UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

SQUARE RING INC.,

Plaintiff,

v. CASE NO. 3:16-cv-641-MCR-GRJ

EDUARD TROYANOVSKY,

Defendant.
_____/

ORDER

Plaintiff Square Ring Inc. ("Square Ring") filed suit against Defendant Eduard Troyanovsky ("Troyanovsky"),[1] a professional boxer, alleging that he participated in bouts arranged by other boxing promoters in violation of an exclusive promotional agreement. Square Ring raises claims for breach of contract and breach of the implied covenant of good faith and fair dealing on this basis. Troyanovsky, in turn, filed Corrected Motions to Dismiss, to Quash Service, and in the Alternative, to Disqualify Counsel (collectively, the "Corrected Motions").[2] ECF No. 15. The

[1] In his Motion to Dismiss, Troyanovsky states he was sued under an incorrect spelling of his name, i.e., "Troyanovsky." The record, however, reflects that he refers to himself alternatively as either "Troyanovsky" or "Troianovskii." *See* ECF No. 12 at 1, 5; ECF No. 20 at 13-16.

[2] Troyanovsky specifically moves to quash service, dismiss for lack of personal jurisdiction, dismiss based on *forum non conveniens* grounds, dismiss for failure to state a claim under Rule 12(b)(6), and to disqualify council. The Court addresses these motions in one order because Troyanovsky filed them in one document. *See* ECF No. 15. The parties have each offered evidence in support of their respective positions on his non-Rule 12(b)(6) motions. For this reason,

Court ordered the parties to confer and file a joint statement on the need for an evidentiary hearing in connection with the Corrected Motions. ECF No. 21. In the joint statement, ECF No. 22, the parties disagreed on the need for an evidentiary hearing, with Square Ring in favor of one and Troyanovsky opposed.[3] After considering the parties' arguments and supporting evidence, the Court determines that an evidentiary hearing is unnecessary, and that Troyanovsky's Corrected Motions should be denied for the following reasons.

I. BACKGROUND

Troyanovsky is a professional boxer living in Russia. ECF No. 1 at 1; ECF No. 12 at 1. He does not read or speak English, has never fought in the United States, and has never been to Florida. ECF No. 12 at 1-2. Square Ring is a boxing

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the background section includes some facts established by the parties' evidence and not from Square Ring's Complaint. The Court's consideration of the facts will be appropriately restricted to the allegations in the Complaint when evaluating Troyanovsky's 12(b)(6) motion. While the Court has the discretion to convert Troyanovsky's motion to dismiss under Rule 12(b)(6) into a Rule 56 motion for summary judgment, it did not do so because requiring the plaintiff to satisfy the summary judgment standard at this stage of the case, before merits discovery has been conducted, would be premature. *See Jones v. Automobile Ins. Co. of Hartford, Conn.*, 917 F.2d 1528, 1531-32 (11th Cir. 1990) (explaining that the district court has discretion as to whether to ignore evidence put forth on a motion to dismiss or to consider that evidence and convert the motion to dismiss to a motion for summary judgment); *Hardy v. Ambika, LLC*, No. 10-485-WS-M, 2010 WL 4636636 at *1 (S.D. Ala. Nov. 3, 2010) (not converting a motion to dismiss into a motion for summary judgment because it was "unfair and inappropriate" to require the plaintiff to offer competing evidence where the plaintiff had yet to have an opportunity to conduct discovery on the merits of the case).

[3] In its Opposition to the Corrected Motions, Square Ring asks for leave to engage in limited jurisdictional discovery if the Court found additional evidence necessary to decide the jurisdictional questions at issue. *See* ECF No. 16 at 18 n.2. Troyanovsky did not ask the Court to allow for jurisdictional discovery.

promotional company incorporated in Delaware with its principal place of business in Florida. ECF No. 1 at 1; ECF No. 17 at 1; ECF No. 20 at 2. John Wirt is Square Ring's CEO and its attorney of record in this case. ECF No. 20 at 1. Roy Jones Jr., a professional boxer, is the President of Square Ring. ECF No. 1 at 1-2; ECF No. 18 at 1. Both Wirt and Jones live in Florida. ECF No. 17 at 1; ECF No. 20 at 2.

In late September of 2011, Square Ring, fellow boxing promoter Salita Promotions Corp. ("Salita Promotions"), and Troyanovsky allegedly entered into a six-page promotional agreement (the "Agreement"), a signed, "true and correct" copy of which is attached to the Complaint.[4] ECF No. 1 at 2; ECF No. 1, Ex. 1. Under the Agreement, Troyanovsky grants Square Ring and Salita Promotions the exclusive right to secure, arrange, and promote any bouts in which he participates. *See* ECF No. 1, Ex. 1 at 2. In exchange, the Agreement requires Square Ring and Salita Promotions to offer Troyanovsky a minimum number of bouts within certain defined time periods, which Troyanovsky agreed to reasonably prepare for, and participate in to the best of his ability. *Id.* According to the Agreement, Troyanovsky would earn at least: $5,000 for bouts scheduled for eight rounds or less, $10,000 for

[4] The Court considers the Agreement when ruling on Troyanovsky's motion to dismiss under Rule 12 (b)(6). *See Gross v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000) ("When considering a motion to dismiss, all facts set forth in the plaintiff's complaint 'are to be accepted as true and the court limits its consideration to the pleadings *and exhibits attached thereto*.'" (citing *GSW, Inc. v. Long County*, 999 F.2d 1508, 1510 (11th Cir. 1993) (emphasis added).

bouts scheduled for more than eight rounds, $20,000 for bouts in defense of a European title, and $50,000 for bouts in defense a world title. *Id*. The Agreement was for at least three years, though Square Ring and Salita Promotions had the right to renew for two one-year periods, and if Troyanovsky became a world champion during the term, the Agreement automatically extended for his entire reign and two years thereafter. *See id.* at 2.

The Agreement contains a forum selection clause in which "[Troyanovsky] irrevocably submits … to the jurisdiction of the United States District Court, Northern District of Florida." *Id*. at 5. It also contains a choice of law provision, stating that the Agreement is to "be governed, construed and enforced in accordance with the substantive law of contracts of the State of Florida," and a service provision, stating that [Troyanovsky] consents to service in any "manner provided for the sending of notices in this Agreement." *See id.* at 5-6. The Agreement's notice provision, in turn, provides that:

> Any notice required or desired to be given hereunder shall be in writing and sent (i) postage prepaid by certified mail, return receipt requested, (ii) by e-mail or (iii) by confirmed facsimile, as addressed as follows:
>
> (b) To Fighter
> Eduard Trainosvky
> _____
> _____
> _____
> _____
> FAX: _____
> E-MAIL:_____

(the "Notice Provision"). ECF No. 13, Ex. A at 4-5.[5]

Square Ring and Salita Promotions worked with Vlad Hrunov, a Russian promoter, to help schedule bouts for Troyanovsky in the months after the Agreement was executed. *See* ECF No. 1 at 5-6. On March 10, 2013, Hrunov purchased Salita Promotion's interest in the Agreement. ECF No. 1 at 9; ECF No. 1, Ex. 2 at 1. Square Ring and Hrunov subsequently co-promoted Troyanovksy in various fights that year.[6] ECF No. 1 at 9-10. Notwithstanding the Agreement, Troyanovsky participated in a bout that Square Ring did not promote on May 30, 2014. *Id.* at 10. This prompted Square Ring to file suit against Troyanovsky on December 5, 2016 for breach of contract and breach of the implied covenant of good faith and fair dealing, seeking damages "believed to be in excess" of $250,000. *Id.* at 10-11. Square Ring served Troyanovsky by emailing him at "markbrat@mail.ru" that same day. *See* ECF No. 4 at 1.

[5] While the Complaint includes a copy of the Agreement listing Troyanovsky's email address on the appropriate line, *see* ECF No. 1, Ex. 1 at 3, Troyanovsky contends that this line is left blank in the version of the Agreement that he allegedly signed, *see* ECF No. 15 at 4-5. Because this issue is not dispositive for the reasons described herein, *see infra* at Pgs. 12-14, the Court assumes, for purposes of argument, that the version of the Agreement that Troyanovsky allegedly signed does not list Troyanovsky's email address in the Notice Provision.

[6] Troyanovsky competed in bouts on April 4, 2012, June 20, 2012, September 18, 2012, December 7, 2012, March 8, 2013, May 17, 2013, November 15, 2013, and December 21, 2013. *See* ECF No. 12 at 4-5; ECF No. 20, Ex. 9. The parties dispute whether Square Ring should get credit for promoting these bouts. Troyanovsky contends they were exclusively promoted by Hrunov while Square Ring maintains that it engaged Hrunov to work with it to promote these bouts. Troyanovsky competed in an additional eight bouts since December 23, 2014 – three of which were in defense of his IBF World Champion title. *See* ECF No. 20, Ex. 9.

Troyanovsky argues that this case should be dismissed because: (1) Troyanovsky was not authorized to effectuate service by email, (2) the Court lacks personal jurisdiction because he does not have the requisite contacts with the forum, (3) Russia is a more convenient forum for this dispute, and (4) Square Ring fails to state a claim for breach of contract due to his affirmative defenses.[7] Troyanovsky supports many of these positions by arguing that he did not sign the Agreement, which he says renders it invalid. Troyanovsky states in a declaration that, without his knowledge or consent, an acquaintance signed the Agreement and used his email address to send the Agreement to Dmitry Salita ("Salita"), the owner of Salita Promotions.[8] ECF No. 12 at 3. Troyanovsky states further that he realized a week later that the acquaintance had signed the Agreement and sent it to Salita, and immediately informed Salita. *Id.* Square Ring responds with evidence that: (1) Salita received the signed Agreement from Troyanovsky's email address,

[7] Troyanovsky specifically argues that Square Ring breached the Agreement first by failing to offer him the requisite number of bouts the Agreement requires and that Square Ring's breach of contract claim is barred by the statute of limitations. Square Ring responds that it offered Troyanovsky the requisite number of bouts, that the Agreement provides that Troyanovsky "waive[s]" and "release[s]" any purported breach that he did not provide Square Ring an opportunity to cure, *see* ECF No. 1, Ex. 1 at 5, and that Troyanovsky did not provide Square Ring an opportunity to cure its purported breach. Troyanovsky did not move to dismiss Square Ring's claim for breach of the implied covenant of good faith and fair dealing. *See* ECF No. 15 at 21-32 (discussing Square Ring's breach of contract claim and not its breach of the implied covenant of good faith and fair dealing claim).

[8] Troyanovsky does not identify this person, much less provide any evidence, other than his own declaration, that this person forged his signature.

"markbrat@mail.ru", ECF No. 18, Ex. 2, (2) Salita reviewed a draft of the Agreement with Troyanovsky and noted revisions Troyanovsky wanted to make, *see* ECF No. 20 at 5, 31, (3) Troyanovsky sent Salita an email from the same address suggesting that he would sign the Agreement, ECF No. 18, Ex. 1, (4) Troyanovksy never told Salita that his acquaintance improperly signed the Agreement on his behalf, ECF No. 18 at 4, and (5) Troyanovsky exchanged messages with Salita concerning the scheduling and promotion of bouts thereafter, ECF No. 18, Ex. 3.

