transactions occur, ‘the Internet is an instrumentality and channel of interstate commerce.’” (quoting *United States v. Trotter*, 478 F.3d 918, 921 (8th Cir.2007) (quoting *United States v. MacEwan*, 445 F.3d 237, 245 (3d Cir.2006))); *States v. Hornaday*, 392 F.3d 1306, 1311 (11th Cir. 2004) (“Congress clearly has the power to regulate the internet, as it does other instrumentalities and channels of interstate commerce”).

Gilliam's acceptance of the online Terms and Conditions, submitting his personal information to a Site comparing national insurance coverage, involves interstate commerce. *Jole v. Apple*, No. 3-11-0882, 2011 WL 6101553, at \*3 (M.D. Tenn. Dec. 8, 2011) ("The Court agrees with those cases which have found that a connection to the internet is affecting interstate commerce or communication."). *Bragg v. Linden Rsch., Inc.*, 487 F. Supp. 2d 593, 604 (E.D. Pa. 2007) (finding online Terms of Service with a Pennsylvania resident involves interstate commerce). Therefore, the FAA governs the Arbitration Agreement.

When determining whether to compel arbitration under an agreement governed by the FAA, a court must undertake four tasks:

- [F]irst, it must determine whether the parties agreed to arbitrate;
- second, it must determine the scope of that agreement;
- third, if federal statutory claims are asserted, it must consider whether Congress intended those claims to be nonarbitrable; and
- fourth, if the court concludes that some, but not all, of the claims in the action are subject to arbitration, it must determine whether to stay the remainder of the proceedings pending arbitration.

*McGee v. Armstrong*, 941 F.3d 859, 865 (6th Cir. 2019) (quoting *Stout v. J.D. Byrider*, 228 F.3d 709, 714 (6th Cir. 2000) (alterations added)); see *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626-28 (1985). Federal courts have routinely compelled TCPA claims to arbitration and found that Congress did not intend for TCPA claims to be nonarbitrable. (i.e., the third task).<sup>1</sup> When this Court evaluates the facts of this case under the three remaining tasks, the Court will find that Gilliam's TCPA claims are subject to the enforceable and broad

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<sup>1</sup> *Pollak v. KeyBank, N.A.*, No. 1:19-CV-1866, 2019 WL 6612064, at \*2 (N.D. Ohio Dec. 5, 2019) ("[I]t does not appear that Congress intended TCPA claims to be nonarbitrable."); *Drozdowski v. Citibank, Inc.*, No. 2:15-CV-2786-STA-CGC, 2016 WL 4544543, at \*9 (W.D. Tenn. Aug. 31, 2016) (finding that plaintiff failed to meet burden of proving Congress intended TCPA claims are nonarbitrable given case law deciding otherwise); *McCormick v. Citibank, NA*, No. 15-CV-46-JTC, 2016 WL 107911, at \*5 (W.D.N.Y. Jan. 8, 2016) (collecting cases).

Arbitration Agreement. Because all of Gilliam’s claims are subject to arbitration, his claims should be dismissed.

**1. Gilliam assented to the Arbitration Agreement and is bound to individually arbitrate his claims.**

To determine whether the Arbitration Agreement was formed, this Court “should apply ordinary state-law principles that govern the formation of contracts.” *Mounts v. Midland Funding LLC*, 257 F. Supp. 3d 930, 938 (E.D. Tenn. 2017) (quoting *First Options*, 514 U.S. at 944, 115 S.Ct. 1920); *see also Becker v. Delek US Energy, Inc.*, 39 F.4th 351, 355–56 (6th Cir. 2022) (forming a contract is a question for the court). For a contract to exist under Tennessee law, there must be a meeting of the minds through mutual assent at the time of execution. *Moore v. New Amsterdam Cas. Ins. Co.*, 199 F. Supp. 941, 945 (E.D. Tenn. 1961).

Specifically, clicking an icon to accept online terms of use is sufficient for mutual assent. *Anderson v. Amazon.com, Inc.*, 478 F. Supp. 3d 683, 693 (M.D. Tenn. 2020); *see Scott v. RVshare LLC*, No. 3:21-CV-00401, 2022 WL 866259, at \*3 (M.D. Tenn. Mar. 22, 2022).<sup>2</sup> The same is true under Delaware law, the chosen law under the Terms and Conditions.<sup>3</sup> (*See* Ex. 2-1, Sec. 15.)

