STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

**SAMANTHA LICHON**,

Plaintiff,

vs.

Case No.: 2017-158919-CZ
Hon. Shalina Kumar

**MICHAEL MORSE** and
**MICHAEL J. MORSE, P.C.**,

Defendants.

---

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Attorneys for Plaintiff
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**NOTICE OF HEARING**

**DEFENDANTS' MOTION TO DISMISS THIS ACTION AND COMPEL ARBITRATION**

**BRIEF IN SUPPORT**

**PROOF OF SERVICE**

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**NOTICE OF HEARING**

TO: Clerk of the Court, All Counsel of Record

PLEASE TAKE NOTICE that a hearing on **Defendants' Motion to Dismiss This Action And Compel Arbitration** will be heard before the Honorable Shalina Kumar in Courtroom 1C, 1200 North Telegraph Road, Pontiac, Michigan 48341 on **Wednesday, June 21, 2017, at 8:30 a.m.**, or as soon thereafter as the matter may be heard.

Dated: May 30, 2017

**DEBORAH GORDON LAW**
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**Benjamin I. Shipper (P77558)**
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**DEFENDANTS' MOTION TO**
**DISMISS THIS ACTION AND COMPEL ARBITRATION**

NOW COME Defendants Michael Morse and Michael J. Morse, P.C., by and through their attorneys, Deborah Gordon Law, and in support of their Motion to Dismiss This Action And Compel Arbitration state as follows:

1. This is an action by Plaintiff Samantha Lichon ("Plaintiff") alleging various torts, including sexual harassment in violation of the Elliot-Larsen Civil Rights Act, MCL 37.2101, *et seq.*, against Defendant Michael Morse and Michael J. Morse, P.C. (collectively, "Defendants") arising out of Plaintiff's employment relationship with Defendants.

2. As a condition of employment with Defendants, Plaintiff signed a Mandatory Dispute Resolution Procedure agreement, which requires arbitration of these claims. **Exhibit A-1**.

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3. In lieu of filing answers to Plaintiff's First Amended Complaint and Reliance on Jury Demand ("Amended Complaint"), **Exhibit B**, and pursuant to MCR 2.116(C)(7) and MCR 3.602, Defendants move this Court to compel Plaintiff to prosecute her claims exclusively by way of compulsory and binding arbitration and to dismiss this action.

4. Defendants further move this Court for sanctions pursuant to MCR 2.114(D) and (E) as a result of Plaintiff and her counsel's failure to perform a reasonable inquiry into the facts of the frivolous instant action, which was actually filed for Plaintiff's counsel's improper purpose of harassing and harming the reputation of Michael Morse, who is Plaintiff's counsel's competitor.

5. In support of this Motion, Defendants file and incorporate fully by reference herein, the accompanying Brief in Support of the Motion and rely on the assertions and authorities cited therein.

6. Defendants sought concurrence in the relief requested from Plaintiff's counsel on May 30, 2017, but such relief was not forthcoming. **Exhibit C**.

WHEREFORE Defendants respectfully request that this Court (1) GRANT their Motion; (2) dismiss this action and compel Plaintiff to proceed with arbitration per the terms of the Arbitration Agreement; and (3) sanction Plaintiff and her counsel for their frivolous pleading by awarding Defendants their attorneys' fees, as well as any other equitable relief this Court deems appropriate.

Dated: May 30, 2017

**DEBORAH GORDON LAW**
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**Benjamin I. Shipper (P77558)**
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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THIS ACTION AND COMPEL ARBITRATION**

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## I. INTRODUCTION

This action is part of an improper scheme by Plaintiff's counsel, Geoffrey Fieger and Donald Dawson, Jr. ("Fieger Law"), to harm the reputation of their competitor, Defendants Michael Morse and Michael J. Morse, P.C., and to gather publicity in doing so. Within days of one another, Fieger Law has filed three frivolous law suits, none of which were preceded by even a modicum of the due diligence or research required under MCR 2.114(D).[1] Fieger Law's goal in these three suits is not to file legal actions that, following reasonable inquiries, are well grounded in fact, but rather to embarrass and harass Michael Morse.

Fieger Law's tactics, as seen with this action as well as the two other pending actions, are to: (1) file a lawsuit; (2) request an amount of damages that has zero to do with reality (in this case, $15,000,000); (3) hold a press conference and provide interviews to local television and newspaper media outlets; and (4) immediately file duces tecum notices of deposition of Michael Morse and others with the Court in violation of MCR 2.302(H)(1) for the improper purpose of publishing to the public the vastly overbroad, irrelevant, and prejudicial documents Fieger Law requests Plaintiff bring to the deposition, in violation of MCR 2.310(C)(2), all of which Fieger Law knows or should know will never actually transpire, especially since none of the documents in the instant lawsuit or the *Jane Doe* lawsuit have been served on Michael Morse.