Troyanovsky also argues that Wirt should be disqualified as Square Ring's counsel because Wirt is a fact witness who may testify to matters adverse to Square Ring's interests. This includes testimony Wirt may provide concerning (1) Square Ring's alleged failure to satisfy its obligations under the Agreement and (2) Wirt's alleged decision to "alter[]" the Agreement by filling Troyanovsky's email address on a blank line in the Agreement's notice provision. *See* ECF No. 15 at 35. Square Ring responds that it does not intend to call Wirt as a fact witness. Jones, Square Ring's president, also states in a declaration that when a fighter leaves his or her email address blank, Square Ring fills in this information on the fighter's behalf as a matter of course. *See* ECF No. 17 at 2.

II. LEGAL STANDARDS AND DISCUSSION

a. *Motion to Quash Service*

On a motion arguing that service was ineffective, or based on any other defect in personal jurisdiction, "in which no evidentiary hearing is held," the plaintiff must make a prima facie showing that jurisdiction exists. *Morris v. SSE, Inc.*, 843 F.2d 489, 492 (11th Cir. 1988); *Delong Equipment Co. v. Washington Mills Abrasive Co.*, 840 F.2d 843, 845 (11th Cir. 1988) (applying this legal standard to resolve an appeal concerning motions to dismiss for ineffective service of process, lack of personal jurisdiction, and improper venue). The plaintiff satisfies this burden if, based on the uncontradicted allegations in the Complaint and the available evidence, the plaintiff could survive a motion for directed verdict. *Morris*, 843 F.2d at 492; *see also Middlebrooks v. Hillcrest Foods, Inc.*, 256 F.3d 1241, 1246 (11th Cir. 2001) (explaining that a plaintiff survives a motion for directed verdict unless "the evidence is so overwhelmingly in favor of the moving party that a reasonable jury could not arrive at a contrary verdict"). The Court must also view any conflicting evidence and make all reasonable inferences in favor of the plaintiff, *id.*, "particularly when the jurisdictional questions are apparently intertwined with the merits of the case," *Delong*, 840 F.2d at 845 (quoting *Psychological Resources Support Systems*, 624 F.Supp. at 486-87 (N.D. Ga. 1983)).

Troyanovksy argues that service is ineffective because Square Ring did not comply with Federal Rule of Civil Procedure 4(f), which provides that service on an internationally-based defendant may occur:

> (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
>
> (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
>
> (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
> (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
> (C) unless prohibited by the foreign country's law, by:
>
> (i) delivering a copy of the summons and of the complaint to the individual personally; or
> (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
>
> (3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4. Rule 4(f) does not create a hierarchy of preferred methods of service. *See Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014-15 (9th Cir. 2002) ("No such requirement is found in the Rule's text, implied by its structure, or even hinted at in the advisory committee notes."). Rather, each method is an

"equal means" to enable service of process on an international defendant.[9] *Id.* at 1016.

Troyanovsky argues, and Square Ring does not dispute, that Square Ring did not properly effectuate service under Rule 4(f)(1) or 4(f)(2). Square Ring, instead, argues that it complied with Federal Rule 4(f)(3) by serving Troyanovsky by email.[10] Rule 4(f)(3) anticipates that, before a party may serve an internationally-based defendant by non-traditional means, that party must seek leave of court. *See* Fed. R. Civ. P. 4(f)(3) (allowing service under this prong only "as the court orders"). Square Ring did not obtain a court order before serving Troyanovsky by email and, as a result, Square Ring did not serve Troyanovksy through a "means not prohibited by international agreement, as the court orders" under Rule 4(f)(3).[11]

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[9] Troyanovsky incorrectly argues that courts can authorize an alternative means of service under Rule 4(f)(3) only if the means under Rule 4(f)(1)-(2) were not available. *See* ECF No. 15 at 15.

[10] Without specifically invoking Rule 4(f)(3), Square Ring argues that the Court should find that service is proper because Troyanovsky "already has notice and has appeared in this case." ECF No. 16 at 31. For purposes of argument, the Court construes this as an attempt to invoke Rule 4(f)(3).

[11] The Court likely would have allowed Square Ring to serve Troyanovsky by email if Square Ring had moved to do so beforehand. Rule 4(f)(3) authorizes a district court to order an alternate method for service to be effected on intentionally-based defendants, provided it is not prohibited by international agreement and is reasonably calculated to give notice to the defendants consistent with their constitutional due-process rights. *United States Commodity Futures Trading Comm'n v. Rubio*, No. 12-cv-22129, 2012 WL 3614360, at *2 (S.D. Fla. Aug. 21, 2012). Courts have consistently allowed plaintiffs to serve Russia-based defendants by email because "Russia has not explicitly objected to service by electronic means." *Fisher v. Petr Konchalovsky Foundation*, No. 15-cv-9831(AJN), 2016 WL 1047394, at *1 (S.D.N.Y. 2016) (citing *AMTO, LLC*

Notwithstanding, Troyanovsky incorrectly concludes that Square Ring failed to effectuate service by serving the summons via email. It is well established that "parties … may agree in advance to a method of service not otherwise permitted by Rule 4." *Trump v. Dagostino*, No. 8:09-cv-2460-T-27EAJ, 2010 WL 3365342, at *1 (M.D. Fla. Aug. 24, 2010); *accord Nat'l Equip. Rental Ltd. v. Szukhent*, 375 U.S. 311, 315–16 (1964) ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice altogether."). Here, the service provision states that Troyanovsky consents to service in any "manner provided for the sending of notices in this Agreement." ECF No. 1, Ex. 1 at 5. The notice provision, in turn, provides for notice by email:

> Any notice required or desired to be given hereunder shall be in writing and sent (i) postage prepaid by certified mail, return receipt requested, (ii) by e-mail or (iii) by confirmed facsimile, as addressed as follows:
>
> (b) To Fighter
> Eduard Trainosvky
> _____
> _____
> _____
> _____
> FAX: _____
> E-MAIL:_____

v. Bedford Asset Mgmt., LLC, No. 14-CV-9913/KMK, 2015 WL 3457452, at *7 (S.D.N.Y. June 1, 2015)).

ECF No. 13, Ex. A at 5-6. Troyanovsky's status as a foreign defendant does not exempt him from accepting service under the service and notice provisions discussed above. *See Russell Brands, LLC v. GVD Intern. Trading, SA*, 282 F.R.D. 21, 24 (D. Mass. 2012) (considering whether a Brazilian corporation was properly served under Rule 4(f) only after determining that "the parties do not appear to have sufficiently provided in this Agreement for the service of complaints."); *Mastec Latin America v. Inepar S/A Industrias E Construcoes*, No. 03 CIV 9892(GBD), 2004 WL 1574732, at *2-*3 (S.D.N.Y. July 13, 2004) (finding that a Brazilian corporation "waived its right to other service of process by entering into a contract in which it agreed to alternative methods of service").

Troyanovsky disputes that the Agreement provides for service by email because the Agreement does not specify the email address to which notice is to be directed.[12] However, as Troyanovsky acknowledges, blanks in a contract will make it unenforceable only if the missing information pertains to "'an essential term.'" ECF No. 15 at 13 (quoting *CSX Transp., Inc. v. Prof'l Transp., Inc.*, 467 F.Supp.2d 1333, 1341 (M.D. Fla. 2006)). The parties agreed on the essential terms of the provision at issue here: Troyanovksy would accept service by certified mail, fax, or

[12] Troyanovsky also argues that this provision is ineffective because it misspells his name. The Court disagrees. A provision is not unenforceable because of a typo.

email.[13] *See* ECF No. 13, Ex. A at 5-6, 8 (providing that Troyanovsky agreed to accept service by any means provided for sending notice and that notice could be given by certified mail, fax, or email).

Where the parties have agreed on the essential terms, courts may fill gaps that the parties have left blank if "'it is possible to reach a fair and just result.'" *Innkeepers Intern., Inc. v. McCoy Motels, Ltd.*, 324 So.2d 676, 678-79 (Fla. 4th DCA 1975) (quoting Professor Corbin, Corbin on Contracts, Vol. 1 § 95, 400 (1963)). Under Florida's Uniform Commercial Code, service would be proper despite a missing email address if it was sent to an address that was "reasonable under the circumstances." *See* Fla. Stat. § 671.201(39) (defining "'[s]end,' in connection with a writing, record, or notice," to mean delivery "to an address specified thereon or otherwise agreed *or, if there be none, to any address reasonable under the circumstances*") (emphasis added). Even though Florida's UCC does not govern this dispute, the Court sees no reason not to follow the same approach here. Square Ring offers undisputed evidence that Troyanovsky sent Salita emails concerning the Agreement using his "markbrat@mail.ru" account. *See* ECF No. 18, Ex. 1. It was

[13] Troyanovksy argues, without explanation, that Troyanovsky's email address is an essential term of the Agreement. The Court disagrees. The missing email address does not appear to be anything other than an oversight. *See Spectrum Holobyte California, Inc. v. Stealy*, 885 F.Supp. 138, 139-40 (D. Md. 1995) (providing, in a different procedural context, that notice was provided under the contract where there was no indication "that the absence of an address in the Option Agreement was anything other than an oversight").

reasonable for Square Ring to serve the summons on Troyanovsky by sending it to that same email address.

Troyanovsky additionally argues that service is ineffective because he did not sign the Agreement and is therefore not bound by its terms. The Court disagrees. In response to Troyanovsky's assertion that he did not sign the Agreement, Square Ring offers evidence that: (1) Salita received the signed Agreement from Troyanovsky's email address, ECF No. 18, Ex. 2, (2) Salita reviewed a draft of the Agreement with Troyanovsky, *see* ECF No. 20 at 5, 31, (3) Troyanovsky had sent Salita an email from the same email address indicating that he would sign the Agreement, ECF No. 18, Ex. 1, (4) Troyanovsky never told Salita that he did not sign the Agreement, ECF No. 18 at 4, and (5) Troyanovsky asked permission to participate in certain fights, ECF No. 18, Ex. 3; that is, he acted in a manner consistent with someone under contract. Viewing this evidence in the light most favorable to Square Ring, there is a question of fact on whether Troyanovsky signed the Agreement. *See Delong*, 840 F.2d at 845 (instructing courts to view conflicting evidence in the plaintiff's favor, "particularly when the jurisdictional questions are … intertwined with the merits of the case") (marks omitted). The Court therefore assumes that Troyanovsky signed

the Agreement when considering Troyanovsky's motion to quash service and motion to dismiss for lack of personal jurisdiction.[14]

b. ***Motion to Dismiss for Lack of Personal Jurisdiction***

The parties dispute whether the Court has personal jurisdiction over Troyanovsky, a Russian citizen who has never visited Florida. A federal district court in Florida can exercise personal jurisdiction over a non-resident defendant to the same extent as a Florida state court where "the exercise is consistent with federal due process requirements." *Licciardello v. Lovelady*, 544 F.3d 1280, 1283 (11th Cir.

