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### CASES:

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### OTHER CITATIONS:

## **REPLY ARGUMENT I.**

### **ASSAULT AND BATTERY IS NOT A CLAIM FOR WRONGFUL DISCHARGE, NOR IS IT A SIMILAR CLAIM**

Telepak argues that Niolet agreed to arbitrate all claims against Phil Rice, including the claims of assault and battery. Telepak is incorrect. By the clear wording of arbitration agreement it says, “any other common law claims for wrongful discharge or other similar claims.” Claims of assault and battery are not similar claims to wrongful discharge. Similar claims to wrongful discharge would be employment claims, which is why Niolet conceded her claim for malicious interference with employment because it is arguably an employment claim. Assault and battery is an intentional tort that does not have to be committed in the employment context.

While Niolet waived her right to litigate certain employment disputes with Telepak as a condition of being hired with Telepak, she did not waive her right to litigate her claims of assault and battery against Rice.

By the clear terms of the contract, Niolet only agreed to arbitrate claims concerning her recruitment for employment and her termination, or claims like wrongful termination. She never agreed to arbitrate claims of assault and battery. Mississippi public policy should prevent employers from shielding their employees

from intentional torts, such as assault and battery. The District Court erred in holding that the arbitration agreement covered her claims of assault and battery.

## **REPLY ARGUMENT II.**

### **THE CIRCUIT COURT ERRED IN FINDING THAT RICE WAS AN INTENDED BENEFICIARY OF THE ARBITRATION AGREEMENT.**

As this Court has stated:

Thus, while “we will read the reach of an arbitration agreement between *parties* broadly, [that] is a different matter from the question of who may invoke its protections.” *Westmoreland v. Sadoux*, 299 F.3d 462, 465 (5th Cir.2002) (emphasis supplied). This is so because “[a]n agreement to arbitrate is a waiver of valuable rights that are both personal to the parties and important to the open character of our state and federal judicial systems—an openness this country has been committed to from its inception.” *Id.*

*Qualcomm Inc.*, at 268-269 (emphasis added).

While Niolet waived her right to litigate certain employment disputes with Telepak as a condition of being hired with Telepak, she did not waive her right to litigate her claims of assault and battery, committed outside her employment, against Rice, a non-signatory to the agreement. Niolet’s claims against Rice cannot be intertwined with any claims against Telepak. Rice cannot demonstrate that equitable estoppel should be invoked, nor can he show that he has the prerequisite clean hands to invoke an equitable remedy. Rice should not be allowed to invoke the protections


of the arbitration agreement.

### **CONCLUSION**

While Niolet waived her right to litigate certain employment disputes with Telepak as a condition of being hired with Telepak, she did not waive her right to litigate her non-employment claims of assault and battery against Rice, a non-signatory to the agreement. Niolet has made no claims against Telepak, and Rice should not be allowed to invoke the protections of the arbitration agreement, under a theory of equitable estoppel or any other theory.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I, Ron L. Woodruff, attorney for Plaintiff/Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing, as well as a 3.5 WP Disk, to the following:

David M. Thomas, II, Esq.  
Balch & Bingham, LLP  
P. O. Box 22587  
Jackson, MS 39201

Hon. William E. Chapman, III  
Circuit Court Judge  
P.O. Box 1626  
Canton, MS 39046

THIS the 24 day of October, 2008.

  
\_\_\_\_\_  
RON L. WOODRUFF

**MISSISSIPPI SUPREME COURT  
MISSISSIPPI COURT OF APPEALS**

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**NO. 2008-CA-00922**

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**NIKKI HATTEN NIOLET**

**APPELLANT**

**VERSUS**

**PHIL RICE**

**APPELLEE**

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**CERTIFICATE OF COMPLIANCE**

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Pursuant to Miss. R. Civ. P. 32, the undersigned certifies this brief complies with the type-volume limitations of Rule 32.

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A. 553 words in proportionally spaced typeface.

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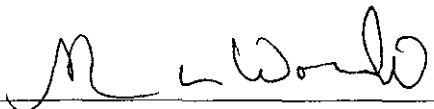

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This, the 24 day of October, 2008.

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