Had Fieger Law performed even the most basic and reasonable inquiry into the facts of the instant action in order to form the knowledge, information, and belief on which their signature and attestation that the Complaint and Amended Complaint are well-grounded in fact rely, they would have learned that:

---

[1] In addition to the instant action filed on May 24, 2017, see *Renee Swain v. Michael Morse*, Case No.: 2017-158765-CZ, Oakland County Circuit Court, filed on May 15, 2017; and *Jane Doe v. Michael Morse*, Case No.: 2017-158939-CZ, Oakland County Circuit Court, filed on May 25, 2017.

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(1) Plaintiff was originally given multiple verbal and written warnings for poor job performance prior to termination;

(2) Following these verbal and written warnings and prior to being terminated Plaintiff apologized for her poor job performance and thanked Michael J. Morse, P.C. for all the chances provided to her to improve her job performance;

(3) Plaintiff was terminated for poor job performance on April 7, 2017 (not February 17, 2017, as the Amended Complaint alleges);

(4) Plaintiff's claims, which arise out of her employment with and termination from Michael J. Morse, P.C., are subject to a valid and enforceable arbitration agreement; and

(5) The arbitration agreement and Michael J. Morse, P.C.'s Employee Personnel Manual required Plaintiff to report sexual harassment complaints to her supervisor or to Human Resources, neither of which Plaintiff did.

In short, as set forth in this Brief in Support of Defendants' Motion, this Court is obligated to compel Plaintiff to prosecute her claims exclusively by way of compulsory and binding arbitration and to dismiss this action. Furthermore, because of Fieger Law's failure to perform a reasonable inquiry into the facts underlying Plaintiff's frivolous claims, Defendants are entitled to sanctions.

## II. STATEMENT OF UNCONTESTED FACTS

### A. Plaintiff Executed A Valid, Enforceable Arbitration Agreement as Consideration for Her Employment with Michael J. Morse, P.C.

Michael J. Morse, P.C. is a law firm wholly owned by Michael Morse. **Exhibit A**, John Nachazel Affidavit ¶ 4. On or about September 28, 2015, Michael J. Morse, P.C. hired Plaintiff to work as a receptionist. Nachazel Aff. ¶ 5. On or about September 29, 2015, Plaintiff signed a Mandatory Dispute Resolution Procedure agreement ("Arbitration Agreement"):

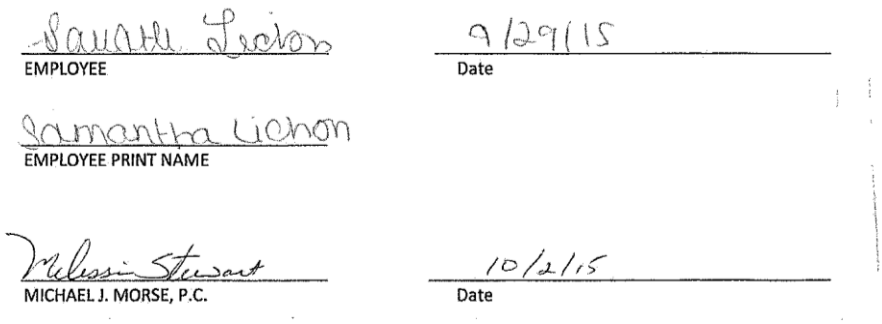


**Exhibit A** ¶ 6; **Exhibit A-1**, at 8. As part of this Arbitration Agreement, Plaintiff expressly agreed to arbitrate:

> all concerns you have over the application or interpretation of the Firm's Policies and Procedure relative to your employment, including, but not limited to, any disagreements regarding discipline, termination, discrimination or violation of other state or federal employment laws. . . . This Procedure includes any claim against another employee of the Firm for violation of the Firm's Policies, discriminatory conduct or violation of other state or federal employment or labor laws. . . .

**Exhibit A-1**, at 1. "The **only exceptions** to the scope of [the Arbitration Agreement] are for questions that may arise under the Firm's insurance or benefit programs (such as retirement, medical insurance, group life insurance, short-term or long-term disability or other similar programs)" because "[t]hese programs are administered separately and may contain their own separate appeal procedures," and for "claims for unemployment compensation, workers' compensation or claims protected by the National Labor Relations Act." *Id.* at 1–2 (emphasis added). The Arbitration Agreement further states that:

> If the Parties are unable to resolve the dispute at the first two steps of the appeal procedure [Step 1: Appeal to Your Supervisor, and Step 2: Appeal to Michael J. Morse], either Party shall have the right to take the concern to final and binding arbitration before an independent arbitration selection by the Parties. The arbitrator shall have the same remedies available to resolve the dispute as if the matter were brought in state or federal court or before an administrative agency. . . .