[14] The Court is mindful that, in disputes concerning subject matter jurisdiction, the Eleventh Circuit has warned that courts are to avoid resolving factual disputes that simultaneously attack the Court's jurisdiction and the merits of the claim at issue. *See Eaton v. Dorchester Development, Inc.*, 692 F.2d 727, 733 (11th Cir. 1982) ("Where the jurisdictional issues are intertwined with the substantive merits, the jurisdictional issues should be referred to the merits, for it is impossible to decide one without the other.") (marks omitted); *see also Amerifactors Financial Group, LLC v. Enbridge, Inc.*, No. 6:13-cv-1446-Orl-22TBS, 2013 WL 5954777, at *5 (M.D. Fla. Nov. 7, 2013) ("Arguably, challenges to personal jurisdiction that also implicate the merits should be treated similarly."). In finding that Square Ring has made a prima facie showing that Troyanovsky signed the Agreement, the Court has not resolved any disputed factual issues germane to Square Ring's breach of contract claim. This is because, in making this determination, the Court was required to view all uncontradicted allegations in the complaint as true and view any evidence in the plaintiff's favor. *See Morris v. SSE, Inc.*, 843 F.2d 489, 492 (11th Cir. 1988). A jury deciding the merits of this case would not be required to do the same. *See Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554 (1990) (citing this distinction to explain why a court dismissing a case under Rule 41(b), which calls on the court to sit as the fact finder, might not direct a verdict in favor of defendant under Rule 50(a), which requires that all inferences are made in favor of the plaintiff); *see also Amerifactors*, 2013 WL 5954777, at *5 ("Requiring only a prima facie showing for facts relevant to both personal jurisdiction and the merits avoids unnecessary and premature adjudication and moots difficult questions surrounding the applicability of law-of-the-case and preclusion doctrines to jurisdictional rulings.") (citing *Jetco Electronics Industries, Inc. v. Gardiner*, 473 F.2d 1228, 1232 (5th Cir. 1972), abrogated on other grounds by *United States v. Cooper*, 135 F.3d 960 (5th Cir. 1998)); *Val Leasing, Inc. v. Hutson*, 674 F.Supp. 53, 55 (D. Mass. 1987) ("[T]here is nothing inconsistent between the ruling … that Val Leasing had put forward a *prima facie* case for the exercise of personal jurisdiction, and the subsequent verdict … after a trial on the merits.").

2008). Under this analysis, the Court must ensure that its exercise of jurisdiction satisfies Florida's Long-Arm statute and comports with due process. *PVC Windoors, Inc. v. Babbitbay Beach Const., N.V.*, 598 F.3d 802, 807 (11th Cir. 2010). Florida's Long-Arm statute, Fla. Stat. § 48.193(1)(a), authorizes a Florida court to exercise jurisdiction over a non-resident if he or she entered into a contract that complies with Fla. Stat. §§ 685.101-.102.[15] Sections 685.101-.102, in turn, allow the Court to exercise jurisdiction where the contract at issue:

> (1) include[s] a choice of law provision designating Florida Law as the governing law, (2) include[s] a provision whereby the non-resident agrees to submit to the jurisdiction of the courts of Florida, (3) involve[s] consideration of not less than $250,000, (4) [does] not violate the United States Constitution, and (5) … [either] bear[s] a substantial [and] reasonable relation to Florida or [was entered into by at least one Florida resident or citizen].

Jetbroadband WV, LLC v. MasTec N. Am., Inc., 13 So.3d 159, 162 (Fla. 3d DCA 2009) (summarizing the requirements in Fla. Stat. §§ 685.101-.102).[16] The

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[15] *See* Fla. Stat. § 48.192(1)(a) (allowing for jurisdiction where the contract complies with Fla. Stat. § 685.102); Fla. Stat. § 685.102 (requiring that the contract comply with Fla. Stat. § 685.101).

[16] In *Jetbroadband*, the court found that Section 685.101 applies to contracts that *either* bear a substantial *or* reasonable relation to this state. 13 So.3d 159, 162 (Fla. 3d DCA 2009). The Court disagrees with *Jetbroadband* to this extent and, instead, finds that Section 685.101 applies to contracts that bear *both* a substantial *and* reasonable relation to the state. This interpretation is apparent in the text of the statute. Section 685.101 provides that it *does not* apply to contracts that *do not* bear *either* "a substantial or reasonable relation to this state." Fla. Stat. § 685.101. This means that Section 685.101 would not apply to (1) a contract lacking a "substantial" relation to the state or (2) one lacking a "reasonable" relation to the state. As a result, in order for Section 685.101 to apply to a contract under this clause, the contract must bear *both* a substantial *and* reasonable relation to the state. *Cf. Evanston v. Insurance Co. v. Gaddis Corp.*, No. 15-civ-60163, 2015 WL 2070386, at *2 (S.D. Fla. May 4, 2015) ("Plaintiff seeks a declaration that it has *no* duty

Agreement must also (6) not fall within one of statute's safe harbor exemptions, which include contracts "[f]or labor or employment." *See* Fla. Stat. § 685.101(2)(b) (listing all exempt contracts). The Court determines whether Square Ring has satisfied each element below, accepting the allegations in Square Ring's complaint as true, to the extent they are uncontroverted by evidence, and viewing the evidence in Square Ring's favor. *See Morris*, 843 F.2d at 492.

i. ***Requirement Nos. 1 & 2: the Florida forum selection clause and choice of law provision***

Troyanovsky does not dispute that the Agreement contains a choice of law provision, under which Florida law governs related disputes between the parties (Requirement No. 1), or that the Agreement contains a forum selection clause, under which Troyanovsky purports to "irrevocably submit[] … to the jurisdiction of the United States District Court, Northern District of Florida" (Requirement No. 2). *See* ECF Nos. 1 at 1; 1-1 at 5 (Square Ring alleging it attached a true and correct copy of the Agreement, which contains a Florida forum selection clause and choice of law provision). Instead, Troyanovsky argues that these provisions are invalid because he did not sign the Agreement. As stated, the Court assumes that Troyanovsky signed the Agreement to resolve this motion. *See supra* at Pgs. 14-15.

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to defend *or* indemnify in the underlying action. The common-sense contrapositive of this is that if Plaintiff loses, it *has* a duty to defend *and* indemnify the insureds.").

Troyanovsky's contention that an acquaintance fraudulently signed the Agreement would not invalidate either provision, regardless. A party seeking to invalidate a forum selection clause based on fraud must show that "the inclusion of [the forum-selection] clause in the contract was the product of fraud or coercion" and not simply that the entire contract was based on fraud. *See Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.14 (1974). Here, nothing indicates that the forum-selection clause, in particular, was a product of fraud. *See Aviation One of Florida, Inc.*, __ F. App'x __, 2018 WL 359998, at *8 (11th Cir. Jan. 11, 2018) ("Aviation One's general assertions of fraud are insufficient to invalidate the forum-selection clause since Aviation one does not allege that the clause itself was included in the agreement because of fraud."). The record, instead, indicates that Salita reviewed a draft of the Agreement with Troyanovsky that included the forum selection clause. *See* ECF No. 20 at 5, 31. The forum selection clause is also easy to read and identify. *See* ECF No. 20, Ex. 7 (the version of the Agreement sent to Troyanovsky for review). This is because: (1) the forum-selection clause unequivocally provides that Troyanovsky "irrevocably submits … to the jurisdiction of the United States District Court of the Northern District of Florida" in the first sentence, (2) the forum selection clause was written in the same size text as the surrounding paragraphs, (3) the clause only spanned two paragraphs and was placed under a bolded header, titled "**XX. FORUM SELECTION/GOVERNING LAW**," and (4) the Agreement, in total,

was only six pages long. *See Krenkel v. Kerzner Int'l Hotels Ltd.*, 579 F.3d 1279, 1282 (11th Cir. 2009) (rejecting an argument that the forum-selection clause was invalid because it was not reasonably communicated to the plaintiff on substantially similar grounds). The forum selection clause is presumptively valid and enforceable as a result. *See Aviation One*, 2018 WL 359998, at *10 (explaining that forum-selection clauses are "presumptively valid and enforceable" until there is a "strong showing" otherwise).

And, where a choice of law provision's validity is in doubt, courts have "constructively split the difference between blindly adhering to [the] choice-of-law provision (although it may not otherwise be in effect) and wholly ignoring it (although it may otherwise control the dispute)" by applying the test articulated in Section 187(2) of the Restatement. *See TSI USA, LLC v. Uber Technologies, Inc.*, No. 3:16-cv-2177-L, 2017 WL 106835, at *3 (N.D. Tex. Jan. 11, 2017); *Barnett v. DynCorp International, L.L.C.*, 831 F.3d 296, 302 (5th Cir. 2016). Section 187(2) provides that, on an issue the parties "could not have resolved by an explicit provision," the law of the state chosen by the parties will apply unless:

> (a) The chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and

> which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

Restat. 2d. of Conflict of Laws § 187(2) (2nd 1988).

Under this test, the Agreement's choice of law provision applies to this dispute. Florida has a "substantial relationship to one of the parties," Square Ring, whose principal place of business is in Florida. *See Restatement (Second) of Conflicts* § 187(2)(b) cmt. f (Am. Law Inst. 1971) (explaining that "the state of the chosen law" has a "substantial relationship … where one of the parties is domiciled or has his principal place of business").[17] And, even assuming Russia has a materially greater interest in this dispute than Florida, there is no indication that Florida law would be contrary to Russian fundamental policy. The only potential distinction between Florida and Russian law raised in the parties' briefs concerns the different statute of limitations that might apply to this dispute. However, the fact that two forums have different statute of limitations periods does not mean that there is a fundamental policy conflict between the laws of those forums. *See ABF Capital Corp. v. Osley*, 414 F.3d 1061, 1066 (9th Cir. 2005) (finding no fundamental policy conflict between California's four-year statute of limitations period for breach of

[17] *See also Arch Ins. Co. v. NCL (Bahamas), Ltd.*, No. 11-20577-CIV, 2012 4896045, at *3 (S.D. Fla. Oct. 15, 2012); *St. Paul Fire & Marine Ins. Co. v. Board of Com'rs of Port of New Orleans*, 418 F. App'x 305, 309 (5th Cir. 2011); *TSI USA, LLC v. Uber Technologies, Inc.*, No. 3:16-cv-2177-L, 2017 WL 106835, at *4 (N.D. Tex. Jan. 11, 2017) (each finding that the state in the choice of law provision had a "substantial relationship to the parties," at least in part, because one of the parties had its principal place of business in that state).

contract claims and New York's six-year statute of limitations period for such claims). In any event, as discussed below, Square Ring has timely raised its claims even assuming Russia's statute of limitations applies to this dispute, making any potential fundamental policy distinction on this ground moot.