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<sup>2</sup> Tennessee law honors a choice of law provision so long as the provision was executed in good faith, there is a material connection between the chosen law and the transaction, and the chosen law is not contrary to the fundamental policies of Tennessee. *Anderson*, 478 F. Supp. 3d at 693. The Terms and Conditions choose Delaware law. (Ex. 2-1, Sec. 15.) Otherwise, Tennessee law would apply under *lex loci contractus* because Gilliam, as a Tennessee resident, presumably clicked on the Terms and Conditions when he was in Tennessee, as evidenced by him providing his Tennessee zip code. *See Anderson*, 478 F. Supp. 3d at 693. Regardless of whether Delaware has a material connection to the transaction, Tennessee law is substantially the same as Delaware law under these circumstances. Therefore, Prince Health cites to Tennessee law and the applicable Delaware law throughout this Memorandum to save the Court the time and expense of resolving this choice of law question. *See id.*, at 694.

<sup>3</sup> “Clickwrap agreements are routinely recognized by courts and are enforceable under Delaware law.” *Doe v. Massage Envy Franchising, LLC*, No. CV S20C-05-005RFS, 2020 WL 7624620, at \*2 (Del. Super. Ct. Dec. 21, 2020) (collecting cases).

Here, Gilliam assented to the Terms and Conditions and all of its terms when clicking the box to accept them. *Anderson*, 478 F. Supp. 3d at 693. These terms include the Arbitration Agreement and the Class Action Waiver.<sup>4</sup> (Ex. 2-1, Sec. 2.) Therefore, Gilliam agreed to arbitrate his claims and is bound to individually arbitrate them.

**2. The question of arbitrability (i.e., validity, enforceability, and scope) is for the arbitrator.**

Gilliam delegated the question of the Arbitration Agreement’s validity, enforceability, and scope to the arbitrator, not this Court. “[P]arties can agree to arbitrate ‘gateway’ questions of ‘arbitrability,’ such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.” *Rent-A-Center., W., Inc. v. Jackson*, 561 U.S. 63, 68- 69 (2010). When an arbitration agreement “delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S.Ct. 524, 529 (2019); *see also Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842, 844 (6th Cir. 2020), *cert. denied sub nom. Piersing v. Domino's Pizza Franchising LLC*, 209 L. Ed. 2d 8, 141 S. Ct. 1268 (2021) (“[W]hen parties have agreed to arbitrate ‘arbitrability,’ a court may not disregard their agreement”).

When Gilliam clicked to accept the Terms and Conditions, he agreed to delegate the question of the validity, enforceability, and scope of the Arbitration Agreement to the arbitrator. (Ex. 2-1, Sec. 2.) Specifically, in the Delegation Provision, Gilliam agreed that “[a]ll issues are for the arbitrator to decide, including, without limitation, issues relating to the applicability and enforceability of this arbitration agreement.” (Ex. 2-1, Sec. 2.) Whether Prince Health, as a non-signatory/third-party beneficiary and “Provider” under the Terms and Conditions, may enforce the

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<sup>4</sup> Class action waivers within arbitration agreements are enforceable under the FAA. *See generally Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 237 (2013).

Arbitration Agreement is an arbitrability question delegated to the arbitrator. *Becker*, 39 F.4th at 356. Because the Arbitration Agreement exists and is governed by the FAA, this Court must compel Gilliam to arbitrate his claims, leaving the questions of the validity, enforceability, and whether Gilliam’s claims fall within the Arbitration Agreement’s scope to the arbitrator.

**3. Regardless of the Delegation Provision, Prince Health may enforce the Arbitration Agreement against Gilliam, because Prince Health is an intended beneficiary of the agreement and Gilliam’s claims fall within its broad scope.**

An arbitration agreement is construed and enforced like any other contract. *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 682 (2010) (citing *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 626 (1985)). That is, arbitration agreements are “valid, irrevocable, and enforceable” as written. *Concepcion*, 563 U.S. at 344 (quoting 9 U.S.C. § 2). Online agreements (e.g., clickwrap and browsewrap agreements) are valid and enforceable contracts that have been routinely upheld in the Sixth Circuit and by this Court.<sup>5</sup> In particular, this Court has recognized that federal courts uphold online agreements that require clicking an icon to accept the terms of use prior to using an online service. *Anderson v. Amazon.com, Inc.*, 490 F. Supp. 3d 1265, 1274–75 (M.D. Tenn. 2020).