*Id.* Furthermore, the Arbitration Agreement "waives the right of the employee and the Firm to have the matter submitted to a court for a jury trial." *Id.* at 1.



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Both Plaintiff and Michael J. Morse, P.C. agreed that "[b]y accepting or continuing employment, [Plaintiff] understand[s] and agree[s] that [Plaintiff] will follow and be bound by the results of" the Arbitration Agreement. *Id.* Moreover, the parties expressly agreed that the Arbitration Agreement "is considered to be a **binding contractual obligation** between [the employee] and the Firm," and that "[s]hould either Party fail to comply with the requirements of [the Arbitration Agreement], **they may file a lawsuit to compel compliance** pursuant to the Federal Arbitration Act . . . or in accordance with state law." *Id.* (emphases added).

### B. Plaintiff's Employment is Involuntarily Terminated for Poor Job Performance And Plaintiff Apologizes for Such Poor Job Performance

On or about April 7, 2017, Plaintiff's employment at Michael J. Morse, P.C. was terminated. Nachazel Aff. ¶ 7.[2] Specifically, Plaintiff received the following memorandum regarding her termination on April 7, 2017, which was placed in her personnel file:

> You have been counseled on several occasions regarding your excessive absences, as evidence by having no remaining PTO for the year in March.
>
> You have been counseled on several occasions regarding your failure to meet performance standards regarding servicing clients in the reception area and directing calls appropriately.
>
> On March 29, 2017 you were placed in Final Warning Status for your poor performance. Because of your inability to meet the performance standards for your position as a Receptionist your employment is terminated effective today, April 7, 2017.

**Exhibit F**. In response to being placed on Final Warning Status on March 29, 2017, Plaintiff wrote the following apologetic email to Perry Schnieder, Michael J. Morse, P.C.'s Operations

[2] Plaintiff's Amended Complaint, which states that Plaintiff "was terminated on February 17, 2017," see **Exhibit B** at ¶¶ 26, 52, is plainly wrong as to the date of Plaintiff's termination. In addition, an original Monetary Determination from the State of Michigan Unemployment Insurance Agency ("UIA") states that Plaintiff filed her "claim for unemployment insurance benefits . . . on 04/12/2017" with the Monetary Determination becoming effective beginning April 9, 2017, the first Sunday following Plaintiff's termination on Friday, April 7, 2017. **Exhibit D**. Furthermore, a subsequent Notice of Determination from the UIA states that Plaintiff was "fired from MICHAEL J. MORSE PC on April 07, 2017 for failure to meet the employer's standard of job performance." **Exhibit E**.

Manager, and Jami Rooney, Plaintiff's supervisor and Michael J. Morse, P.C.'s Customer Service Manager:

> I just truly wanted to apologize for being disappointing. I thought I could for sure do good. I know I can, just have made to many inexcusable mistakes. I truly do know that they have been over and over. I wish I could change it all, but the only thing I can do is learn from all of these situations and make myself better at this job. I totally understand all of your frustration and I am sorry I put you all through so much. You guys have given me limitless opportunities and I sincerely will and do always appreciate it as I know I am such a pain. Your support has made such a difference in my life whether it ends up working out or not and I really am grateful. I just feel so grateful for everything you guys as a whole firm has taught me. I just had to make that known. Thank you times a million for really working with me. The appreciation is unexplainable. xoxox

**Exhibit G** (sic throughout).

### C. Following the Involuntary Termination of Plaintiff's Employment with Defendants, Plaintiff Filed The Instant Action Asserting Claims Arising out of or Related to Her Employment with Defendants

Despite Plaintiff's involuntary termination for poor performance after several verbal and written warnings and Plaintiff's contrition for such poor performance, Plaintiff's filed her Amended Complaint on May 26, 2017, asserting five causes of action, all of which stem from Plaintiff's employment at and termination from Michael J. Morse, P.C. Specifically, Plaintiff states that "[a]t all relevant times, Defendants, [Michael J. Morse, P.C.] and [Michael Morse], employed Plaintiff, [Samantha Lichon], as a receptionist," and that "throughout the course of her employment, Plaintiff, [Samantha Lichon], was continuously and periodically sexually harassed by Defendant, [Michael Morse], who was owner and agent of Defendant, [Michael J. Morse, P.C.]." **Exhibit B** ¶¶ 11, 13. The rest of the Amended Complaint goes in to greater detail regarding Plaintiff's allegations of the types of sexual harassment incurred. Plaintiff further states that Defendants' actions constituted "various acts of sexual harassment at the workplace,

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negligence, intentional and negligent infliction of emotional distress, and sexual assault and battery." *Id.* ¶ 33.[3]

### D. Plaintiff Intentionally Fails to Request Her Personnel File prior to Filing The Instant Law Suit, And Fails To Dismiss This Lawsuit Once Provided with A Copy of the Arbitration Agreement.

Prior to filing the instant lawsuit, Plaintiff knew of the verbal and written reprimands she had received and of the binding Arbitration Agreement into which she had entered. See, e.g., **Exhibits A-1**, **F**, **G**. Neither Plaintiff nor her counsel ever once requested a copy of her personnel file. Nachazel Aff. ¶ 9. Had Plaintiff or her counsel requested a copy of her personnel file, they would have discovered that the Arbitration Agreement was contained therein. Nachazel Aff. ¶ 10. 6. Defendants sought concurrence in the relief requested from Plaintiff's counsel on May 30, 2017, but such relief was not forthcoming. **Exhibit C**. Plaintiff did not respond to this request.

## III. LAW AND ARGUMENT

### A. Standard of Review

Defendants bring this Motion pursuant to MCR 2.117(C)(7), which provides that "[a] party may move for dismissal of or judgment on all or part of a claim" based upon "an agreement to arbitrate" between the parties. *See also* MCR 2.116(B). Because the claims raised by Plaintiff are covered by the Arbitration Agreement—which constitutes a valid and enforceable arbitration agreement pursuant to which Plaintiff agreed to waive her right to a jury trial and, instead pursue

[3] Although irrelevant to the applicability of the valid and enforceable Arbitration Agreement Plaintiff signed, for which this Court must compel Plaintiff to engage in arbitration and dismiss this action, it bears stating that Plaintiff's Amended Complaint vaguely claims that she reported Defendants' actions to her superiors and to Michael J. Morse, P.C.'s "Human Resources Department" on several occasions. *See* **Exhibit B** ¶¶ 25, 29, 51, 66, 72(g), 78, 83(g). To the contrary, while employed at Michael J. Morse, P.C. or anytime thereafter, Plaintiff Samantha Lichon never complained to any supervisor regarding any alleged sexual assault or sexual harassment by, or intimidating, hostile, offensive and/or abusive working environment caused by, any employee of Michael J. Morse, P.C., including, but not limited to, Michael Morse or Jami Rooney. Nachazel Aff. ¶ 8.



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her employment-related claims solely through mandatory, binding arbitration—this Court should grant Defendants' Motion and dismiss Plaintiff's Amended Complaint.

### B. Michigan Law Favors Enforcement of Plaintiff's Arbitration Agreement

It is Michigan's strong and unequivocal public policy to encourage arbitration as an inexpensive and expedition alternative to litigation. *Madison Dist. Pub. Schs. v. Myers*, 247 Mich. App. 583, 600 (2001); *Rembert v. Ryan's Family Steak Houses, Inc.*, 235 Mich. App. 118, 123 (1999). "The Michigan arbitration statute provides that an agreement to settle a controversy by arbitration under the statute is valid, enforceable, and irrevocable if the agreement provides that a circuit court can render judgment on the arbitration award." *Hetrick v. Friedman*, 237 Mich. App. 264, 269 (1999) (quoting *Tellkamp v. Wolverine Mut. Ins. Co.*, 219 Mich. App. 231, 237 (1996)).

Under Michigan law, agreements to arbitrate statutory employment discrimination claims are valid if: (1) the parties have agreed to arbitrate the claims, (2) the statute itself does not prohibit such agreements, and (3) the arbitration procedures are fair so that the employee may effectively vindicate his statutory rights. *Rembert*, 234 Mich. App. At 156.

#### 1. Plaintiff Agreed to Arbitrate Her Claims And Her Claims Fall within The Scope of The Arbitration Agreement

Here, it cannot be disputed that Plaintiff agreed to arbitrate her claims, or that her claims fall within the scope of her agreement to arbitrate. As indicated by their signatures on the Arbitration Agreement, **Exhibit A-1**, at 8, both Plaintiff and Michael J. Morse, P.C. agreed that "[b]y accepting or continuing employment, [Plaintiff] understand[s] and agree[s] that [Plaintiff] will follow and be bound by the results of" the Arbitration Agreement. *Id.* at 1. Moreover, the parties expressly agreed that the Arbitration Agreement "is considered to be a binding contractual obligation between [the employee] and the Firm." *Id.*



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Regarding the scope of the Arbitration Agreement, both parties agreed to arbitrate:

> all concerns you have over the application or interpretation of the Firm's Policies and Procedure **relative to your employment**, including, but not limited to, any **disagreements regarding discipline, termination, discrimination or violation of other state or federal employment laws**. . . . **This Procedure includes any claim against another employee of the Firm for violation of the Firm's Policies, discriminatory conduct or violation of other state or federal employment or labor laws**. . . .

*Id.* All of Plaintiff's causes of action stem from her allegations that that "[a]t all relevant times, Defendants, [Michael J. Morse, P.C.] and [Michael Morse], employed Plaintiff, [Samantha Lichon], as a receptionist," and that "throughout the course of her employment, Plaintiff, [Samantha Lichon], was continuously and periodically sexually harassed by Defendant, [Michael Morse], who was owner and agent of Defendant, [Michael J. Morse, P.C.]." **Exhibit B ¶¶** 11, 13. The rest of the Amended Complaint goes in to greater detail regarding Plaintiff's claims of the types of sexual harassment allegedly incurred. Plaintiff further states that Defendants' "various acts of sexual harassment at the workplace, negligence, intentional and negligent infliction of emotional distress, and sexual assault and battery." *Id.* ¶ 33. Thus, Plaintiff's claims are clearly within the scope of the Arbitration Agreement.

No Michigan statute exits that would prohibit the arbitration of Plaintiff's employment-related claims. Indeed, such claims are regularly arbitrated. *See Leonard v. Art Van Furniture, Inc.*, 2004 WL 1254330, at *1–2 (Mich. App. June 8, 2014) (holding that Plaintiff's "complaint against Art Van alleging sexual harassment and retaliation under the [ELCRA] and assault and battery" was governed by a valid arbitration agreement, requiring dismissal of Plaintiff's complaint pursuant to MCR 2.116(C)(7)); *Powell v. Sparrow Hosp.*, 2010 WL 2901875, at *3 (W.D. Mich. July 23, 2010) (granting defendants motion to compel arbitration because Plaintiff's tort claim for defamation was "inextricably intertwined with her employment relationship" with

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Defendants). Accordingly, Plaintiff should be compelled to arbitrate her claims against Defendants.

**2. Plaintiff's Claims against Michael Morse Individually Do Not Remove The Claims from Binding Arbitration Where The Claims Are Identical to Those against Michael J. Morse, P.C. And Arise out of Plaintiff's Employment with Defendants.**

This Court should reject any argument by Plaintiff that the Arbitration Agreement is not enforceable because Michael Morse is named as an individual Defendant. Courts routinely find that claims against individual employees, whose actions are otherwise covered by valid arbitration agreements between plaintiffs and their employers, are also subject to arbitration, regardless of whether that defendant employee is a party to the arbitration agreement or specifically named in the agreement. *See Knepper v. Holley Dev. Co.*, 2009 WL 629867, at *2 (Mich. App. Mar. 3, 2009) (rejecting plaintiff's argument that, because the arbitration agreement in question was between herself and the corporate defendant, plaintiff should be allowed to pursue claims against the individual defendants in court, and instead relying on the "rule that persons with claims derivative of those parties to an arbitration agreement may be bound by that arbitration despite their not being party to the agreement to arbitrate in the first instance") (citing *Jozwiak v. N. Mich. Hosps., Inc.*, 207 Mich. App. 161, 167–68 (1994)); *Foxworth v. Radio One, Inc.*, 2003 WL 22244073, at *2 (Mich. App. Sept. 30, 2003) (holding that "[t]he trial court correctly found that the claims raised in plaintiff's complaint fell within the agreement to arbitrate, and that the claims against the individual defendants were governed by the agreement"); *Powell*, 2010 WL 2901875, at *10–11 ("Companies act through their employees. Accordingly, where claims against individual employees or owners of a company are identical to those against the company, the claims against the individual are similarly governed by the agreement to arbitrate."); *Kettles v. Rent-Way, Inc.*, 2009 WL 1406670, at *12–13 (W.D. Mich.



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May 18, 2009) (finding "no case law, let alone binding Michigan appellate decisions, suggesting that a mandatory-arbitration agreement does not apply to an employee's claims against parties other than the employing corporation itself" and thus rejecting plaintiff's argument that his claims were not subject to arbitration because he sued two employees "in their personal capacity").

This is particularly true where, as in the instant case, "[t]he claims against the individual defendants [are] identical to those brought against [the employer]." *Foxworth,* 2003 WL 22244073, at *5. The reasoning behind this is clear: if the rule were otherwise, "every employee could flout his agreement to arbitrate work-related disputes by naming his supervisor or some other individual employee who was involved in the alleged unlawful discrimination, retaliation or interference in question." *Kettles,* 2009 WL 1406670, at *12–13.

As a result, the fact that Plaintiff sued Michael Morse individually does not remove her claims against Defendants from the scope of the Arbitration Agreement where the claims against both Defendants are identical and, as Plaintiff alleges, the claims arise out of Michael Morse's employment of Plaintiff. **Exhibit B**, ¶ 11. Consequently, this Court should grant Defendants' Motion, dismiss Plaintiff's Amended Complaint, decline to exercise jurisdiction over Plaintiff's claims against either Defendant, and order Plaintiff to pursue her claims through binding arbitration if she so chooses.

**3. The Arbitration Agreement Is A Valid Contract**

Arbitration agreements are interpreted in the same manner as ordinary contracts. *Bayati v. Bayati*, 264 Mich. App. 595, 599 (2004). A valid and enforceable contract must satisfy the following requirements: (1) the parties are competent to contract; (2) proper subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation. *Hess v. Cannon*

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*Twp.*, 265 Mich. App. 582, 592 (2005) (quoting *Thomas v. Leja*, 187 Mich. App. 418, 422 (1991)). Michigan law presumes that one who signs a written agreement knows the nature of the instrument so executed and understands its contents. *McKinstry v. Valley Obstetrics-Gynecology Clinic, P.C.*, 428 Mich. 167, 184 (1987). This Court should interpret the arbitration agreement in a manner that renders the agreement valid and enforceable and any doubt about arbitration should be resolved in favor of arbitration. *Fromm v. MEEMIC Ins. Co.*, 264 Mich. App. 302, 306 (2004); *Watts v. Polaczyk*, 242 Mich. App. 600, 608 (2000).

In the instant case, Plaintiff and Michael J. Morse, P.C. are "competent to contract," and arbitration is a "proper subject matter" for a contract. Further, there is ample "legal consideration," "mutuality of agreement," and "mutuality of obligation." *See* **Exhibit A-1**, at 1 ("By accepting or continuing employment, [Plaintiff] understand[s] and agree[s] that [Plaintiff] will follow and be bound by the results of" the Arbitration Agreement."); *Ryoti v. Paine, Webber, Jackson & Curtis, Inc.*, 142 Mich. App. 805, 812 (1985) (finding that the arbitration agreement between the parties was supported by consideration where plaintiff's "employment with Defendant was conditioned on" performing a certain action (becoming registered with the New York Stock Exchange)); *Tillman v. Macy's, Inc.*, 735 F.3d 453, 460 (6th Cir. 2013) (recognizing that "[s]everal decisions applying Michigan law have held that an offer may be accepted through continued employment," and citing *Dawson v. Rent–A–Center, Inc.*, 490 Fed. Appx. 727, 730 (6th Cir. 2012) (noting that the plaintiff "demonstrated his assent [to his employer's offer to arbitrate disputes] by continuing to work for Rent–Way' and that 'Michigan law permits parties to accept offers through conduct"); *Kettles*, 2009 WL 1406670, at *5; *Rembert*, 235 Mich. App. at 118).

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Similarly, Michael J. Morse, P.C.'s agreement to bind itself to the Arbitration Agreement and foreclose its right to seek redress in the courts also constitutes sufficient consideration. *See* **Exhibit A-1**, 1–2 ("[The Arbitration Agreement] waives the right of the employee and the Firm to have the matter submitted to a court for a jury trial," and "[t]he findings and results of this [Arbitration Agreement] are final and binding on you and the Firm."); *Hall v. Small*, 267 Mich. App. 330, 334–35 (2005); *Mazera v. Varsity Ford Mgmt. Servs., LLC*, 565 F.3d 997, 1002 (6th Cir. 2009).

**4. The Arbitration Agreement's Arbitration Program Complied with Michigan Law**

Michigan courts evaluate the following elements to ensure there is fairness in the arbitration process: (1) notice that the employee is waiving the right to trial for arbitration; (2) the right to representation by counsel; (3) a neutral arbitrator; (4) reasonable discovery; and (5) a fair arbitration hearing. *Rembert*, 235 Mich. App. at 161–63. The Arbitration Agreement meets all these elements.

First, the Arbitration Agreement states that

> either Party shall have the right to take the concern to **final and binding arbitration** before an independent arbitration selection by the Parties. The arbitrator shall have the same remedies available to resolve the dispute as if the matter were brought in state or federal court or before an administrative agency. This Procedure **waives the right of the employee and the Firm to have the matter submitted to a court for a jury trial**.

**Exhibit A-1**, at 1 (emphases added). Second, the Arbitration Agreement states that "[Plaintiff] ha[s] the right to request that a representative of [her] choosing be present at all steps of this [Arbitration Agreement]." **Exhibit A-1**, at 7. Third, the Arbitration Agreement states that, should a dispute be submitted to arbitration, "[t]he Parties shall promptly endeavor to agree upon the selection of an impartial Arbitrator." **Exhibit A-1**, at 4. Fourth, the Arbitration Agreement places

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**no restrictions** on discovery; rather, "[t]he selected arbitration shall be empowered to set a date for hearing, to take testimony, examine whether acceptable evidence the employee and the Firm may present and he or she **shall conduct the arbitration in accordance with the rules of the [American Arbitration Association]**." **Exhibit A-1**, at 4 (emphasis added). Fifth, under the Arbitration Agreement, Plaintiff is entitled to a fair hearing: "the arbitrator shall issue a written decision with findings of fact and application of law"; the costs to Plaintiff are minimal to begin the arbitration process ($500.00), and, in the event any or part of the arbitrator's decision is in favor of Michael J. Morse, P.C., the arbitrator's fees and expenses will be shared equally by the parties, but in no instance will Plaintiff owe more than $500.00 (or five days' pay, whichever is less); and the entire arbitration process is governed by the rules of the American Arbitration Association. **Exhibit A-1**, at 4–5.

### C. Because of the Binding Arbitration Agreement, The Instant Action Should Be Dismissed.

Because there is a valid and enforceable Arbitration Agreement governing Plaintiff's claims in the instant action, this Court should dismiss Plaintiff's Amended Complaint with prejudice and allow Plaintiff to pursue her claims through arbitration, if she so chooses. *See Leonard*, 2004 WL 1254330, at *1 (reversing and remanding for dismissal the trial court's denial of employer's motion for summary disposition under MCR 2.116(C)(7) as a result of a "an enforceable predispute arbitration agreement"); *Green v. Ameritech Corp.*, 200 F.3d 967, 973 (6th Cir. 2000) ("The weight of authority clearly supports dismissal where all of the issues raised in the district court must be submitted to arbitration."); *Hensel v. Cargill, Inc.*, 198 F.3d 245 (6th Cir. 1999) ("Under § 3 of the [Federal Arbitration Act], . . . litigation in which all claims are referred to arbitration may be dismissed.").

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Michigan's Uniform Arbitration Act, requires that, "[i]f a party moves the court to order arbitration"—as Defendants have done here—"the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section." MCL 691.1687(6). *See also* MCR 3.602(C) ("[A]n action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or motion for such an order has been made under this rule.") On May 26, 2017, Plaintiff's counsel issued two duces tecum deposition notices of Michael Morse and Derek Brackon, an employee of Michael J. Morse, P.C., set to be heard on July 7, and July 6, 2017, respectively. **Exhibit H**. In addition to staying these depositions, this Court must stay discovery in this action generally until the Court rules renders a final decision on Defendants' Motion.

**D. Defendants Are Entitled to Sanctions against Plaintiff for her Frivolous Complaint and Amended Complaint.**

MCR 2.114(E) requires sanctions if an attorney or party signs a document in violation of MCR 2.114(D), which provides:

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> (1) he or she has read the document;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Similarly, MCL 600.2591(1) provides:

> Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the

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> civil action by assessing the costs and fees against the nonprevailing party and their attorney.

The statute defines "frivolous" to include that "[t]he party's primary purpose in initiating the action . . . was to harass, embarrass, or injure the prevailing party," MCL 600.2591(3)(a)(i), or that "[t]he party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true." MCL 600.2591(3)(a)(ii). "Sanctions [under MCL 600.2591(3)(a)(ii)] may be assessed without regard to whether the pleader harbored an improper purpose." *Harrison v. Munson Healthcare, Inc.*, 304 Mich. App. 1, 41 (2014). "The purpose for punishing with sanctions the introduction of frivolous claims is to **deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose**." *Id.* (citations and quotation marks omitted) (emphasis added).

Plaintiff's counsel, Geoffrey Fieger and Donald Dawson, Jr., have filed the instant action without performing even the most basic and reasonable inquiry into the facts of the action and to serve the improper purpose of impugning the Defendants.

First, had Fieger Law performed a reasonable inquiry they would have learned that: Plaintiff was originally given multiple verbal and written warnings for poor job performance prior to termination and that Plaintiff apologized for her poor job performance, thanking the employees of Michael J. Morse, P.C. for all the chances provided to Plaintiff to improve her job performance; Plaintiff was terminated for poor job performance on April 7, 2017 (not February 17, 2017, as the Amended Complaint alleges); Plaintiff's claims, which arise out of her employment with and termination from Michael J. Morse, P.C., are subject to a valid and enforceable Arbitration Agreement.

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Second, Plaintiff nor her counsel ever once requested a copy of Plaintiff's personnel file or requested to view her personnel file, which contained a copy of the discipline, reason for and date of termination, and the Arbitration Agreement. Had Plaintiff or her counsel requested a copy of her personnel file or requested to view her personnel file, to which is she entitled under the Bullard-Plawecki Employee Right to Know Act, MCL 423.501, *et seq.*, she and her counsel would have discovered the Arbitration Agreement and known that Plaintiff had agreed to arbitration in lieu of filing her action in this Court, and that Plaintiff's claims were frivolous.

Requesting to view a personnel file is an elementary step in an employment-related action. Moreover, Plaintiff's first Complaint was filed on May 24, 2016, in which she claims that she was terminated on February 17, 2017 (Plaintiff was actually terminated on April 7, 2017). Plaintiff had plenty of time to request her personnel file, review it, and then file her action in the appropriate venue (i.e., arbitration). None of Plaintiff's claims have statutes of limitation of less than 2 years, and even the strictest and most truncated contractual statute of limitation—of which Plaintiff would have no idea since she never requested to see her personnel file—would not have expired for 6 months (July 17, 2017, based on a February 17, 2017, termination date).

Rather, Plaintiff's counsel, in their overzealous, media-driven desire to file this action quickly following another action against Michael Morse (see *Renee Swain v. Michael Morse*, Case No.: 2017-158765-CZ, Oakland County Circuit Court), and immediately preceding a third action against Michael Morse (*Jane Doe v. Michael Morse*, Case No.: 2017-158939-CZ, Oakland County Circuit Court), **specifically elected** not to take the time to request the personnel file under Michigan law, or do any due diligence regarding the underlying facts.

This is not the only instance in which Plaintiff's counsel has specifically elected to operate to annoy, harass, and embarrass Michael Morse. In the *Renee Swain v. Michael Morse*

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case, Plaintiff's counsel filed an Ex Parte Motion for a Preliminary Injunction to order Michael Morse to preserve his social media accounts because "Plaintiff's counsel has been notified by numerous witnesses" regarding Michael Morse's alleged "proclivity of making unwanted sexual advances upon women," and by subsequently providing this Ex Parte Motion to the local newspapers without serving Michael Morse. Correctly, Judge Phyllis McMillen denied Plaintiff's counsel's Ex Parte Motion stating in relevant part that:

> [Plaintiff's] motion and proposed order are broadly worded and not limited in any way to the allegations in this case or the named defendants or the purported evidence Plaintiff seeks to protect.
>
> The ostensible evidence would only be relevant to this case at bar under very narrow circumstances where the requirement of MRE 404(b) have been met.

**Exhibit I**. Similarly, on May 18, 2017, Plaintiff's counsel in the *Swain* case filed with the Court a Notice of Taking Videotaped Duces Tecum Deposition of Michael Morse (the "Deposition Notice") which purported to schedule Morse's deposition for June 2, 2017, less than three weeks after this case was filed and before Morse was even required to answer the Complaint. **Exhibit J**. In the *Swain* case, the Deposition Notice made it abundantly clear that Plaintiff's counsel improperly intends to try to depose Morse on subjects that are wholly unrelated to that case, including: any and all complaints made by any employees of The Michael Morse Law Firm relating the sexual harassment by Michael Morse or analogous complaints; a list of all former female employees of The Michael Morse Law Firm including their last known contact information; all letters of recommendations for all previous female workers of The Michael Morse Law Firm; and any videos of Michael Morse discussing the female anatomy. The Deposition Notice was filed with the Court in violation of MCR 2.302(H)(1), and requested documents be produced on June 2, 2017, in violation of MCR 2.306(B)(4) and 2.310(C)(2), which rules grant Michael Morse 42 days after being served to respond to any document request.

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Fieger Law has performed the exact same actions in the instant case, as well as in the third *Jane Doe* case. The contents of the filed Deposition Notices in these three cases, and Fieger Law's other conduct, plainly confirms their improper purpose of annoying, harassing, and embarrassing Michael Morse. This is even further reinforced by Plaintiff's counsel filing the instant case in this Court, without regard to the contents of Plaintiff's personnel file, which contains multiple instances of documentary evidence written by Plaintiff herself that refutes her claims and a valid and enforceable Arbitration Agreement, which precludes such filing.

This Court should award Plaintiff sanctions, including attorneys' fees and any other equitable relief this Court deems appropriate, for Plaintiff's counsel's intentional failure to sufficiently or reasonably investigate, research, and inquire as to Plaintiff's claims and for subsequently filing the instant action to serve an improper purpose.

## IV. CONCLUSION/RELIEF REQUESTED

Based on the foregoing, Defendants respectfully request that this Court (1) GRANT their Motion; (2) dismiss this action and compel Plaintiff to proceed with arbitration per the terms of the Arbitration Agreement, only, if Plaintiff so chooses; and (3) sanction Plaintiff and her counsel for their frivolous pleadings by awarding Defendants their attorneys' fees, as well as any other equitable relief this Court deems appropriate.

Dated: May 30, 2017

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