Requirement Nos. 1 & 2 are satisfied for these reasons.

ii. ***Requirement No. 3: The $250,000 transactional amount***

Troyanovsky argues in one sentence in his motion, without explanation, that the Agreement's "choice of forum clause fails under Fla. Stat. §§ 685.102 and 685.101 because the $250,000 transactional amount is not met." *See* ECF No. 15 at 15. While Troyanovsky later attempts to support this argument in response to the Court's order directing the parties to address the need for an evidentiary hearing, this attempt comes too late. Under Federal Rule of Civil Procedure 7(b)(1), Troyanovsky was required to "state with particularity the grounds for seeking the order" in his motion. Fed. R. Civ. P. 7(b)(1); *see also Brown v. CitiMortgage, Inc.*, 817 F.Supp.2d 1328, 1332 (S.D. Ala. 2011) (stating that parties cannot raise new issues in reply briefs). Because Troyanovsky could and should have adequately supported his argument then, he has waived his right to challenge personal jurisdiction on this ground.[18] *See McGowan v. AME Financial Corp.*, No. 1:08-cv-896-BBM-LTW,

[18] Troyanovsky's attempt to bolster this argument also violates the Local Rules. If Troyanovsky wanted to address this issue, he should have moved for leave to file a reply to Square Ring's opposition and explained to the Court what "extraordinary circumstances" justified one in

2009 WL 10666307 (N.D. Ga. Dec. 18, 2009) (finding defendant's argument, which consisted of "conclusory statements devoid of explanatory reasoning," waived because Plaintiff "had no real notice" of the argument); *accord Taul ex rel. United States v. Nagel Enterprises, Inc.*, No. 2:14-cv-61-VEH, 2016 WL 304581, at *10 (N.D. Ala. Jan. 25, 2016); *Donahay v. Palm Beach Tours & Transp., Inc.*, No. 06-61279, 2007 WL 1119206, at *2 (S.D. Fla. Apr. 16, 2007) (dropping cases).[19]

Notwithstanding Troyanovsky's waiver, the Agreement appears to satisfy the $250,000 statutory requirement, as Square Ring alleges. *See* ECF No. 1 at 10-11. Section 685.101(1) provides that, to satisfy the Florida Long-Arm statute, the

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this case. *See* N.D. Fla. Local Rule 7.1(I) (explaining that a party is ordinarily not entitled to a reply brief on motions, other than a motion for summary judgment, but that the Court may grant a party leave to do so "in extraordinary circumstances."). It was not proper for him to file what amounted to a reply in response to the Court's request for briefing on the need for an evidentiary hearing. He has also waived this argument for this reason. *See Gallon v. Harbor Freight Tools USA, Inc.*, No. 8:17-cv-520-T-24 MAP, 2017 WL 1788641, at *1 n.1 (M.D. Fla. May 5, 2017) ("The Court would note that Plaintiff also filed a reply (Doc. 23) to Defendant's response without seeking leave of Court as required by Local Rule 3.01(c). The Court will therefore not consider the arguments made therein."); *Ventures, Inc. v. Palaxar Group, LLC*, No. 6:07-cv-1788-Orl-28GJK, 2010 WL 11507188, at *1 (M.D. Fla. Apr. 29, 2010) ("Estes and Campbell, without seeking leave of Court, filed a reply to the Response. Doc. No. 218. The reply fails to comply with Local Rule 3.01(c) and, therefore, the Court will not consider it. The Clerk is directed to STRIKE the reply."); *see also U.S. v. Degayner*, No. 6:06-cv-1462-Orl-19KRS, 2008 WL 4613084, at *6 (M.D. Fla. Oct. 16, 2008) (denying a motion to strike where it was "nothing more than a transparent attempt to file a reply brief without seeking leave of the Court").

[19] *See also In re Egidi*, 571 F.3d 1156, 1163 (11th Cir. 2009) (finding an argument that "was not fully and fairly raised in BOA's initial brief" waived because allowing otherwise would "unfairly impede[] the [the other party's] response"); *United States v. Moore*, 443 F.3d 790, 794 n.4 (11th Cir. 2006) (noting that defendant waived her right to challenge personal jurisdiction based on the "argu[ment] that the summons" was defective because "she failed to raise it prior to the revocation hearing" and because "unlike subject matter jurisdiction, objections to personal jurisdiction over a particular defendant may be waived.").

contract at issue must be "in consideration of or relating to any obligation arising out of a transaction involving in the aggregate not less than $250,000." Fla. Stat. § 685.101(1). Florida courts give a "somewhat relaxed reading" to this requirement. *Steffan v. Carnival Corp.*, No. 16-24295-CIV-ALTONAGA/Goodman, 2017 WL 4182203, at *6 (S.D. Fla. Aug. 1, 2017). "[E]ven if the parties to an agreement do not exchange at least $250,000, section 685.101 may still apply if an aggregate of more than $250,000 arises from transactions related to the contract." *Upofloor Americas, Inc. v. S Squared Sustainable Surfaces, LLC*, 616-cv-179ORL37DCI, 2016 WL 5933422, at *6 (M.D. Fla. Oct. 12, 2016) (noting that Section 685.101 requires the agreement to be either "in consideration of *or relating to* any obligation arising out of a transaction involving not less than $250,000") (emphasis in *Upofloor*). Under the Agreement, Troyanovsky is entitled to "not less" than: $5,000 for a bout scheduled for eight rounds or less, $10,000 for a bout scheduled for more than eight rounds, and $50,000 for a bout in defense of a world title. The record shows that Troyanovsky has fought in at least sixteen (16) bouts since the Agreement was executed in September of 2011,[20] *see* ECF No. 20, Ex. 9, which the Court

[20] Under Square Ring's theory of the case, the Agreement governs Troyanovsky's bouts from September 2011 to as late as December 3, 2018. Section IV of the Agreement provides that it governs for "an initial term of three (3) years," though the Promoter may have "two (2) separate and distinct options to renew" for "two (2) one (1) year terms" and, in the event the fighter is recognized as a world champion during the term, "the term of this agreement shall be extended for the entire time that Fighter is so recognized plus a period of 2 years following the date on which" he stops being world champion. *See* ECF No. 1, Ex. 1 at 2. This means that the initial term of the Agreement extended to September 2014, Square Ring and Hrunov had an option to extend until

considers to determine whether the $250,000 requirement is satisfied.[21] Three of these bouts were in defense of a world championship, which would have netted Troyanovsky at least $150,000 under the Agreement. *See id*. The other remaining thirteen (13) bouts would have netted Troyanovsky "not less" than approximately $70,000 to $130,000.[22] In light of (1) the value of the bouts that Troyanovsky participated in as of the date Square Ring filed its Response ($220,000 to $280,000, at a minimum), (2) any bouts that Troyanovsky has or may have already participated in since then, and (3) Troyanovsky's failure to cite evidence indicating that the

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September 2016, and because Troyanovsky was a world champion from November 4, 2015 to December 3, 2016, the Agreement potentially governs until December 3, 2018.

[21] Square Ring did not promote each of these bouts. The Court nevertheless considers them to determine whether the $250,000 requirement is satisfied because they reflect how much money Troyanovsky could have made under the Promotional Agreement. *See Upofloor Americas, Inc. v. S Squared Sustainable Surfaces, LLC*, 616-cv-179ORL37DCI, 2016 WL 5933422, at *6 (M.D. Fla. Oct. 12, 2016) (finding the $250,000 requirement is satisfied based on the amount of "projected" sales, even though these sales were never made).

[22] The record contains Troyanovsky's boxing record, including the round in which each bout concluded. However, Troyanovsky has a knack for finishing his opponents by knockout ("KO") or technical knockout ("TKO") before the bout is scheduled to end. The record shows that, in 12 of his 13 non-title defense bouts (the "Quick Finish Bouts"), Troyanovsky either finished his opponent by KO or TKO in or before the eighth round. ECF No. 20, Ex. 9. He finished his opponent in the thirteenth bout by TKO in the tenth round (the "Slow Finish Bout"). *Id.* As a result, the Court is unable to establish with certainty how many rounds each bout was scheduled to last and, in turn, how much money Troyanovsky would have been entitled to under the Agreement for these bouts. The Court, however, concludes that, under the Agreement, Troyanovsky would stand to receive at least $70,000, assuming that each of the 12 Quick Finish Bouts was scheduled to last only eight rounds or less (12 x $5,000 for the 12 Quick Finish Bouts + $10,000 for the single Slow Finish Bout). It also concludes that, under the Agreement, Troyanovsky would stand to receive up to $130,000, assuming that each of the 12 Quick Finish Bouts was scheduled to last more than eight rounds (12 x $10,000 for the 12 Quick Finish Bouts + $10,000 for the single Slow Finish Bout).

$250,000 requirement is not satisfied, the Court credits Square Ring's contention that the aggregate transactions relating to the Agreement equal or exceed $250,000.[23]

iii. ***Requirement No. 4: Due Process Clause of the United States Constitution***

Troyanovsky argues that he does not have sufficient minimum contacts with the forum, as required for due process under the United States Constitution, because (1) the Agreement is unrelated to any transaction or business in Florida, (2) the Agreement does not contemplate any business in Florida, and (3) Troyanovsky has not stepped foot in Florida. The Court disagrees.

The Due Process Clause "requires that the defendant have minimum contacts with the forum and that the exercise of jurisdiction not offend traditional notions of fair play and substantial justice." *Siouss Indus. Corp. v. Eurisol*, 488 F.3d 922, 925 (11th Cir. 2007) (internal quotation marks omitted). Personal jurisdiction can be

[23] The Court acknowledges that Square Ring's evidence does not definitively show that the transactions under the Agreement will equal or exceed $250,000. However, Square Ring is not required to make a definitive showing on the jurisdictional facts at issue. *See Morris*, 843 F.2d at 492 (explaining that, where no evidentiary was held, the plaintiff must only make a prima facie showing based on any uncontradicted allegations in the complaint and any evidence in the record, which must be viewed in the plaintiff's favor). This is particularly true here because Florida courts give a "somewhat relaxed reading" to the $250,000 requirement. *Steffan v. Carnival Corp.*, No. 16-24295-CIV-ALTONAGA/Goodman, 2017 WL 4182203, at *6 (S.D. Fla. Aug. 1, 2017). Consistently, another federal district court in this circuit has found that a contract between a cruise ship company and a vendor responsible for planning "shore excursions" for the company "almost certainly satisfied" the $250,000 requirement "given the number of vessels involved (at least 20), the number of excursions, and the number of years the contract ha[d] been in effect (11+)." *Stefan*, 2017 WL 4182203, at *2 & *6 (marks omitted); *see also Upofloor*, 2016 WL 5933422, at *6 (finding that the $250,000 requirement was satisfied based on projected sales that were never made).

general or specific. *See Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S.Ct. 1773, 1779-80 (2017). Here, Square Ring relies solely on specific jurisdiction.[24] Specific jurisdiction exists where the defendant's "suit-related conduct … creates a substantial connection with the forum State." *Walden v. Fiore*, 134 S.Ct. 1115, 1121 (2014). This requirement ensures that the defendant has "fair warning" that he is subjected to the jurisdiction of a particular forum. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 (1985). "Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this 'fair warning' requirement is satisfied if the defendant has 'purposely directed' his activities at the residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities." *Burger King*, 471 U.S. at 472 (quotations and citations omitted). However, where the parties have agreed to a valid forum selection clause,[25] the "enforcement [of that clause]

[24] General jurisdiction applies where a party's contacts with the forum are so strong that the Court would have personal jurisdiction over that defendant over any claim, even if it arose in a different state. *See Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S.Ct. 1773, 1780 (2017) (explaining that "the paradigm forum for the exercise of general jurisdiction is the individual's domicile").

[25] Troyanovsky challenges the validity of the forum selection clause based on his contention that he did not sign the Agreement and not on any other ground. *See* ECF No. 15 at 21-22 (contending that Square Ring cannot rely on the forum selection clause to establish personal jurisdiction because "it was actually Defendant's acquaintance who signed the agreement, and then emailed it to Salita from Defendant's email account"). However, as stated, the Court assumes that Troyanovsky signed the Agreement for purposes of this motion. *See supra* at Pgs. 14-15; *see also supra* at Part II(b)(i) (explaining why the forum selection clause is presumptively valid, regardless).

does not offend due process." *Id.* at 472 n.14.[26] This is particularly true where the contract at issue contains a choice of law provision designating that the law of the forum governs. *See id.* at 481-82. This is because, by agreeing that contractual disputes will be heard in a particular forum and that the forum's substantive law governs, the non-resident has deliberately affiliated with the forum state and can reasonably anticipate that a suit concerning the dispute will be tried in that forum. *See Burger King*, 471 U.S. at 472 n.14, 481-82 (explaining that enforcing a forum selection clause does not offend due process and that a choice of law provision "reinforced [the defendant's] deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there"); *see also Aviation One*, 2018 WL 359998, at *8 (explaining that the South Africa forum selection provision and choice of law clause "indicat[e] that Airborne did deliberately affiliate with [South Africa] and did not reasonably anticipate being haled into court in the United States based on a dispute arising from the policies.").