Gilliam entered into a valid and enforceable arbitration agreement when he electronically clicked and accepted the Terms and Conditions, which included the Arbitration Agreement. (Ex. 2, ¶¶ 5–12; Ex. 2-1, Ex. 2-2.) Although Prince Health was not a party to the Terms and Conditions, it is clear that Prince Health was a third-party beneficiary of this agreement that is entitled to enforce the Arbitration Agreement. Under Tennessee and Delaware law, an intended beneficiary may enforce a contract that it did not sign.<sup>6</sup> The terms of the Arbitration Agreement make clear

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<sup>5</sup> *Scott*, 2022 WL 866259 at \*4; *Morris v. Serv. Experts Heating & Air Conditioning LLC*, No. 3:23-CV-00642, 2023 WL 8851611, at \*5 (M.D. Tenn. Dec. 21, 2023).

<sup>6</sup> Under Tennessee law:

their intent to benefit Prince Health as a “Provider”/insurance broker (e.g., “insurance agents, insurance companies, lead aggregators, and other similar parties”). (Ex. 2-1, Sec. 1.)

Specifically, the Arbitration Agreement states: “Providers shall be third party beneficiaries of the rights to dispute resolution and arbitration set forth in this Section 2, and each Provider shall have the right to enforce this Section 2 against Users as if such Provider were a party to the agreement set forth in this Section 2 in the event of any dispute or claim between you and such Provider based on or relating to any transaction or interaction between you and such Provider that is enabled by or arises in connection with your use of the Site.” (Ex. 2-1, Sec. 2.) The Terms and

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“a third party is an intended third-party beneficiary of a contract, and thus entitled to enforce the terms of a contract, where (1) the parties to the contract have not otherwise agreed, (2) recognition of the third-party's right to performance is appropriate to effectuate the parties' intent, and (3) terms or circumstances indicate that performance of the promise is intended or will satisfy an obligation owed by the promisee to the third party.”

*Sanders v. Allenbrooke Nursing & Rehab. Ctr., LLC*, No. 2:20-CV-02001, 2020 WL 5576696, at \*9 (W.D. Tenn. Sept. 17, 2020) (quoting *Benton v. Vanderbilt Univ.*, 137 S.W.3d 614, 618 (Tenn. 2004) (citing *Owner-Operator Indep. Drivers Ass'n*, 59 S.W.3d at 70)); *see also So v. Dynamics*, No. 3:22-CV-01063, 2023 WL 4938404, at \*1 (M.D. Tenn. Aug. 2, 2023) (same).

Under Delaware law:

(a) the contracting parties must have intended that the third party beneficiary benefit from the contract, (b) the benefit must have been intended as a gift or in satisfaction of a pre-existing obligation to that person, and (c) the intent to benefit the third party must be a material part of the parties' purpose in entering into the contract.

*Appforge, Inc. v. Extended Sys., Inc.*, No. C.A.04-704-GMS, 2005 WL 705341, at \*9 (D. Del. Mar. 28, 2005); *see also E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 195 (3d Cir. 2001) (“[W]hether seeking to avoid or compel arbitration, a third party beneficiary has been bound by contract terms where its claim arises out of the underlying contract to which it was an intended third party beneficiary.”); *MBIA Ins. Corp. v. Royal Indem. Co.*, 519 F. Supp. 2d 455, 464 (D. Del. 2007), *aff'd*, 321 F. App'x 146 (3d Cir. 2009) (“To have standing to recover on a contract as a third party beneficiary, the contracting parties must have expressed an intention that the third party be a beneficiary, and that intention must affirmatively appear in the contract.”).

Conditions state the purpose of the Site is to provide information to insurance agents and other similar parties so that they may sell and offer insurance products to the Site's Users. (Ex. 2-1, Sec. 1.) The benefit to "Providers" that is selling User information is more than material to the Terms and Conditions—it is the stated purpose. Therefore, Prince Health may enforce the Arbitration Agreement as an intended beneficiary of the Terms and Conditions and the Arbitration Agreement.

Furthermore, Gilliam's TCPA claims fall within the broad scope of the Arbitration Agreement. When evaluating whether to compel arbitration, a court must find that "the specific dispute falls within the substantive scope of that agreement." *Richmond Health Facilities v. Nichols*, 811 F.3d 192, 195 (6th Cir. 2016) (quoting *Javitch v. First Union Sec., Inc.*, 315 F.3d 619, 624 (6th Cir. 2003)). An arbitration provision that covers any controversy arising out of or relating to a contract is "extremely broad." *Nestle Waters N. Am., Inc. v. Bollman*, 505 F.3d 498, 505 (6th Cir. 2007) (quoting *Highlands Wellmont Health Network, Inc. v. John Deere Health Plan, Inc.*, 350 F.3d 568, 578 (6th Cir. 2003)). When faced with such a broad arbitration clause, a court should find that the dispute is subject to the arbitration agreement unless there is a clause excluding the specific dispute from arbitration. *NCR Corp. v. Korala Assocs., Ltd.*, 512 F.3d 807, 813 (6th Cir. 2008) (citing *Solvay Pharms., Inc. v. Duramed Pharms., Inc.*, 442 F.3d 471, 482 n. 10 (6th Cir. 2006)).