[26] *See also Alexander Proudfoot Co. World Headquarters v. Thayer*, 877 F.2d 912, 921 (11th Cir. 1989) ("As the Supreme Court noted in *Burger King*, the due process analysis is unnecessary where a nonresident has consented to suit in a forum."); *American Steel Bldg. Co., Inc. v. Davidson & Richardson Const. Co.*, 847 F.2d 1519, 1521 n.2 (11th Cir. 1988) ("Davidson consented to the personal jurisdiction of the Texas court through the forum-selection provision of the contract, and the enforcement of such a provision does not offend due process so long as it is 'freely negotiated' and not 'unreasonable and unjust'"); *TruServ Corp v. Flegles, Inc.*, 419 F.3d 584, 589 (7th Cir. 2005) (rejecting the plaintiff's argument that "she does not have sufficient minimum contacts with the state" because the contract contained "a valid forum selection clause," which establishes minimum contacts "even standing alone"); *Dominum Austin Partners, L.L.C. v. Emerson*, 248 F.3d 720, 726 (8th Cir. 2001) ("Due process is satisfied when a defendant … enter[s] into a contract that contains a valid forum selection clause.").

In this case, the Agreement contains a forum selection clause, stating that "[Troyanovsky] irrevocably submits … to the jurisdiction of the United States District Court, Northern District of Florida," and a choice of law provision stating that the Agreement is to "be governed, construed and enforced in accordance with the substantive law of contracts of the State of Florida."[27] *See* ECF No. 1, Ex. 1 at 5-6. These provisions "indicat[e] that [Troyanovsky] … deliberately affiliate[d] with the forum" and reasonably anticipated that a suit concerning the Agreement would be litigated in this district. *See Aviation One*, 2018 WL 359998, at *8; *Burger King*, 471 U.S. at 472 n.14, 481-82. Due process is satisfied as a result, notwithstanding Troyanovsky's limited contacts with the forum apart from the Agreement's Florida forum selection clause and choice of law provision. *See Burger King*, 471 U.S. at 472 n.14 (explaining that the enforcement of a forum selection clause will not offend due process); *supra* footnote 26.

iv. ***Requirement No. 5: Substantial and reasonable relation to Florida/ Florida resident or citizen.***

Troyanovsky also argues that he does not have the minimum contacts that the Florida Long-Arm Statute requires. Here too, the Court disagrees. As stated, the Florida Long-Arm statute authorizes a Florida court to exercise jurisdiction over a

[27] The choice of law provision also states that "it is in the interest of both parties to rely upon Florida law to [resolve] any disputes they may have" ECF No. 1, Ex. 1 at 5-6.

non-resident if the non-resident "[e]nter[ed] into a contract that complies with" Fla Stat. §§ 685.101-.102. Under these sections, because the Agreement contains a Florida forum selection clause and choice of law provision, the Court can exercise jurisdiction over Troyanovsky if the Agreement *either* "bears a substantial [and] reasonable relation to Florida" *or* at least one of the parties is a Florida resident or citizen.[28] *See* Fla Stat. §§ 685.101-.102; *see also supra* footnote 16 (explaining why the requirement is "substantial and reasonable" not "substantial or reasonable"). In this case, the Agreement was signed by a Florida resident, Square Ring, whose principal place of business is in the state, ECF Nos. 1 at 1; 17 at 1; 20 at 2. *See Jetbroadband*, 13 So.3d at 162 (explaining that a business satisfies Section 685.101-.102's residency/citizenship requirement where it "is incorporated or organized under the laws of Florida or maintains a place of business in Florida"). The Florida Long-Arm Statute's minimum contacts requirement is satisfied as a result.[29]

[28] These statutes also contain other requirements, which the Court discusses in other sections of the Order; these requirements do not concern the parties' contacts with the forum.

[29] Square Ring suggests that courts necessarily have personal jurisdiction when the parties have agreed to a forum selection clause. *See* ECF No. 16 at 21-22 (criticizing Troyanovsky's argument that a forum selection clause does not independently establish minimum contacts under Florida law because a case on which he relied "failed to address the Supreme Court's guidance" in *Burger King*). The Court disagrees. *Burger King* establishes that, by agreeing to a forum selection clause, a party has sufficient contacts to satisfy what is minimally required by the due process clause of the United States Constitution. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-73 & n.14 (1985) (discussing whether minimum contacts are satisfied to the extent required by the due process clause). A state, however, may provide *more* due process protections than what is minimally required for federal due process. *See Bracy v. Gramley*, 520 U.S. 899, 904 (1997) ("the Due Process Clause of the Fourteenth Amendment establishes a constitutional floor, not a uniform standard."); *PVC Windoors, Inc. v. Babbitbay Beach Const., N.V.*, 598 F.3d 802,

Although Sections 685.101-.102 do not include any such requirement, Troyanovsky insists that the Court can exercise personal jurisdiction over him only if he has a connection to Florida separate and apart from the Agreement's forum selection clause. In support of this position, Troyanovsky relies on *Hamilton v. Hamilton*, 142 So.3d 969 (Fla. 4th DCA 2014), which, in turn, relies on the Florida Supreme Court's holding in *McRae v. J.D./M.D., Inc.*, 511 So.2d 540 (Fla. 1987).[30] In *McRae*, the Florida Supreme Court found personal jurisdiction lacking where neither the defendant nor the contract at issue had sufficient ties to the state. 511 So.2d at 543. While the parties in *McRae* agreed to a Florida forum-selection clause,

807 (11th Cir. 2010) (providing that a court may exercise personal jurisdiction where the exercise comports with due process under the United States Constitution *and* satisfies the requirements specific to Florida's Long-Arm statute).

[30] Troyanovsky also cites *Walack v. Worldwide Machinery Sales*, 278 F.Supp.2d 1358, 1369-70 (M.D. Fla. 2003) to support his contention that a defendant's sole contact to the forum cannot be the contract at issue, even where the parties agreed to a forum selection clause. *See* ECF No. 15 at 18-19. *Walack* does not stand for this proposition. In *Walack*, the court concluded that "[a]n individual's contract alone with an out of state defendant does not automatically establish minimum contacts with the individual's home forum." *Id.* at 1369. However, unlike the Agreement here, the contract at issue in *Walack* does not appear to contain a Florida forum selection clause or choice of law provision. Accordingly, *Walack* simply stands for the proposition that a defendant has not "automatically" established minimum contacts based on a contract not containing those provisions. This interpretation is consistent with the Florida statute. In the absence of a Florida forum selection clause and choice of law provision, the minimum contacts provisions set out in Fla. Stat. §§ 685.101-.102 do not apply. *See* Fla. Stat. §§ 685.101-.102 (applying only to agreements "for which a choice of the law of this state, in whole or in part, has been made … and which contains a provision by which such person or other entity residing or located outside this state agrees to submit to the jurisdiction of the courts of this state"). Where the contract at issue contains a Florida forum selection clause and choice of law provision and Sections 685.101-.102 apply, the Florida statute requires only that the Agreement "bear[] a substantial [and] reasonable relation to Florida" or that at least one of the parties is a Florida resident or citizen. *See* Fla. Stat. §§ 685.101-.102. And, as stated, Square Ring is a Florida resident.

the Florida Supreme Court found that it did not have personal jurisdiction because Florida's Long-Arm statute did not contain "any provision for submission to in personam jurisdiction merely by contractual agreement." *Id*. The Court is not persuaded.

Unlike when *McRae* was decided, the Florida Legislature has now enacted a "provision for submission to in personam jurisdiction merely by contractual agreement" – namely Fla. Stat. §§ 685.101-.102, discussed in more detail above. Several Florida courts have recognized that *McRae* was abrogated by Sections 685.101-.102. As one court explains,

> By promulgating sections 685.101-.102, the Legislature allowed contracting parties to dispense with the more restrictive Florida [L]ong-[A]rm limitations. In section 685.102, the Legislature, by its clear terms, granted parties the very right that *McRae* and its progeny found conspicuously absent in section 48.193; the right to confer personal jurisdiction by agreement…. [W]e must assume that the Legislature knew the existing law when it passed sections 685.101-.102.

Jetbroadband, 13 So.3d at 163; *accord Steller Group, Inc. v. Mid–Ohio Mech., Inc.*, No. 3:03–cv–1057–J–20HTS, 2004 WL 5685570, at *2 (M.D. Fla. Jan. 28, 2004); *E–One, Inc. v. R. Cushman & Assocs., Inc.*, No. 5:05-cv-209-Oc-10GRJ, 2006 WL 2599130, at *6 (M.D. Fla. May 15, 2006).[31] The Florida Long-Arm Statute's minimum contacts requirement is satisfied in this case for these reasons.

[31] Troyanovsky's reliance on *Hamilton*, which cites *McRae* with approval, is misplaced for the same reasons. *See Jetbroadband*, 13 So.3d at 162 n.3 (noting that "[e]ven after the Legislature

v. ***Requirement No. 6: Safe harbor exemption applicable to contracts for labor or employment***

As with his argument on the $250,000 transactional amount, *see supra* at Pgs. 21-22, in response to the Court's Order directing the parties to address the need for evidentiary hearing on this motion, Troyanovsky argues for the first time that the Agreement is a contract "for labor," which is an exemption and cannot be used to satisfy Florida's Long-Arm statute under Fla. Stat. § 685.101(2)(b). Troyanovsky could and should have raised this argument in his motion and, as a result, he has waived his right to challenge personal jurisdiction on this basis. *See Brown*, 817 F.Supp.2d at 1332-33; Fed. R. Civ. P. 7(b)(1); *supra* footnote 18 (discussing Troyanovsky's failure to comply with Local Rule 7.1(I), which prohibits replies on a motion to dismiss absent "extraordinary circumstances"). In the absence of the waiver, the Court would find that the Agreement is not a contract "[f]or labor or employment" under Fla. Stat. § 685.101.

Section 685.101 does not apply to contracts "(b) for labor or employment [or] (c) [r]elating to any transaction for personal, family, or household purposes," Fla. Stat. § 685.101(2), but does not offer a definition for these terms.[32] However, by not

passed sections 685.101–.102, courts [mistakenly] still quote with approval the language of *McRae*").

[32] There also do not appear to be any case law defining what "for labor or employment" means under Fla. Stat. § 685.101.

adding the qualifier "relating to" to the labor or employment exemption – as the legislature did with respect to the personal, family, or household purposes exemption – it appears the legislature intended for the labor and employment exemption to be interpreted narrowly. *See Elandia Intern., Inc. v. Ah Koy*, 690 F.Supp.2d 1317, 1335 (S.D. Fla. 2010) (noting the expansive effect of the phrase "or relating to any obligation" as to a different provision in Fla. Stat. § 685.101).[33] With this in mind, the Court looks to the "plain and ordinary meaning" of the terms "for labor or employment," *see Debaun v. State*, 213 So.3d 747, 751 (Fla. 2017), and considers how these terms are defined by the common law and dictionaries, among other sources, *see Empire Roofing Co. Southeast, LLC v. Occupational Safety and Health Review Commission*, __ F. App'x __, No. 16-17309, 2017 WL 4708162, at *2 (11th Cir. Oct. 19, 2017).

Meriam Webster defines a "laborer" as "a person who does unskilled physical work for wages.'"[34] *See State ex rel. Employee Leasing Servs., Inc. v. Amissah*, No.

[33] The Florida Legislature also anticipated that Section 685.101 would apply to at least some contracts for the provision of services, *see* Fla. Stat. § 685.101(1) (providing that the section applies to contracts worth $250,000 or "the equivalent thereof in any foreign currency, *or services* or tangible or intangible property, or both" (emphasis added)), further suggesting that the labor and employment exemption is to be narrowly interpreted.

[34] Consistent with Merriam Webster's definition, the Supreme Court has long considered the plain meaning of the term "labor" as referring to unskilled, manual labor. *See Holy Trinity Church v. United States*, 143 U.S. 457, 463 (1892) (interpreting a statute prohibiting the migration of foreigners "to perform labor in the United States" to "[o]bviously" refer to "the work of manual laborers, as distinguished from that of the professional man" considering how the term is "commonly understood"); *Burns v. U.S. R.R. Retirement Bd.*, 701 F.2d 193, 197 n.13 (D.C. Cir. 1983) (citing the interpretation of "labor" in *Holy Trinity* with approval). Troyanovsky suggests

08AP-151, 2008 WL 5159928, at *8 (Ohio Ct. App. Dec. 9, 2008) (quoting Merriam-Webster's Collegiate Dictionary (11 Ed.Rev.2005)); Oxford English Dictionary ("Laborer"), https://en.oxforddictionaries.com/definition/us/laborer (last visited Jan. 20, 2018) (defining a "laborer" as "[a] person doing unskilled manual work for wages."). And, under Florida common law, an "employee" is a person who performs services under the substantial control and direction of an employer. *See, e.g., Ware v. Money-Plan Intern., Inc.*, 467 So.2d 1072, 1072 (Fla. 2d DCA 1985) ("The essential element in the determination is the existence of the power to control and to direct the manner in which the work shall be done."). Accordingly, the Agreement constitutes a contract "for labor or employment" if, under its terms, Troyanovsky was expected to perform unskilled physical work in return for wages, provide Square Ring services largely under its direction and control, or both, none of which is the case.

The Agreement is for the promotion of Troyanovsky's skills as a world-class professional boxer, not for unskilled work. *See* ECF No. 1, Ex. 1 at 1. Further,

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that he is a "laborer" under the Agreement simply because he is paid to perform work by another party. *See* ECF No. 20 at 14 ("This is obviously a contract for labor – [Troyanovsky] is a boxer who gets paid to participate in boxing matches."). However, if labor was defined that broadly, the Florida Legislature would have no reason to exempt contracts for labor *and* contracts for employment; any contract "for labor" would also constitute a contract "for employment." *See Marx v. General Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

Troyanovsky does not contend, nor does the Court find reason to conclude, that Square Ring exerts sufficient control over Troyanovsky such that he was Square Ring's "employee."[35] For these reasons, the Agreement is not a contract "for labor" or "for employment" exempt from the effect of the forum selection clause.[36]

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[35] The Agreement requires Square Ring to offer Troyanovsky a certain number of fights and requires Troyanovsky to participate in each bout "to the best of his ability" and "use all reasonable efforts to prepare for and honestly compete in each of the Bouts." *See* ECF No. 1, Ex. 1 at 2. It does not require him to prepare for bouts through any particular training regimen or to use any specific strategy on fight night. Considering the nature of his job – which requires unique talents and split-second decision making – Square Ring would likely be unable to dictate how Troyanovsky performed his job even if it wanted to. *See Florida Gulf Coast Symphony, Inc. v. Dept. of Labor and Employment Sec.*, 386 So.2d 259, 264 (Fla. 2d DCA 1980) (finding musicians not to be employees, in part, because they were "responsible for the manner in which the musical effects are achieved"). Additionally, the Agreement expressly states that Troyanovsky is an independent contractor, *see* ECF No. 1, Ex. 1 at 4, which further suggests that he is not an employee, *see McGillis v. Dep't of Economic Opportunity*, 210 So.3d 220, 225-26 (Fla. 3rd DCA 2017) (relying on a similar disclaimer as evidence indicating that an Uber driver is not an employee).

[36] In other statutes, lawmakers have included similar exemptions to account for the uneven bargaining power between an employer and an employee or laborer. For instance, the drafters of the Federal Arbitration Act (the "FAA"), which "compels judicial enforcement of a wide range of arbitration agreements," *see Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 112 (2001), excluded "'contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce'" from its terms, in part, due to concerns of "the potential disparity in bargaining power between individual employees and large employers," *see Circuit City Stores*, 532 U.S. at 132 (dissenting, J. Stevens); Carmen Comsti, A Metamorphosis: How Forced Arbitration Arrived in the Workplace, Berkeley J. Emp. & Lab. L. 5, 11-13 (2014) (quoting 9 U.S.C. § 1)); *see also Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 (1974) (explaining that "[a]n agreement to arbitrate before a specified tribunal is, in effect, a specialized kind of forum selection clause"). If the Florida Legislature intended to exempt contracts "for labor or employment" from the effect of forum selection clauses for the same reason, this would also support the Court's determination that the Agreement is not a contract "for labor or employment." Troyanovsky and Square Ring are sophisticated parties who entered into a lucrative, arms-length commercial transaction and are presumed to understand the terms they agreed to. *See Solano v. Shearson Lehman Hutton, Inc.*, No. 90 Civ. 2122 (JFK), 1990 WL 180174, at *6 (S.D.N.Y. 1990) (finding that a contract for consulting services was a contract between "sophisticated business people" – not a contract "for labor or personal services" exempt from the effects of a forum selection clause under New York law).

c. ***Motion to Dismiss for Forum Non Conveniens***

Troyanovsky contends that dismissal is appropriate on *forum non conveniens* grounds. Dismissal on *forum non conveniens* grounds is proper where (1) an adequate, alternative forum is available, (2) the public and private convenience factors weigh in favor of dismissal, and (3) the plaintiff can reinstate its suit in the alternative forum without undue inconvenience or prejudice. *Aviation One*, 2018 WL 359998, at *9; *GDG Acquisitions, LLC v. Government of Belize*, 749 F.3d 1024, 1028 (11th Cir. 2014). However, where the parties agreed to a forum selection clause:

> [The parties have] waive[d] the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation. A court accordingly must deem the private-interest factors to weigh entirely in favor of the preselected forum.

See Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for Western Dist. of Texas, 134 S.Ct. 568, 582 (2013); *see also GDG Acquisitions*, 749 F.3d at 1028 ("an enforceable forum-selection clause carries near-determinative weight in this analysis.").[37] The

[37] In a single sentence in its Opposition, Square Ring argues that, pursuant to the Forum Selection Clause, Troyanovsky wholly waived his right to object on *forum non conveniens* grounds, and not just as to the private interest factors discussed above. *See* ECF No. 22 at 28. However, as the Supreme Court explained in *Atlantic Marine*, by agreeing that disputes will be held in a particular forum, the parties only waived their objections on the grounds pertaining to their specific interests – i.e. "the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witness, or for their pursuit of the litigation" – not those that implicate *the public's* interests. *See Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for Western Dist. of Texas*, 134 S.Ct. 568, 582 (2013) (explaining that, where the parties agreed to a forum selection clause, "a district court may consider arguments about public-interest factors," but not

moving party bears the burden of proof on a motion based on *forum non conviens* grounds.[38] *See GDG Acquisitions*, 749 F.3d at 1310-11. This is an especially "heavy burden" where, as here, the plaintiff has chosen its home forum. *See Sinochem Intern. Co. Ltd. v. Malaysia Intern. Shipping Corp.*, 549 U.S. 422, 430 (2007); *see also Wilson v. Island Seas Investments, Ltd.*, 590 F.3d 1264, 1270 (11th Cir. 2009) ("This Circuit has long mandated that district courts require positive evidence of unusually extreme circumstances, and should be thoroughly convinced that material injustice is manifest before exercising any such discretion as may exist to deny a United States citizen access to the courts of this country.") (marks omitted)).

Troyanovsky fails to meet his burden on each of these elements. While Troyanovsky argues that Russia is an adequate forum, *see supra* footnote 38, Troyanovsky does not argue or cite to any evidence indicating that Russia would be *available* to hear this dispute (Element No. 1), *see Leon v. Millon Air, Inc.*, 251 F.3d 1305, 1311 (11th Cir. 2001) ("Availability and adequacy warrant separate

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the private interest factors); *see also Savin v. CSX Corp.*, 657 F.Supp. 1210, 1212-13 (S.D.N.Y. 1987).

[38] The Eleventh Circuit recognizes an exception to this rule. *See Leon v. Millon Air, Inc.*, 251 F.3d 1305, 1311-12 (11th Cir. 2001). In *Leon*, the Eleventh Circuit explained that, when the plaintiff argues that an alternative forum is inadequate based on allegations of serious corruption or delay, the plaintiff must produce "significant evidence" to support this argument before the defendant's burden to provide contrary evidence is triggered. *See id.* at 1311 (noting that "the argument that the alternative forum is too corrupt to be adequate does not enjoy a particularly impressive track record"). In this case, Square Ring does not respond to Troyanovsky's argument that Russia is an adequate forum. For this reason, the Court assumes that it is an adequate forum.

consideration. An alternative forum is 'available' to the plaintiff when the foreign court can assert jurisdiction over the litigation sought to be transferred."), or that Square Ring would be able to reinstate its suit in Russia without undue delay or prejudice (Element No. 3). *Compare with Aviation One*, 2018 WL 359998, at *12 (finding that Aviation One could reinstate its suit without undue inconvenience or prejudice because defendant "stipulates that it will consent to service of process in England and toll any applicable statute of limitations in England as a condition of the dismissal."); *Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1330-31 (11th Cir. 2011) (affirming a district court's finding that defendants established Element Nos. 1 & 3 where defendants "stipulated that they w[ould] consent to service of process in Brazil; toll any applicable Brazilian statutes of limitation; make relevant witnesses and documents available to a Brazilian civil court; and respect the final judgment of a Brazilian Court").

The convenience factors also weigh against dismissal. (Element No. 2). Because the Agreement contains a forum selection clause,[39] the private-interest

[39] Here too, Troyanovsky's argument that the forum selection clause is invalid because he did not sign the Agreement is unavailing. It would be improper for the Court to determine whether Troyanovsky signed the Agreement in resolving this motion because it implicates the merits of the case. As one court in this circuit has explained, it would "defeat the purpose of *forum non conveniens* if district courts were required to predetermine whether a plaintiff's claims are meritorious" before deciding whether it or another court should resolve the merits of the case. *See In re Banco Santander Securities-Optimal Litigation*, 732 F.Supp.2d 1305, 1338-39 (S.D. Fla. 2010) (declining to consider an argument on the plaintiff's standing as part of a *forum non conveniens* analysis on this basis); *Mediterranean, Inc. v. Hirsh*, 783 F.Supp. 835 (D.N.J. 1991) (explaining that "a *forum non conveniens* analysis does not require a district court to entangle itself

factors are presumed to weigh entirely in favor of allowing this case to proceed in this District. *See Atl. Marine*, 134 S.Ct. at 582. Accordingly, to support a dismissal on *forum non conviens* grounds, Troyanovsky must rely only on the public interest factors.[40] *See id.* These include: "(1) the forum's interest in entertaining the suit; (2) court congestion and jury duty generated by the lawsuit; (3) the desirability of having localized controversies decided at home; and (4) the difficulty in determining applicable law and applying foreign law." *See Pierre-Louis v. Newvac*, 584 F.3d 1052, 1061 (11th Cir. 2009). "[T]he practical result is that forum-selection clauses should control except in unusual cases." *See Atl. Marine*, 134 S.Ct. at 582.