Gilliam's TCPA claims fall within the extremely broad Arbitration Agreement that covers "any dispute or claim between you and such Provider based on or relating to any transaction or interaction between you and such Provider that is enabled by or arises in connection with your use of the Site." (Ex. 2-1, Sec. 2.) Gilliam's use of the Site enabled Prince Health to contact him, because Prince Health acquired Gilliam's contact information from P1 Solutions, which acquired this information from Top American. (Ex. 1, ¶¶ 5–6); (Ex. 2, ¶¶ 11–12); (Doc. 1, ¶ 30.) Gilliam's

TCPA claims, which are based upon allegedly unauthorized phone calls from Prince Health, certainly arise from (or relate to) the Terms and Conditions of the Site from which Gilliam’s phone number was obtained. (Ex. 1, ¶¶ 5–6); (Ex. 2, ¶¶ 11–12.) Accordingly, this Court should compel Gilliam to individually arbitrate his claims, consistent with the enforceable Arbitration Agreement and the Class Action Waiver.

**4. Gilliam’s claims are due to be dismissed because all claims are subject to arbitration.**

This Court should dismiss this case since all claims properly before this Court are subject to arbitration. *Green v. Ameritech Corp.*, 200 F.3d 967, 973 (6th Cir. 2000) (dismissing claims is appropriate when all issues are subject to arbitration); *see also Milan Exp. Co. v. Applied Underwriters Captive Risk Assur. Co.*, 590 F. App’x 482, 486 (6th Cir. 2014) (same). This Court has followed this Sixth Circuit precedent and said that dismissal is appropriate when all claims or all issues before the court are subject to arbitration. *Riley v. Ntan, LLC*, No. 3:21-CV-00314, 2022 WL 4359065, at \*5 (M.D. Tenn. Sept. 20, 2022) (dismissal is appropriate when ‘all issues before the court,’ and not . . . merely some claims (or ‘issues’)’ are subject to arbitration) (citing *5th of July, LLC v. Thomas*, 2020 WL 5983111 (M.D. Tenn. Oct. 8, 2020)).<sup>7</sup>

The claims against P1 Solutions are not before this Court because P1 Solutions has not been served. A named defendant “becomes a party officially . . . only upon service of a summons[.]” *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). “In the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant.” *Id.*; *see also Malone v. Bank*

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<sup>7</sup> *Karri v. BMW (US) Holding Corp.*, No. 3:22-CV-00528, 2023 WL 3131990, at \*13 (M.D. Tenn. Apr. 27, 2023) (Referring claims subject to arbitration and dismissing case without prejudice); *see also Bercovitch v. Baldwin Sch., Inc.*, 133 F.3d 141, 156 n. 21 (1st Cir. 1998) (“However, a court may dismiss, rather than stay, a case when all of the issues before the court are arbitrable.”).

*of New York Mellon*, No. 3:13-CV-00518, 2013 WL 4508709, at \*2 (M.D. Tenn. Aug. 23, 2013) (same). Therefore, all claims and issues *before* this Court are subject to arbitration.

Regardless, all claims even *potentially before* this Court are subject to arbitration. Since Gilliam alleges that P1 Solutions, at best, is a nominal party as a purported agent of Prince Health, all claims are truly claims against Prince Health; the same claims that are subject to arbitration for the above-mentioned reasons. (Doc. 1, ¶¶ 33–53.) Accordingly, this Court should dismiss this case upon compelling Gilliam to arbitration. Alternatively, this Court should stay the case pending arbitration pursuant to 9 U.S.C. § 3.

### **CONCLUSION**

Based upon the foregoing, this Court should compel Gilliam to arbitrate his claims and dismiss this action. Alternatively, this Court should stay the case pending arbitration.

Respectfully submitted,

*s/ Joseph V. Ronderos*  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of April, 2024, a true and exact copy of the foregoing was electronically filed with the Clerk's office using the CM/ECF system and served via the Court's CM/ECF system and/or via email and/or first-class U.S. mail upon the parties listed below. Parties may also access this filing through the Court's CM/ECF system.

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