This is not the "unusual case" in which the forum selection clause should not control. *See, e.g., Savin v. CSX Corp.*, 657 F.Supp. 1210 (S.D.N.Y. 1987) (transferring the case to the Western District of Pennsylvania, despite a New York forum selection clause, where there were six related cases in the Western District of

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in the merits of the case," even if it may have to "delineate the likely contours of the case" to determine the public and private interest factors implicated) (citing *Lacey v. Cessna Aircraft Co.*, 932 F.2d 170, 181 (3rd Cir. 1991)); *Aero Systems Engineering, Inc. v. Opron, Inc.*, 21 F.Supp.2d 990, 1000 (D. Minn. 1998) (rejecting an argument because it required an "inquiry too far into the merits of the action"). Regardless, the forum selection clause would be presumptively valid and enforceable even if Troyanovsky's argument did not implicate the merits of the case. *See supra* at Part II(b)(i).

[40] Troyanovsky argues that Russia is a more convenient forum because he resides in Russia, the Agreement was allegedly executed in Russia, and key non-party witnesses are located in Russia. *See* ECF No. 15 at 32. The Court has not considered these argument to the extent they bear on the private interest factors, as discussed above.

Pennsylvania that were being tried by a judge there for the past ten years).[41] To the contrary, the public interest factors weigh in favor of allowing this case to proceed in this district. While Troyanovsky allegedly breached the Agreement in Russia, an indication that the action is more local there (Factor No. 3), Florida law governs under the Agreement,[42] meaning that Florida has a stronger interest in the case (Factor No. 1) and that a Florida court would be better equipped to efficiently address the issues of law at hand (Factor Nos. 2 and 4).[43] *See Ferens v. John Deere Co.*, 494 U.S. 516, 530 (1990) ("[T]here is an appropriateness in having the trial of a diversity

[41] The Court acknowledges that *Savin* was decided by a court outside of this circuit and before the Supreme Court explained in *Atlantic Marine* "that forum-selection clauses should control except in unusual cases." *See* 134 S.Ct. at 582. The Court nevertheless cites *Savin* as an example of an "unusual case" where the forum-selection clause did not control because of the apparent dearth of cases finding that a forum selection clause does not control based on *forum non conveniens* grounds.

[42] Troyanovsky argues that the Florida lacks a "substantial relationship to the parties or the transaction" and, as a result, the Agreement is governed by "the law of the place where the contract was signed," Russia, and not the choice of law provision. *See* ECF No. 15 at 29 n.5 (citing *Merriman v. Convergent Business Systems, Inc.*, No. 90-30138-LAC, 1993 WL 989418, at *5 (N.D. Fla. June 23, 1993)). In *Merriman*, the Court acknowledged that a Florida choice of law provision will not govern a dispute under certain circumstances described in Section 187(2) of the Restatement, though it ultimately found that the Florida choice of law provision applied. *See Merriman*, 1993 WL 989418, at *5. For the reasons discussed above, Section 187(2) dictates that the Florida choice of law provision applies. *See supra* at Part II(b)(i) (applying the standard articulated by Section 187(2) of the Restatement to the choice of law provision at issue here).

[43] The choice of law provision is dispositive as to Factor No. 1 because Russia and Florida have the same interest in providing a forum to a resident and as to Factor No. 2 because neither party contends that one jurisdiction has a more congested docket than the other; all things being equal, this case would be less of a burden on a Florida court, which obviously would be more versed in Florida law than a Russian court. *Compare with Aviation One*, 2018 WL 359998, at *11 (affirming a dismissal on *forum non conveniens* grounds where the Agreement contained an English choice-of-law provision and the federal district court dismissing the action was "one of the busiest districts in the United States").

case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflicts of law, and in law foreign to it.") (quotation marks omitted)); *Aviation One*, 2018 WL 359998, at *11 (citing an English choice of law provision to indicate England is the better forum because "English courts would obviously be more familiar with" English law); *TSI*, 2017 WL 106835, at *10-*11 (citing a California choice-of-law clause as weighing in favor of transferring the case to California for similar reasons).

Troyanovsky's motion to dismiss on *forum non conveniens* grounds is denied for these reasons.

d. ***Motion to Dismiss for Failure to State a Claim***

Troyanovsky moves to dismiss Square Ring's claim for breach of contract under Rule 12(b)(6) based on two affirmative defenses – namely that Square Ring materially breached the Agreement prior to Troyanovsky's alleged breach and failed to file the action within the statute of limitations.[44] *See Massey-Ferguson, Inc. v. Santa Rosa Tractor Co.*, 366 So. 2d 90, 92–93 (Fla. 1st DCA 1979) ("[P]laintiff's prior breach of the contract sued on is regarded as an affirmative defense.");[45]

[44] As discussed further below, Troyanovsky specifically argues that Russia's three-year statute of limitations applies to this dispute, and that any alleged breach to the Agreement occurred in 2012, meaning that Square Ring's claim for breach of contract expired in 2015.

[45] *See also Mancil's Tractor Serv., Inc. v. T&K Constr., LLC*, No. 15-80520-CIV, 2016 WL 7535902, at *2 (S.D. Fla. May 3, 2016); *Firestone Fin. Corp. v. Meyer*, 796 F.3d 822, 824 (7th

Proctor v. Schomberg, 63 So.2d 68, 70 (Fla. 1953) ("This Court has long been committed to the doctrine that the statute of limitations is an affirmative defense.").

Affirmative defenses generally "will not support a motion to dismiss." *Quiller v. Barclays Am./Credit, Inc.*, 727 F.2d 1067, 1069 (11th Cir. 1984), *on reh'g*, 764 F.2d 1400 (11th Cir. 1985). However, an affirmative defense will warrant dismissal when "it appears beyond [a] doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Mann v. Adams Realty Co.*, 556 F.2d 288, 293 (5th Cir. 1977). This occurs where "the complaint has a built-in defense and is essentially self-defeating. '[T]he problem is not that [the] plaintiff merely has anticipated and tried to negate a defense he believes his opponent will attempt to use against him; rather [the] plaintiff's own allegations show that the defense exists.'" *Quiller*, 727 F.2d at 1069 (quoting 5B Charles A. Wright & Arthur R. Miller ("Wright & Miller"), Federal Practice and Procedure, § 1357 (1969)).[46] Support for Troyanovsky's affirmative defenses is not apparent from the face of Square Ring's complaint.

Cir. 2015); *Countrywide Servs. Corp. v. SIA Ins. Co.*, 235 F.3d 390, 392 (8th Cir. 2000) (each describing prior breach of the contract as an affirmative defense).

[46] Wright & Miller also used the passage that the Eleventh Circuit quoted in *Quiller* in the most recent version of their federal practice guide, Wright & Miller, 5B Federal Practice and Procedure § 1357, at 708–13 (3d ed. 2004), which was updated in April 2017. *See also Hunt v. Aimco Properties, L.P.*, 814 F.3d 1213, 1225 n.8 (11th Cir. 2016) (explaining that, while it is uncommon, a complaint may be dismissed based on an affirmative defense if the defense "'appears on the face of the complaint'") (quoting *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011)); *Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008) ("If the plaintiff voluntarily

Troyanovsky argues he is not bound by the Agreement because Square Ring breached the Agreement before his alleged breach.[47] Troyanovsky specifically contends that, while the Agreement required Square Ring "to offer a Bout to [Troyanovsky] within 90 days of the alleged execution of the [Agreement], or by December 22, 2011" and "three Bouts in the first two years of the relationship and two Bouts per year thereafter," Square Ring "did not make any such offer[s] nor does [it] allege that [it] made any such offer[s]." *See* ECF No. 15 at 24-25. The Complaint discusses more bouts offered under the Agreement than Troyanovsky suggests.[48] Regardless, the existence of an affirmative defense must be apparent

provides unnecessary facts in her complaint, the defendant may use those facts to demonstrate that she is not entitled to relief.").

[47] While Troyanovsky disputes that he signed the Agreement, he did not raise this argument in the section of his brief concerning the motion to dismiss. This argument fails, nonetheless. On a Rule 12(b)(6) motion to dismiss, the Court must view all allegations and make all reasonable inferences in the light most favorable to Square Ring, as the non-moving party. *See Butler v. Sheriff of Palm Beach Cty.*, 685 F.3d 1261, 1265 (11th Cir. 2012); *Wooten v. Quicken Loans, Inc.*, 626 F.3d 1187, 1196 (11th Cir. 2010). Here, Square Ring alleges that Troyanovsky entered into the Agreement, sent the signed Agreement from his personal email address (markbrat@mail.ru), and participated in bouts that were arranged and promoted under the terms of the Agreement. *See* ECF No. 1 at 2, 9, 10, 12. Square Ring also alleges that it attached a "true and correct" copy of the Agreement, *see id.* at 2, and attached a version of the Agreement containing Troyanovsky's signature on several pages, *see* ECF No. 1, Ex. 1 at 1-6. Assuming these allegations are true, it is reasonable to infer that Troyanovsky signed the Agreement. Troyanovsky correctly notes that, in Square Ring's complaint, it "acknowledges that Defendant denies having ever signed the alleged contract." ECF No. 15 at 2. However, the fact that Square Ring acknowledges Troyanovsky's position does not mean that it agrees with his position.

[48] This is because Troyanovsky did not consider the bouts that Square Ring alleges to have co-promoted with Hrunov. Troyanovsky reasons that: (1) the Agreement is for personal services, (2) under Florida law, Salita Promotions could not assign its rights to Hrunov unless Troyanovsky consented to the assignment, (3) Troyanovsky did not provide his consent, (4) the assignment of the Agreement to Hrunov was therefore invalid, and, (5) as a result, any bouts co-promoted by Square Ring and Hrunov do not constitute bouts that Square Ring offered under the Agreement.

from the allegations raised in the Complaint, *see Quiller*, 727 F.2d at 1069, and, here, the exact number of bouts that Square Ring offered Troyanovsky is not referenced in the Complaint. The Court may not infer that Square Ring did not offer the requisite number of bouts based on that omission.[49] *See Naxos Rights US Inc. v. Wyatt*, No. 8:16-cv-516-T-27TBM, 2016 WL 5724064, at *3 (M.D. Fla. Sept. 29, 2016) (denying an affirmative defense because the complaint's "silen[ce] as to the date and time royalty payments are due suggest there is ambiguity in the agreement, but *does not rule out* … that Defendant breached the agreement.") (emphasis added).[50]

See ECF No. 15 at 26-29. This argument cannot support Troyanovsky's attempt to dismiss the Complaint based on his prior breach defense. Nothing on the face of the Complaint allows the Court to infer that Troyanovsky did not consent to the Assignment. To the contrary, Square Ring alleges that Troyanovsky participated in bouts that it co-promoted with Hrunov after the Assignment, creating an inference that he did consent to the assignment. *See* ECF No. 1 at 9-10.

[49] The Agreement also provides that Troyanovsky "waive[s] and release[s] [Square Ring] from any and all liability with respect to such claimed breach." ECF No. 1, Ex. 1 at 5. Because nothing on the face of the Complaint indicates that Square Ring was provided with any notice or opportunity to cure this purported breach, Troyanovsky arguably cannot raise this purported breach as an affirmative defense. *But see* ECF No. 22 at 20 (Troyanovsky arguing that a distinction exists between trying to find Square Ring liable for a breach and raising an affirmative defense based on that breach). The Court need not make this determination at this time because the prior breach defense fails for the reasons discussed above.

[50] *See also Davidson v. Maraj*, 609 F. App'x 994, 999 (11th Cir. April 24, 2015) ("Because the inference of an express contract governing the commercial use of Davidson's designs is not compelled by the allegations of the complaint, that inference cannot bar Davidson's *quantum meruit* claim at this stage of the litigation."); *Sream, Inc. v. Bengal Star, Inc.*, No. 16-81778-CIV-MARRA/MATTHEWMAN, 2017 WL 5151565, at *5 (S.D. Fla. Nov. 3, 2017) (rejecting an affirmative defense based on the unlawful use doctrine where "[n]owhere in the Amended Complaint does Plaintiff state that it filed an Application for Registration of Fictitious Name on April 19, 2017, or allude to the Florida statutes relied on by Defendant in its Motion."); *Hicks v. Lee County School District*, No. 2:15-cv-254-FtM-29DNF, 2015 WL 6736748, at *3 (M.D. Fla. Nov. 4, 2015) (denying an affirmative defense based on a general release where "the Complaint

Troyanovsky also raises a statute of limitations defense, arguing that Square Ring failed to timely raise its breach of contract claim under Russia's statute of limitations,[51] which purportedly required Square Ring to file its breach of contract claims within three years of breach.[52] The Court disagrees. Square Ring alleges that Troyanovsky breached the Agreement by fighting in bouts with other promoters around May 30, 2014, and filed this action in federal court approximately two and a half years later, on December 5, 2016. *See* ECF No. 1 at 10. This means that Square Ring timely raised its breach of contract claim even assuming Russia's three-year statute-of-limitations applies.

Troyanovsky argues that Square Ring's breach of contract claim started to accrue in 2012 and not on May 30, 2014 as Square Ring contends. He reasons that

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does not attach the Release to it nor contain any references to the Release. As such, it is inappropriate to review the affirmative defense at this stage of the proceedings.").

[51] Troyanovsky argues that Russia's statute of limitations applies to this dispute because Florida contains a "borrowing statute," codified at Fla. Stat. § 95.10, which provides that, "[w]hen [a] cause of action arose in another state or territory of the United States, or in a foreign country, and its laws forbid the maintenance of the action because of lapse of time, no action shall be maintained in this state." Square Ring responds that, by agreeing to the Florida choice of law provision, the parties meant for the five-year statute of limitations that traditionally applies to Florida-based contractual disputes to apply rather than the one dictated by the borrowing statute. Because this issue is not dispositive for the reasons discussed above, the Court does not weigh in on this dispute.

[52] Troyanovsky purports to attach a "true and accurate copy of a Legal Opinion of Russian Law," which is curiously written in Q & A format. *See* ECF No. 14 & Ex. A. This "Legal Opinion" explains that "the statute of limitations for the defense of a right due to a breach of contract is 3 years" under Article 196 of the Civil Code of the Russian Federation. *See* ECF No. 14, Ex. A at 2. The Court assumes for the purpose of argument that this is an accurate statement of Russian law.

(1) the Complaint alleges that he participated in bouts arranged and promoted by Hrunov as early as 2012, (2) these bouts were not exclusively promoted by Square Ring and Salita Promotions, (3) these bouts therefore constitute a breach under the Agreement, assuming it is valid, (4) any breach of contract claim that Square Ring may have had against Troyanovsky therefore started to accrue in 2012, and (5) as a result, assuming Russia's three-year statute of limitations applies, Troyanovsky's breach of contract claim expired in 2015, *see* ECF No. 15 at 30-31, before this suit commenced in 2016. The Court disagrees with Troyanovsky's reasoning.

The Florida Supreme Court has long held that a different statute of limitations period attaches to each independent breach of a contract. *See Issacs v. Deutsch*, 80 So.2d 657, 660 (Fla. 1955) ("[I]t is much more logical to hold that in a case such as this, as in the case of an obligation payable by instalments, the statute of limitations runs against each instalment from the time it becomes due; that is in accord with the great majority of cases form other jurisdictions involving similar contracts."); *Access Ins. Planners, Inc. v. Gee*, 175 So.3d 921, 924-25 (Fla. 4th DCA 2015).[53] After all,

[53] Troyanovsky cites *Dubin v. Dow Corning Corp.*, 478 So.2d 71, 73 (Fla. 2d DCA 1985), for the proposition that a breach of contract claim based on multiple alleged breaches starts to accrue "as soon as the first breach is discovered." ECF No. 15 at 31. The Court disagrees with Troyanovsky's interpretation. In *Dubin*, the Court found that the statute of limitations started to accrue on a breach of warranty claim after the plaintiff noticed that his roof, which was warranted against leaks, started to leak. *See id.* In reaching this conclusion, the court rejected the plaintiff's argument that subsequent leaks constituted new breaches that would reset the statute of limitations on the breach of warranty claim. *See id.* This is because, in cases like *Dubin*, where a plaintiff alleges that a manufacturer provided a faulty product that did not live up to expectations, the breach occurs at the time the product was *delivered*. *See AB CTC v. Morejon*, 324 So.2d 625, 628 (Fla.

a "claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *See Texas v. U.S.*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-81 (1985)). Square Ring's decision not to pursue claims based on breaches that allegedly occurred in 2012 therefore have no bearing on its decision to now pursue claims based on bouts occurring in 2014 and later.

Troyanovsky's motion to dismiss for failure to state a claim is denied for these reasons.

e. ***Motion to Disqualify Plaintiff's Counsel***

Finally, Troyanovsky argues that Wirt should be disqualified as counsel for Square Ring under Florida Bar Rule 4-3.7, which provides that a lawyer will not act as an advocate if he or she is likely to be a necessary witness on behalf of the client.[54]

1975) (explaining that "[a] breach of warranty occurs *when tender of delivery is made*.") (emphasis added; quotations omitted). Accordingly, these types of claims start to accrue as soon as the plaintiff is on notice that the product did not work as promised, even if the plaintiff does not become aware of the full extent of the product's defects until later. *See Havatampa Corp. v. McElvry, Jennewein, Stefany & Howard, Architects/Planners, Inc.*, 417 So.2d 703, 704 (Fla. 2nd DCA 1982) (rejecting the plaintiff's argument that the statute of limitations was tolled because it did not know the "full extent" of the defects that caused the roof defects until after it was first discovered that the roof started leaking). *Dubin*'s holding does not apply to Square Ring's breach of contract claim. The Agreement in this case concerns Troyanovsky's alleged promise to refrain from fighting for other boxing promoters during the entire contract term. Troyanovsky consequently breaches the Agreement each time he fights for a different boxing promoter during the contract term, meaning that a new limitations period applies to each breach. *See Welsh v. Fort Bend Independent School District*, 860 F.3d 762, 766 (5th Cir. 2017) (finding that, under Texas law, "a claim for breach of a continuing contract is not barred by a previous suit on the same contract where the causes of action in the second suit accrued *after* the filing of the first suit).

[54] Rule 4-3.7(a) states that a lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client unless: (1) the testimony relates to an

Troyanovsky speculates that "Wirt's testimony about nonperformance, unauthorized assignments and altering a purportedly signed contract, appears to be adverse to his client's interest."[55] ECF No. 15 at 35. Troyanovsky's speculation about what Wirt may testify to is not sufficient to support disqualification.

Square Ring states in its response brief that it does not plan on calling Wirt as a witness.[56] Where counsel will serve as a witness for the opposing party and not for his or her client, courts will disqualify counsel only when the moving party shows that counsel is a necessary witness whose testimony is "'sufficiently adverse to the factual assertions or account of events offered on behalf of the client.'" *Allstate Ins. Co. v. English*, 588 So.2d 294, 295 (Fla. 2d DCA 1991) (quoting *Ray v. Stuckey*, 491 So.2d 1211, 1213 (Fla. 1st DCA 1986)). The Eleventh Circuit has observed that disqualifying a client's choice of counsel "often work[s] substantial hardship on the

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uncontested issue; (2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; (3) the testimony relates to the nature and value of legal services rendered in the case; or (4) disqualification of the lawyer would work substantial hardship on the client." R. Regulating Fla. Bar 4-3.7(a).

[55] Square Ring disputes Troyanovsky's insinuation that Wirt doctored the Agreement. In Jones' declaration, he states that when a fighter leaves his or her email address blank, Square Ring fills the information in on the fighter's behalf as a matter of course. *See* ECF No. 17 at 2.

[56] Square Ring did not offer evidence establishing that it does not plan to call Wirt as a witness in this case. The Court nevertheless takes Square Ring at its word due to the preclusive effect that likely results from Square Ring making this representation to the Court and the lack of any contrary evidence from Troyanovsky, who carries the burden of proof on this motion. *See Pegram v. Herdrich*, 530 U.S. 211, 227 n.8 (2000) ("[J]udicial estoppel generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase."); *In re BellSouth Corp.*, 334 F.3d 941, 961 (11th Cir. 2003) (explaining that the party seeking the disqualification has the burden of proof).

client and should therefore be resorted to sparingly." *Herrmann v. GutterGuard, Inc.*, 199 F. App'x 745, 752 (11th Cir. 2006) (quoting *Norton v. Tallahassee Mem'l Hosp*, 689 F.2d 938, 941 n.4 (11th Cir. 1982); internal quotations omitted). Accordingly, the moving party "bears the burden of proving the grounds for disqualification." *In re BellSouth Corp.*, 334 F.3d 941, 961 (11th Cir. 2003).

Here, Troyanovsky fails to explain or even allege that Wirt is a "necessary witness" – that is, a witness who has information that no one else can speak to. *See Steinberg v. Winn-Dixie Stores, Inc.*, 121 So.3d 622, 624 (Fla. 4d. DCA 2013) ("A lawyer is not a necessary witness when there are other witnesses available to testify to the same information."). Moreover, the fact that Wirt might testify to facts that show Square Ring in a negative light does not prohibit Wirt from serving as Square Ring's counsel. As explained above, Wirt should be disqualified only if his version of events *will differ from Square Ring's version*. *See Ray*, 491 So.2d at 1213 ("The testimony is prejudicial only when sufficiently adverse to the factual assertions or account of events offered on behalf of the client."). Troyanovsky provides no basis for the Court to conclude or to infer that this is the case.

Troyanovsky's motion to disqualify is denied for these reasons.

III. CONCLUSION

Accordingly, Defendant Eduard Troyanovsky's Corrected Motions to Dismiss the Complaint, to Quash Service, and in the Alternative, to Disqualify Counsel, ECF No. 15, are **DENIED**.

DONE AND ORDERED this 12th day of February 2018.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE