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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

Court of Common Pleas
Jennifer B. McCoy, Circuit Judge
Irvin G. Condon, Probate Judge
Tamara C. Curry, Associate Probate Judge

Appellate Case No. 2021-001152
Court of Common Pleas Case No. 2020-CP-10-04036
Probate Court Case No. 2017-ES-10-01946

IN THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,
Respondent,

versus

MINNIE LEE NEWMAN-MEVERS,
Appellant,

versus

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers, Jr.,
Respondent.

**RECORD ON APPEAL
(VOLUME II OF II)**

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INDEX TO RECORD ON APPEAL

Record Page #

VOLUME I OF II

Filings in Probate Court Case No. 2017-ES-10-01946:

Orders, Decrees, and Appointments

Order Closing Estate filed December 31, 2018	0001
Ex Parte Temporary Restraining Order filed March 13, 2020.....	0002
Certificate of Appointment of Special Administrator filed March 13, 2020.....	0011
Notice of Hearing dated March 13, 2020.....	0012
Order Granting Temporary Injunction filed June 29, 2020	0013
Order Denying Motion to Alter, Amend, and Vacate Order and Granting Motion for Removal to Circuit Court filed September 10, 2020.....	0029

Pleadings, Motions, Affidavits, and Memoranda

Application for Informal Probate filed November 13, 2017.....	0034
Second Codicil to Last Will & Testament	0042
Codicil to Last Will & Testament.....	0043
Last Will & Testament.....	0044
Death Certificate	0056
Motion to Substitute as Counsel filed December 12, 2017	0057
Motion to Withdraw as Counsel filed December 14, 2017	0059
Order Granting Motion to Substitute Counsel filed December 19, 2017	0060
Amended Inventory & Appraisement filed May 25, 2018	0061
Proposal for Distribution filed November 21, 2018	0063
Notice of Right to Demand Hearing filed November 21, 2018.....	0064
Final Accounting filed November 30, 2018	0065
Application for Settlement filed November 30, 2018.....	0068
Summons and Verified Petition to Re-Open Estate filed March 13, 2020	0069
Exhibit A (Will and Codicils).....	0085
Exhibit B (Articles of Incorporation).....	0099
Exhibit C (IRS letter July 21, 2005)	0106
Exhibit D (Obituary)	0107
Exhibit E (Application for Informal Probate).....	0108
Exhibit F (IRS Auto-Revocation List).....	0117
Exhibit G (Minutes)	0118
Exhibit H (Articles of Dissolution).....	0119
Exhibit I (Proposal for Distribution).....	0125
Motion for Temporary Restraining Order filed March 13, 2020.....	0126
Memorandum of Law in Opposition to Motion for Temporary Restraining Order filed March 20, 2020.....	0131
Affidavit of H. Christopher Moss filed March 20, 2020	0154
Affidavit of Jessica M. Wentworth filed March 20, 2020	0166

Affidavits of Service filed April 3, 2020	0176
Summons and Verified Return to Petition and Counterclaims, Cross-Claims, and Third-Party Claims filed April 10, 2020	0178
Special Administrator’s Reply to Petition and Counterclaims, Cross-Claims, and Third-Party Claims dated May 4, 2020.....	0198
Attorney General’s Reply to Return to Petition and Answer to Cross-Claims and Third-Party Claims dated May 8, 2020.....	0203
Notice of Demand for Jury Trial filed May 12, 2020	0211
Notice of Removal and Motion to Remove Action to Circuit Court filed May 12, 2020	0214
Motion to Alter, Amend, and/or Vacate Order filed July 10, 2020	0220
Exhibit A (Order Granting Temporary Injunction)	0228
Special Administrator’s Reply to Respondent’s Motion to Alter, Amend, and/or Vacate Order dated August 19, 2020.....	0231
Attorney General’s Request to Deny Rule 59(e) Motion and Consent Without Waiver of Rights to Respondent’s Notice of Removal filed August 19, 2020.....	0237
Motion to Vacate Order filed August 28, 2020	0243
Notice of Intent to Appeal to the Circuit Court filed on September 11, 2020.....	0252
Ex Parte Temporary Restraining Order	0254
Order Granting Temporary Injunction.....	0255
Order Denying Motion to Alter, Amend, and Vacate Order	0256

Transcripts and Hearing Exhibits

Transcript of March 23, 2020 Hearing before The Honorable Irvin G. Condon.....	0258
Hearing Exhibit (various correspondence and enclosures).....	0356

Miscellaneous

Articles of Incorporation for The “Sonny Mevers” Foundation filed July 23, 2004.....	0423
Bylaws of The “Sonny Mevers” Foundation dated July __, 2004.....	0430
Internal Revenue Service Notice dated March 19, 2018	0433
Secretary of State status page regarding The ‘Sonny Mevers’ Foundation.....	0434
Letter from Stephen L. Brown to The Honorable Irvin G. Condon filed March 13, 2020.....	0435
Letter from Daniel F. Blanchard, III to The Honorable Irvin G. Condon dated August 28, 2020	0436
Emails between James Duggan, Esquire and James Ward dated March 16, 2020.....	0438

VOLUME II OF II

Filings in Court of Common Pleas Case No. 2020-CP-10-04036:

Notice of Intent to Appeal to the Circuit Court filed on September 11, 2020.....	0440
Ex Parte Temporary Restraining Order	0443
Order Granting Temporary Injunction.....	0444
Order Denying Motion to Alter, Amend, and Vacate Order	0445
Appellant’s Statement of Issues on Appeal filed on October 16, 2020.....	0446
Brief of Appellant filed on November 20, 2020.	0450
Brief of Respondent South Carolina Attorney General filed on January 20, 2021.	0507

Reply Brief of Appellant filed on February 1, 2021	0542
Letter from Daniel F. Blanchard, III with Supplemental Citation filed on March 23, 2021	0566
Letter from Stephen L. Brown to The Honorable Jennifer B. McCoy dated March 30, 2021.	0567
E-mail from K. Brooke Stone, Administrative Assistant to The Honorable Jennifer B. McCoy, dated March 31, 2021	0568
Motion for Approval of Special Administrator Fees and Costs filed on June 8, 2021	0570
Order Affirming Probate Court's Orders filed on September 10, 2021.	0572
Notice of Appeal to South Carolina Court of Appeals filed on October 8, 2021.	0575
Ex Parte Temporary Restraining Order	0578
Order Granting Temporary Injunction.....	0579
Order Denying Motion to Alter, Amend, and Vacate Order	0580
Order Affirming Probate Court's Orders filed on September 10, 2021	0581

Filings in Court of Common Pleas Case No. 2020-CP-10-04089:

Orders and Decrees

Order Removing Action to Circuit Court filed September 15, 2020.....	0584
Form 4 Order Denying Motion for Temporary Restraining Order filed September 22, 2020.	0589
Form 4 Order Denying Motion for Judgment on Pleadings filed December 22, 2020.	0592

Pleadings, Motions, Affidavits, and Memoranda

Verified Motion for Continuance of the Temporary Injunction Issued by Probate Court or, in the Alternative, Issuance of a Temporary Injunction filed September 16, 2020.	0595
Exhibit A (Order Granting Temporary Injunction)	0605
Exhibit B (Verified Petition with Exhibits A-I).....	0606
Exhibit C (Letter dated June 1, 2020 with Exhibits A-H)	0607
Exhibit D (Ex Parte Temporary Restraining Order)	0638
Exhibit E (Memorandum of Law and Affidavits).....	0639
Exhibit F (Transcript of Hearing)	0640
Exhibit G (Crescom record).....	0641
Exhibit H (Crescom record).....	0642
Exhibit I (Crescom record)	0643
Exhibit J (Crescom record)	0653
Exhibit K (Crescom record).....	0654
Memorandum of Law in Opposition to Motion for Temporary Restraining Order filed September 21, 2020.	0663
Exhibit 1 (Christopher Moss Affidavit).....	0702
Exhibit 2 (Jessica Wentworth Affidavit)	0703
Exhibit 3 (Marcus Owens Affidavit).	0704
Exhibit 4 (Memorandum of Law)	0715
Exhibit 5 (Last Will & Testament and Codicils)	0716
Exhibit 6 (IRS letter dated March 19, 2018).....	0731

Exhibit 7 (The Sonny Mevers Foundation documents)	0733
Defendant’s Reply Memorandum of Law in Support of Motion for Order Quashing Subpoena Duces Tecum to Defendant’s Attorney (H. Christopher Moss, Esquire) filed on December 16, 2020	0738

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	
	)	Case No.: 2017-ES-10-1946
IN THE MATTER OF:	)	
THE ESTATE OF ROY E. MEVERS, JR.	)	
	)	
SOUTH CAROLINA ATTORNEY	)	
GENERAL	)	NOTICE OF INTENT TO APPEAL
Petitioner/Counter-Claim	)	TO THE CIRCUIT COURT
Defendant,	)	
	)	
v.	)	
	)	
MINNIE LEE NEWMAN MEVERS,	)	
Respondent/Counter-Claim	)	
Plaintiff/Cross-Claim	)	
Plaintiff/Third-Party Plaintiff	)	
	)	
v.	)	
	)	
J. JAMES DUGGAN, as Special	)	
Administrator of the Estate of Roy E.	)	
Mevers, Jr.,	)	
Cross-Claim	)	
Defendant/Third-Party	)	
Defendant,	)	
	)	

TO: ALL PARTIES ABOVE-NAMED AND THEIR LEGAL COUNSEL:

PLEASE TAKE NOTICE that, pursuant to S.C. CODE ANN. § 62-1-308, Respondent Minnie Lee Newman-Mevers (hereinafter “Respondent”), by and through the undersigned attorneys, hereby provides this Notice of Intent to Appeal the *ex parte* Temporary Restraining Order of Associate Probate Judge Tamara C. Curry dated March 13, 2020; the Order Granting Temporary Injunction of Probate Judge Irvin G. Condon dated June 29, 2020; and the Order Denying Motion to Alter, Amend, and Vacate Order of Probate Judge Irvin G. Condon dated September 10, 2020. Counsel for Respondent received written notice of the entry of the Probate Court’s Order Denying Motion to Alter, Amend, and Vacate Order via e-mail from the Probate

Court on September 10, 2020, thus this Notice of Intent to Appeal is timely filed pursuant to S.C. CODE ANN. § 62-1-308(a). Copies of the Probate Court's Orders being appealed from are attached hereto.

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ATTORNEYS FOR RESPONDENT

Charleston, South Carolina
September 11, 2020.

SWORN to and subscribed before me this
11 day of September, 2020.

Dana Beltz
Notary Public for the State of South Carolina
My commission expires: 1/10/29

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2020, that I have served all counsel in this action with a copy of the Notice of Intent to Appeal to Circuit Court in the above-captioned action by mailing a copy of same by United States mail, first class mail, postage prepaid, and addressed to the following:

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Special Administrator of the Estate of Roy E. Mevers, Jr.
Duggan Law Firm, LLC
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ROSEN HAGOOD, LLC

By: /s/ Daniel F. Blanchard, III
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR RESPONDENT

NOTE: This document is the same document already set forth in the Record on Appeal at R_0002 through R_0010 (Ex Parte Temporary Restraining Order filed March 13, 2020). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

NOTE: This document is the same document already set forth in the Record on Appeal at R_0013 through R_0028 (Order Granting Temporary Injunction filed June 29, 2020). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

NOTE: This document is the same document already set forth in the Record on Appeal at R_0029 through R_0033 (Order Denying Motion to Alter, Amend, and Vacate Order and Granting Motion for Removal to Circuit Court filed September 10, 2020). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Case No.: 2020-CP-10-04036
	)	
IN THE MATTER OF:	)	
THE ESTATE OF ROY E. MEVERS, JR.	)	
	)	
SOUTH CAROLINA ATTORNEY	)	
GENERAL	)	STATEMENT OF ISSUES
	)	ON APPEAL
Respondent on appeal	)	
/Petitioner and Counter-Claim	)	
Defendant in lower court;	)	
	)	
v.	)	
	)	
MINNIE LEE NEWMAN MEVERS,	)	
Appellant on appeal/	)	
Respondent-Counter-Claim	)	
Plaintiff-Cross-Claim	)	
Plaintiff-Third-Party Plaintiff	)	
in lower court	)	
	)	
v.	)	
	)	
J. JAMES DUGGAN, as Special	)	
Administrator of the Estate of Roy E.	)	
Mevers, Jr.,	)	
	)	
Respondent on appeal/Cross-	)	
Claim Defendant-Third-Party	)	
Defendant in lower court,	)	
	)	

This action involves an appeal from Orders of the Charleston County Probate Court pursuant to S.C. CODE ANN. § 62-1-308. In accordance with S.C. CODE ANN. § 62-1-308(b), the Appellant Minnie Lee Newman-Mevers (hereinafter “the Appellant”), by and through the undersigned attorneys, hereby submits this Statement of Issues on Appeal:

1. Did the Probate Court err by granting Respondent South Carolina Attorney General’s (“Respondent”) motion for an *ex parte* temporary restraining order in contravention of the requirements of S.C. R. CIV. PRO. 65(b) and by not affording Appellant notice of the motion or an opportunity to be heard prior to issuance of the *ex parte* temporary restraining order when Appellant’s counsel had been actively engaged in dialogue and exchange of information with Respondent concerning the subject

matters in this action for several months before this action was filed, Respondent made no attempt to contact Appellant or her counsel about a hearing before the *ex parte* temporary restraining order was sought and obtained, and Respondent did not show or present specific facts by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to Respondent before notice could be served on Appellant and a hearing had thereon?

2. Did the Probate Court err by concluding that Respondent had presented specific facts by affidavit or verified complaint clearly showing that immediate and irreparable injury, loss, or damage will result to Respondent before notice could be served on Appellant and a hearing had on Respondent's *ex parte* motion for a temporary restraining order and *ex parte* petition for appointment of a special administrator?
3. Did the Probate Court err by reopening Decedent Roy E. Mevers, Jr.'s estate and granting Respondent's *ex parte* petition for appointment of a special administrator pursuant to S.C. CODE ANN. § 62-3-614 without affording Appellant notice of the petition or an opportunity to be heard when Appellant had been serving as Personal Representative of the Decedent's estate when the Probate Court had previously closed the Decedent's estate?
4. Did the *ex parte* temporary restraining order expire within ten days of its issuance when Respondent served no motion on Appellant to extend the *ex parte* temporary restraining order past the initial ten days and he made no motion for a temporary injunction, preliminary injunction, or any relief beyond a temporary restraining order?
5. Did the Probate Court err by granting a temporary injunction or preliminary injunction and ordering Appellant to render an accounting when Respondent's motion served on Appellant merely requested an *ex parte* temporary restraining order "effective from the date and time of issuance and for a period of 10 days thereafter" and the *ex parte* temporary restraining order expired within ten days of its issuance in accordance with South Carolina law, and Respondent had not served any motion on Appellant seeking an extension of the *ex parte* temporary restraining order or seeking a temporary injunction, preliminary injunction, or any relief beyond an *ex parte* temporary restraining order and Appellant had not been provided notice of any motion or hearing on any such matters?
6. Did the Probate Court err by extending the *ex parte* temporary restraining order for a duration beyond that permitted by the terms of S.C. R. CIV. PRO. 65(b)?
7. Did the Probate Court err by denying Appellant's request for leave to file additional affidavits in opposition to Respondent's motion so as to respond to matters or arguments raised for the first time by Respondent at the hearing conducted by the Probate Court after the issuance of the *ex parte* temporary restraining order?
8. Did the Probate Court err by holding that it possessed subject matter jurisdiction to grant a temporary injunction or preliminary injunction and to order Appellant to

render an accounting when a Notice of Removal and Motion to Remove Action to Circuit Court had been timely filed and served pursuant to S.C. CODE ANN. § 62-1-302(d) before the Probate Court entered its written Order granting the temporary injunction or preliminary injunction and ordering Appellant to render an accounting?

9. Is the Probate Court's Order granting a temporary injunction or preliminary injunction and ordering Appellant to render an accounting void for lack of subject matter jurisdiction?
10. Did the Probate Court err by granting a temporary or preliminary injunction in favor of Respondent when the facts and evidence demonstrated that an adequate remedy is available at law, Respondent is not likely to succeed on the merits, and Respondent would not suffer irreparable harm if the injunction is denied?
11. Did the Probate Court err by finding or holding that Respondent has no adequate remedy at law when the injury the Respondent alleges in his Petition can be remedied by monetary relief after a trial on the merits?
12. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of the claims raised in his Petition when Respondent alleges no injury or damage to himself, but bases his claim on alleged injuries or damage purportedly sustained by another person or entity?
13. Did the Probate Court err by finding or holding that Respondent will suffer irreparable harm if a temporary injunction or preliminary injunction is not issued when the injury Respondent alleges in his Petition can be remedied by monetary relief after a trial on the merits?
14. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim when his action seeks to assert the rights or interests of The "Sonny Mevers" Foundation (hereinafter "Foundation") as the alleged residuary beneficiary of the Decedent's estate, but the Foundation failed to satisfy the express conditions in the Decedent's Will and Codicils necessary for it to have a vested interest as the residuary beneficiary of the Decedent's estate?
15. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim when Respondent cannot assert claims or causes of action on behalf of and/or belonging to Foundation because the Foundation was a South Carolina corporation that was dissolved prior to commencement of this action, such dissolution has not been revoked, the statutory period for the Foundation's dissolution to be revoked or to have its charter reinstated has expired, and the Foundation no longer has the right, power, or ability to pursue any claims as a matter of law?
16. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claims when Respondent lacks standing and/or capacity to assert

- claims or causes of action on behalf of and/or belonging to the Foundation, particularly the claims or causes of action raised by Respondent in his Petition?
17. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim when Respondent is not a real party in interest or proper party to this action?
18. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim and by holding that Respondent may maintain this action in place of the Foundation by intervening in a probate process that had already been closed, in order to facilitate a forced distribution of assets to the Foundation, when the Foundation itself has not requested or sought any such relief?
19. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim when the Foundation (whose interests Respondent is attempting to pursue in this action) was disqualified from receiving under the Decedent's Will and Codicils because at the time of the Decedent's death and/or when the Estate was distributed (a) the Foundation could not qualify as a charitable organization within the meaning of Section 2055 of the IRC and (b) a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes, both of which were necessary conditions to the Foundation's receipt of any benefits under the terms of the Decedent's Will and Codicils?

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October 26, 2020.
Charleston, South Carolina.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

APPEAL FROM CHARLESTON COUNTY PROBATE COURT
Irvin G. Condon, Judge of Probate

Court of Common Pleas Case No. 2020-CP-10-04036
Probate Court Case No. 2017-ES-10-01946

IN THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,
Petitioner in Probate Court-Respondent on Appeal,

versus

MINNIE LEE NEWMAN-MEVERS,
Respondent-Third-Party Petitioner in Probate Court,

versus

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers, Jr.,
Third-Party Respondent in Probate Court,

Of whom MINNIE LEE NEWMAN-MEVERS is the *Appellant on Appeal.*

BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	viii
Statement of Issues on Appeal.....	1
Introduction.....	4
Statement of the Case and Facts	6
Arguments.....	15
I. STANDARD OF REVIEW	15
II. THE PROBATE COURT ERRED BY GRANTING AN <i>EX PARTE</i> TRO AND APPOINTING A SPECIAL ADMINISTRATOR WITHOUT AFFORDING APPELLANT NOTICE OR AN OPPORTUNITY TO BE HEARD.....	16
III. THE PROBATE COURT ERRED BY EXTENDING THE TRO BEYOND TEN DAYS AND BY PRELIMINARY ENJOINING APPELLANT FOR AN INDEFINITE DURATION AND ORDERING HER TO ACCOUNT WHEN THE SCAG DID NOT MOVE FOR SUCH RELIEF	20
IV. THE PROBATE COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT A PRELIMINARY INJUNCTION OR TO REQUIRE APPELLANT TO ACCOUNT AFTER THE NOTICE OF REMOVAL TO THE CIRCUIT COURT HAD BEEN FILED AND SERVED	22
V. THE PROBATE COURT ERRED BY FINDING THAT THE SCAG SATISFIED THE NECESSARY REQUIREMENTS FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION	23
(1) <i>The SCAG Did Not Show Irreparable Harm</i>	24
(2) <i>The SCAG Did Not Show Likelihood of Success on the Merits</i>	27
a. The Foundation Was Dissolved, Has Not Been Reinstated, and Cannot Pursue Any Claims Against Appellant.....	28
b. The SCAG Lacks Standing or Capacity to Pursue any Rights the Foundation May Have to Decedent’s Estate	30
c. The Foundation Did Not Satisfy the Conditions and Qualifications in Decedent’s Will and Codicils	39
(3) <i>The SCAG Did Not Show an Inadequate Remedy at Law</i>	48
Conclusion	49

TABLE OF AUTHORITIES

Cases

<u>Abrams v. Porter,</u> 920 P.2d 386 (Idaho 1996)	29
<u>Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez,</u> 458 U.S. 592 (1982)	36
<u>Babb v. Rothrock,</u> 303 S.C. 462, 401 S.E.2d 418 (1991)	32
<u>Bank of Am., N.A. v. Draper,</u> 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013)	31
<u>Bayne v. Bass,</u> 302 S.C. 208, 394 S.E.2d 726 (Ct. App. 1990)	13
<u>Bethesda Softworks, LLC v. Interplay Entm't Corp.,</u> 452 F. App'x 351 (4th Cir. 2011)	27
<u>Bio-Thrust, Inc. v. Div. of Corps.,</u> 80 P.3d 164 (Utah 2003)	29
<u>Bowman v. Richland Mem'l Hosp.,</u> 335 S.C. 88, 515 S.E.2d 259 (Ct. App. 1999)	13
<u>Brown v. Drake,</u> 275 S.C. 299, 270 S.E.2d 130 (1980)	40
<u>Centro Tepeyac v. Montgomery Cnty.,</u> 722 F.3d 184 (4th Cir. 2013)	24
<u>Christy v. Christy,</u> 347 S.C. 503, 556 S.E.2d 70 (Ct. App. 2001)	13
<u>City of Columbia v. Pic-A-Flick Video, Inc.,</u> 340 S.C. 278, 531 S.E.2d 518 (2000)	15
<u>Com. of Pa., by Shapp v. Kleppe,</u> 533 F.2d 668 (D.C. Cir. 1976)	37
<u>County Council of Charleston v. Felkel,</u> 244 S.C. 480, 137 S.E.2d 577 (1964)	24

<u>County of Richland v. Simpkins,</u> 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002)	15
<u>Dao Travels, LLC v. Charleston Black Cab Co.,</u> 2015 WL 631137 (D.S.C. Feb. 13, 2015)	24
<u>Davis v. Hamm,</u> 300 S.C. 284, 387 S.E.2d 676 (Ct. App. 1989)	32
<u>Deere & Co. v. JPS Dev., Inc.,</u> 592 S.E.2d 175 (Ga. Ct. App. 2003)	30
<u>Denman v. City of Columbia,</u> 387 S.C. 131, 691 S.E.2d 465 (2010)	34
<u>Ex parte Cannon,</u> 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009)	22
<u>Ex parte TLC Laser Eye Centers (Piedmont/Atlanta), LLC,</u> 404 S.C. 385, 745 S.E.2d 105 (2013)	15
<u>First Technology Safety Systems, Inc. v. Depinet,</u> 11 F.3d 641 (6th Cir. 1993)	17
<u>Fisher on behalf of estate of Shaw-Baker v. Huckabee,</u> 422 S.C. 234, 811 S.E.2d 739 (2018)	31
<u>Furman Univ. v. McLeod,</u> 238 S.C. 475, 120 S.E.2d 865 (1961)	38
<u>Gas Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc.,</u> 436 S.E.2d 207 (Ga. 1993)	28-29
<u>Guilford v. California,</u> 2017 WL 376153 (D. Nev. Jan. 25, 2017)	17
<u>Holcombe-Burdette v. Bank of Am.,</u> 371 S.C. 648, 640 S.E.2d 480 (Ct. App. 2006)	40
<u>Hook Point, LLC v. Branch Banking and Trust Co.,</u> 397 S.C. 507, 725 S.E.2d 681 (2012)	24
<u>Hughes Network Sys., Inc. v. InterDigital Communications Corp.,</u> 17 F.3d 691 (4th Cir. 1994)	26

<u>In re Estate of Pallister,</u> 363 S.C. 437, 611 S.E.2d 250 (2005)	15
<u>In re Greenwood Supply Co.,</u> 295 B.R. 787 (Bankr. D.S.C. 2002)	32
<u>In re Last Will & Testament of Smoak,</u> 286 S.C. 419, 334 S.E.2d 806 (1985)	40
<u>In re Racing Servs., Inc.,</u> 619 B.R. 681 (B.A.P. 8 th Cir. 2020)	36
<u>In re Tobacco/Governmental Health Care Costs Litig.,</u> 83 F. Supp. 2d 125 (D.D.C. 1999)	37
<u>In re Unauthorized Practice of Law Rules Proposed by S.C. Bar,</u> 309 S.C. 304, 422 S.E.2d 123 (1992)	7
<u>Joytime Distribs. & Amusement Co. v. State,</u> 338 S.C. 634, 528 S.E.2d 647 (1999)	31
<u>Lefkowitz v. Lebensfeld,</u> 68 A.D.2d 488, 417 N.Y.S.2d 715 (1979), <u>aff'd</u> , 51 N.Y.2d 442, 415 N.E.2d 919 (1980)	35
<u>Lefkowitz v. Lebensfeld,</u> 408 N.Y.S.2d 216, 219 (Sup. Ct. 1978)	36
<u>MailSource, LLC v. M.A. Bailey & Assocs.,</u> 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003)	15, 26, 48
<u>Matter of Howard,</u> 315 S.C. 356, 434 S.E.2d 254 (1993)	15
<u>McDevitt v. Wellin,</u> 2016 WL 199626 (D.S.C. Jan. 15, 2016)	26-27
<u>Metered Appliances, Inc. v. 75 Owners Corp.,</u> 225 A.D.2d 338 (N.Y. App. Div. 1996)	30
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<u>People ex rel. Spitzer v. Grasso,</u> 893 N.E.2d 105 (N.Y. 2008)	34, 36
<u>People of State of N.Y. by Abrams v. Seneci,</u> 817 F.2d 1015 (2 nd Cir. 1987)	36-37
<u>Pfizer, Inc. v. Lord,</u> 522 F.2d 612 (8th Cir. 1975)	37
<u>Professional Wiring Installers, Inc. v. Sims,</u> 2008 WL 9840409 (S.C. Ct. App. 2008)	26
<u>Quince Orchard Valley Citizens Ass’n v. Hodel,</u> 872 F.2d 75 (4th Cir. 1989)	18
<u>Rabbi Jacob Joseph School v. Province of Mendoza,</u> 342 F. Supp. 2d 124 (E.D. N.Y. 2004)	17
<u>Reno Air Racing Ass’n., Inc. v. McCord,</u> 452 F.3d 1126 (9th Cir. 2006)	17
<u>Sampson v. Murray,</u> 415 U.S. 61 (1974)	26
<u>S.C. Dep’t of Soc. Servs. v. Boulware,</u> 422 S.C. 1, 809 S.E.2d 223 (2018)	31
<u>S.C. Pub. Interest Found. v. S.C. Dep’t of Transportation,</u> 421 S.C. 110, 804 S.E.2d 854 (2017)	31
<u>Schwartz v. Wellin,</u> 2014 WL 51212 (D.S.C. Jan. 7, 2014)	26-27
<u>Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.,</u> 361 S.C. 117, 603 S.E.2d 905 (2004)	24, 48
<u>Sellner v. State,</u> 416 S.C. 606, 787 S.E.2d 525 (2016)	15
<u>Shuman v. Heldman,</u> 63 S.C. 474, 41 S.E. 510 (1902)	41

<u>Spectre, LLC v. S.C. Dept. of Health and Envtl. Control,</u> 386 S.C. 357, 688 S.E.2d 844 (2010)	34
<u>State ex rel. Butterworth v. Anclothe Manor Hosp., Inc.,</u> 566 So. 2d 296 (Fla. Dist. Ct. App. 1990)	35
<u>Thomas v. Gathings,</u> 304 S.C. 308, 403 S.E.2d 682 (Ct. App. 1991)	22
<u>Townsend v. Townsend,</u> 323 S.C. 309, 474 S.E.2d 424 (1996)	31
<u>Univ. of S. California v. Moran,</u> 365 S.C. 270, 617 S.E.2d 135 (Ct. App. 2005)	15
<u>Van de Kamp v. Gumbiner,</u> 270 Cal. Rptr. 907 (Ct. App. 1990)	34
<u>Wangson Biotechnology Grp., Inc. v. Tan Tan Trading Co.,</u> 2008 WL 4239155 (N.D. Cal. Sept. 11, 2008)	18
<u>Watson v. Wall,</u> 229 S.C. 500, 93 S.E.2d 918 (1956)	38
<u>Wilson v. Dallas,</u> 403 S.C. 411, 743 S.E.2d 746 (2013)	38
<u>Zabinski v. Bright Acres Assocs.,</u> 346 S.C. 580, 553 S.E.2d 110 (2001)	21
<u>Statutes, Rules, and Regulations</u>	
REV. PROC. 2014-11, 2014-3 I.R.B. 411 (2014)	46
S.C. CODE ANN. § 1-7-130	33-36
S.C. CODE ANN. §§ 33-31-101 to -31-1708	33-34
S.C. CODE ANN. § 33-31-304 rptr.'s cmt.	34
S.C. CODE ANN. § 33-31-810	35
S.C. CODE ANN. § 33-31-1404(a)	7
S.C. CODE ANN. § 33-31-1404(b)	28

S.C. CODE ANN. § 33-31-1405(a)	28
S.C. CODE ANN. § 33-31-1430	35
S.C. CODE ANN. § 62-1-302(d)	5, 13, 22-23
S.C. CODE ANN. § 62-1-308	15
S.C. CODE ANN. § 62-1-308(i)	15
S.C. CODE ANN. §§ 62-2-201 <u>et seq.</u>	13, 25
S.C. CODE ANN. § 62-3-101	44
S.C. CODE ANN. § 62-3-614(2)	18
S.C. R. CIV. PRO. 17(a)	31
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STATEMENT OF ISSUES ON APPEAL

I. Did the Probate Court err by granting Respondent South Carolina Attorney General's ("Respondent") motion for an *ex parte* temporary restraining order in contravention of the requirements of S.C. R. CIV. PRO. 65(b) and by not affording Appellant notice of the motion or an opportunity to be heard prior to issuance of the *ex parte* temporary restraining order when Appellant's counsel had been actively engaged in dialogue and exchange of information with Respondent concerning the subject matters in this action for several months before this action was filed, Respondent made no attempt to contact Appellant or her counsel about a hearing before the *ex parte* temporary restraining order was sought and obtained, and Respondent did not show or present specific facts by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to Respondent before notice could be served on Appellant and a hearing had thereon?

II. Did the Probate Court err by concluding that Respondent had presented specific facts by affidavit or verified complaint clearly showing that immediate and irreparable injury, loss, or damage will result to Respondent before notice could be served on Appellant and a hearing had on Respondent's *ex parte* motion for a temporary restraining order and *ex parte* petition for appointment of a special administrator?

III. Did the Probate Court err by reopening Decedent Roy E. Mevers, Jr.'s estate and granting Respondent's *ex parte* petition for appointment of a special administrator pursuant to S.C. CODE ANN. § 62-3-614 without affording Appellant notice of the petition or an opportunity to be heard when Appellant had been serving as Personal Representative of the Decedent's estate when the Probate Court had previously closed the Decedent's estate?

IV. Did the *ex parte* temporary restraining order expire within ten days of its issuance when Respondent served no motion on Appellant to extend the *ex parte* temporary restraining order past the initial ten days and he made no motion for a temporary injunction, preliminary injunction, or any relief beyond a temporary restraining order?

V. Did the Probate Court err by granting a temporary injunction or preliminary injunction and ordering Appellant to render an accounting when Respondent's motion served on Appellant merely requested an *ex parte* temporary restraining order "effective from the date and time of issuance and for a period of 10 days thereafter" and the *ex parte* temporary restraining order expired within ten days of its issuance in accordance with South Carolina law, and Respondent had not served any motion on Appellant seeking an extension of the *ex parte* temporary restraining order or seeking a temporary injunction, preliminary injunction, or any relief beyond an *ex parte* temporary restraining order and Appellant had not been provided notice of any motion or hearing on any such matters?

VI. Did the Probate Court err by extending the *ex parte* temporary restraining order for a duration beyond that permitted by the terms of S.C. R. CIV. PRO. 65(b)?

VII. Did the Probate Court err by denying Appellant's request for leave to file additional

affidavits in opposition to Respondent's motion so as to respond to matters or arguments raised for the first time by Respondent at the hearing conducted by the Probate Court after the issuance of the *ex parte* temporary restraining order?

VIII. Did the Probate Court err by holding that it possessed subject matter jurisdiction to grant a temporary injunction or preliminary injunction and to order Appellant to render an accounting when a Notice of Removal and Motion to Remove Action to Circuit Court had been timely filed and served pursuant to S.C. CODE ANN. § 62-1-302(d) before the Probate Court entered its written Order granting the temporary injunction or preliminary injunction and ordering Appellant to render an accounting?

IX. Is the Probate Court's Order granting a temporary injunction or preliminary injunction and ordering Appellant to render an accounting void for lack of subject matter jurisdiction?

X. Did the Probate Court err by granting a temporary or preliminary injunction in favor of Respondent when the facts and evidence demonstrated that an adequate remedy is available at law, Respondent is not likely to succeed on the merits, and Respondent would not suffer irreparable harm if the injunction is denied?

XI. Did the Probate Court err by finding or holding that Respondent has no adequate remedy at law when the injury the Respondent alleges in his Petition can be remedied by monetary relief after a trial on the merits?

XII. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of the claims raised in his Petition when Respondent alleges no injury or damage to himself, but bases his claim on alleged injuries or damage purportedly sustained by another person or entity?

XIII. Did the Probate Court err by finding or holding that Respondent will suffer irreparable harm if a temporary injunction or preliminary injunction is not issued when the injury Respondent alleges in his Petition can be remedied by monetary relief after a trial on the merits?

XIV. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim when his action seeks to assert the rights or interests of The "Sonny Mevers" Foundation (hereinafter "Foundation") as the alleged residuary beneficiary of the Decedent's estate, but the Foundation failed to satisfy the express conditions in the Decedent's Will and Codicils necessary for it to have a vested interest as the residuary beneficiary of the Decedent's estate?

XV. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim when Respondent cannot assert claims or causes of action on behalf of and/or belonging to Foundation because the Foundation was a South Carolina corporation that was dissolved prior to commencement of this action, such dissolution has not been revoked, the statutory period for the Foundation's dissolution to be revoked or to have its charter reinstated has expired,

and the Foundation no longer has the right, power, or ability to pursue any claims as a matter of law?

XVI. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claims when Respondent lacks standing and/or capacity to assert claims or causes of action on behalf of and/or belonging to the Foundation, particularly the claims or causes of action raised by Respondent in his Petition?

XVII. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim when Respondent is not a real party in interest or proper party to this action?

XVIII. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim and by holding that Respondent may maintain this action in place of the Foundation by intervening in a probate process that had already been closed, in order to facilitate a forced distribution of assets to the Foundation, when the Foundation itself has not requested or sought any such relief?

XIX. Did the Probate Court err by finding or holding that Respondent is likely to succeed on the merits of his claim when the Foundation (whose interests Respondent is attempting to pursue in this action) was disqualified from receiving under the Decedent's Will and Codicils because at the time of the Decedent's death and/or when the Estate was distributed (a) the Foundation could not qualify as a charitable organization within the meaning of Section 2055 of the IRC and (b) a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes, both of which were necessary conditions to the Foundation's receipt of any benefits under the terms of the Decedent's Will and Codicils?

INTRODUCTION

For several compelling reasons—procedural, jurisdictional, and substantive—this Court should reverse the Probate Court’s *ex parte* Orders entered on March 13, 2020, which granted Respondent South Carolina Attorney General’s (“SCAG”) motion for a temporary restraining order and appointed a Special Administrator (hereinafter “*ex parte* TRO”), and its Order entered on June 29, 2020, which granted a preliminary injunction and ordered Appellant Minnie Lee Newman-Mevers (“Minnie”) to render an accounting (hereinafter “Preliminary Injunction”).

First, the Probate Court erred by granting the *ex parte* TRO on March 13, 2020, in disregard of the mandates of S.C. R. CIV. PRO. 65(b) and by not affording Minnie notice of the motion or an opportunity to be heard prior to the *ex parte* TRO’s issuance when the SCAG knew of Minnie’s whereabouts, Minnie’s counsel had been actively engaged in dialogue and exchange of information with the SCAG involving the subject matters in this case for several months before this action was filed, the SCAG made no attempt to contact Minnie or her counsel about a hearing before seeking and obtaining the *ex parte* TRO, and the SCAG did not present specific facts by affidavit or verified complaint showing an emergency or that “immediate and irreparable injury, loss, or damage will result” to him before notice could be served on Minnie and a hearing conducted.

Second, the Probate Court erred by granting a Preliminary Injunction on June 29, 2020, and ordering Minnie to render an accounting when the SCAG’s motion merely requested an *ex parte* TRO “effective from the date and time of issuance and for a period of 10 days thereafter,” which expired ten days after its issuance in accordance with Rule 65(b), and the SCAG never files or served any motion for an extension of the *ex parte* TRO or requesting a preliminary injunction, thus Minnie was not provided notice of any such motion. The matter of a preliminary injunction was not before the Probate Court when it conducted a hearing on March 23, 2020. The Probate Court further

erred by extending the *ex parte* TRO for a duration beyond that permitted by the terms of Rule 65(b) and by refusing Minnie's request for leave to file additional affidavits in response to matters which the SCAG raised for the first time at the hearing conducted on March 23, 2020.

Third, when the Probate Court entered its Preliminary Injunction on June 29, 2020 and required Minnie to render an accounting, the Probate Court no longer possessed subject matter jurisdiction to grant such relief because a Notice of Removal and Motion to Remove Action to Circuit Court had previously been timely filed and served on May 12, 2020 in accordance with S.C. CODE ANN. § 62-1-302(d), thereby divesting the Probate Court of subject matter jurisdiction over the matter. Thus, the Preliminary Injunction is void for lack of subject matter jurisdiction.

Finally, the Probate Court erred by holding that the SCAG satisfied the prerequisites for the issuance of a preliminary injunction—(1) irreparable harm, (2) likelihood of success on the merits, and (3) inadequate remedy at law. As a matter of law, the SCAG failed to prove he would suffer irreparable harm if a preliminary injunction was not issued and lacked an adequate remedy at law because the injury the SCAG alleges in his Petition can be remedied by monetary relief after a trial on the merits. The Probate Court also erred by holding that the SCAG's derivative lawsuit seeking to assert claims on behalf of and belonging to The "Sonny Mevers" Foundation (hereinafter "Foundation") is likely to succeed on the merits when the Foundation was dissolved on January 24, 2018 before commencement of this action, its dissolution has not been revoked, the statutory period for the Foundation's dissolution to be revoked has long expired, and the Foundation no longer has the right to pursue any claims as a matter of law. Respondent lacks standing or capacity to assert claims on behalf of the Foundation and is not a real party in interest because he cannot pursue claims that the Foundation itself—a dissolved corporation—can no longer pursue. Notably, the Foundation itself has not brought this action or sought to join in the SCAG's lawsuit.

The Probate Court further erred by holding that the SCAG is likely to succeed on the merits of his claim when the Foundation (whose interests the SCAG is attempting to pursue) was disqualified from taking under the Decedent's Will and Codicils as the alleged residuary beneficiary of the Decedent's estate. The Foundation failed to satisfy the express conditions in the Decedent's Will and Codicils necessary for it to have a vested interest as the residuary beneficiary of the Decedent's Estate because at the time of the Decedent's death and when the Estate was distributed (1) the Foundation could not qualify as a charitable organization within the meaning of Section 2055 of the IRC and (2) a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes, both of which were necessary conditions to the Foundation's receipt of any benefits under the terms of the Decedent's Will and Codicils.

STATEMENT OF THE CASE AND FACTS

This case originated in the Probate Court. Minnie is the widow of the late Roy E. Mevers, Jr.'s ("Sonny"). See Wentworth Aff. ¶6. Sonny died on November 3, 2017. Id. Minnie was appointed as Personal Representative of his Estate on November 13, 2017. Id. ¶5.

On December 19, 2017, Jessica Wentworth, Esquire was substituted as Minnie's counsel in her role as Personal Representative for the Estate. See Wentworth Aff. ¶5; Motions & Orders Withdraw and Substitute Counsel.¹ Ms. Wentworth is a local attorney whose practice focuses primarily on estate planning, probate administration, and real estate transactions. See Wentworth Aff. ¶¶1-4. Minnie also hired H. Christopher Moss, who is both a Certified Public Accountant (CPA) and tax attorney with over 35 years of experience, to serve as advisor on tax and Internal

¹ Ms. Wentworth replaced Irvin Slotchiver, Esquire, who initially served as counsel for Minnie in her role as Personal Representative. Mr. Slotchiver filed the initial application on November 13, 2017 opening the Estate and obtained Minnie's appointment as Personal Representative.

Revenue Service (IRS) related matters. See Wentworth Aff. ¶5; Moss Aff. ¶¶6, 17.²

In 2004, many years before marrying Minnie, Sonny had formed the Foundation as a South Carolina non-profit organization. See Art. of Inc. Via an IRS determination letter issued on July 21, 2005, the Foundation initially was granted tax-exempt status as a private, nonoperating foundation under § 501(c)(3) of the IRC. See IRS letter 7.21.05. However, effective on November 15, 2017, the IRS revoked the Foundation's federal tax-exempt status under IRC § 501(c)(3) for failure to file the required annual returns for three consecutive years. See IRS letter posted 3.19.18. The Foundation's tax-exempt status has never been reinstated.

On January 23, 2018, the Foundation was dissolved as an entity with the South Carolina Secretary of State with an effective date of January 24, 2018. See Art. of Diss.; Sec. of State page. The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the Secretary of State on January 24, 2018, and thereby forfeited its charter. Id. State statutory law provides that the Foundation could revoke its dissolution within 120 days of its effective date, which did not occur. See S.C. CODE ANN. § 33-31-1404(a). The statutory period for the Foundation to revoke its dissolution expired on May 24, 2018. No such revocation of dissolution was applied for or occurred.

² The SCAG has suggested that the Probate Court found that Mr. Moss had engaged in the unauthorized practice of law when he rendered advice to Minnie on tax and IRS matters while she was administering Sonny's estate in the Probate Court because he is not licensed as a lawyer in South Carolina. However, the Probate Court made no such findings in its Orders.

Mr. Moss is licensed as a CPA in Virginia and South Carolina as well as the District of Columbia. He is also licensed as a lawyer in Virginia and the District of Columbia. The South Carolina Supreme Court has specifically held that a CPA such as Mr. Moss does not engage in unauthorized practice of law in this state when he renders professional assistance, including compensated representation before agencies or before our state Probate Courts, that is within his professional expertise and qualifications. In re Unauthorized Practice of Law Rules Proposed by S.C. Bar, 309 S.C. 304, 422 S.E.2d 123 (1992). Absolutely no showing has been made that Mr. Moss's advice to Minnie exceeded his professional expertise or qualifications.

Sonny died testate after being married to Minnie for several years. His Last Will and Testament, as well as two Codicils amending his original Will, were prepared by Irvin Slotchiver, Esquire. See Wentworth Aff. ¶6. Article XII of Sonny's original Will, which was made before he married Minnie, specifically provided for the disposition of his residuary estate:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE "SONNY MEVERS" FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

See Will dated 11.16.15.

After Sonny married Minnie on September 12, 2016, he later executed a Codicil to his Will amending Article XII so as to add the following sentence to the conclusion of that article:

Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, **MINNIE LEE NEWMAN MEVERS**, absolutely and in fee simple, forever, on the condition that she shall survive me.

See Codicil dated 4.12.17.

Under the terms and provisions of Sonny's Will, the Foundation's status as the outright beneficiary of Sonny's residuary estate would vest at the time of Sonny's death ***provided*** the Foundation was in existence at that time ***and*** it satisfied the other "conditions" set forth in Article XII. See Wentworth Aff. ¶12; Moss Aff. ¶15. The Will sets forth specific conditions that the Foundation must satisfy to qualify for receipt of the gift or distribution of the residuary estate—that (a) it is an organization which is charitable within the meaning of Section 2055 of the Internal Revenue Code (IRC) and (b) that the gift is permitted as a charitable deduction from Sonny's Estate for federal estate tax purposes. If either of those conditions were not satisfied either at the time of Sonny's death or when the estate assets were to be distributed, then the devise or gift to the

Foundation either did not vest or, if it vested, it lapsed or was cancelled and instead devolved to Minnie. See Wentworth Aff. ¶13; Moss Aff. ¶16.

Sonny had created the Foundation in 2004, before he had even met Minnie. Because Ms. Wentworth is not a CPA or tax attorney, Minnie contacted Mr. Moss, who is both a CPA and a tax attorney, to serve as advisor on tax and IRS related matters, including the question of whether the Foundation satisfied the conditions in Article XII of the Will. See Wentworth Aff. ¶¶5, 14; Moss Aff. ¶17. Mr. Moss investigated the matter and concluded that the Foundation was a sham and it had no real substance. See Moss Aff. ¶¶18-19.

Among other things, Mr. Moss learned that the Foundation had not filed the legally required tax information returns (Form 990-PF) for the fiscal years 2014, 2015, and 2016 and he could find no other reporting or other documentation to the IRS or another regulatory body concerning its operations during these periods. See Moss Aff. ¶18; Wentworth Aff. ¶14. He determined that the Foundation had no real corporate records or documentation (outside its initial formation documents) that evidenced the Foundation had been, and was continuing, to be organized and operated exclusively for charitable purposes. Id. He learned that almost the entirety of the Foundation's Board members had conflicts of interest as they primarily comprised persons with whom Sonny transacted business raising a number of self-dealing concerns under Section 4941 of the IRC. Id. There were no records of when and how long these individuals were serving as directors, whether they were in fact appointed, or had ever approved any transactions, the compensation arrangements, or any charitable activities, grants, or any other matters required of individuals acting as directors. Id. The Foundation had no bookkeeping or records, had not conducted periodic meetings or recorded minutes of meetings as required in the bylaws, had no records of appointments of directors or officers, had no staff or employees, and had no office. Id. In short, Mr. Moss concluded the

Foundation had no substance. Id. It had no documentation that could demonstrate it had been actually operated by a board of directors to further charitable purposes. Id.

Based on his considerable experience in the field of taxation and his experience with tax audits by the IRS, Mr. Moss concluded that the Foundation could not withstand an IRS audit, it could not and would not qualify as a charitable organization within the meaning of Section 2055 of the IRC, and that a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes. See Moss Aff. ¶19; Wentworth Aff. ¶15. Mr. Moss communicated his conclusion to Ms. Wentworth and Minnie. See Moss Aff. ¶20; Wentworth Aff. ¶15. Ms. Wentworth and Minnie were concerned that it would be fraudulent or possibly even criminal to file papers taking the position that the Foundation was a tax-exempt organization. See Wentworth Aff. ¶15.

The IRS confirmed Mr. Moss's conclusion about the Foundation when it revoked the Foundation's federal tax-exempt status under IRC § 501(c)(3) effective on November 15, 2017. See Moss Aff. ¶21; Wentworth Aff. ¶16. As of November 15, 2017, the Foundation was a taxable corporation. Id. This occurred a mere two days after Minnie had been appointed as Personal Representative.

On January 23, 2018, the Foundation's Board of Directors voted to dissolve the Foundation for the reasons pointed out by Mr. Moss—that the Foundation did not qualify as a tax-exempt entity and it had no real substance. See Moss Aff. ¶22. The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the South Carolina Secretary of State on January 24, 2018, and the Foundation ceased to exist. Id.

Minnie and Ms. Wentworth took the appropriate steps to probate Sonny's Will and administer his estate based on the reasoned and good faith determination that the Foundation had not

satisfied the conditions in the Will, that the devise or gift to the Foundation had lapsed or was canceled, and that Minnie was the residuary beneficiary under the Will. See Wentworth Aff. ¶17; Moss Aff. ¶23. With Ms. Wentworth's assistance, Minnie filed a Proposal for Distribution (Form #410ES) with the Probate Court on November 21, 2018, along with a Final Accounting (Form #361ES), Application for Settlement (Form #412ES), and Notice of Right to Demand Hearing (Form #416ES), which disclosed that Minnie would receive the residuary estate as part of the proposed distribution of Sonny's estate. Id.; see Prop. for Distr.; Final Accounting; Appl. for Settlement; Notice. Because the Foundation was not a proper residuary beneficiary, these actions were completely proper and were mandated by the terms and provisions of Sonny's Will.

All of the 28 beneficiaries who received distributions from the Estate signed a Receipt and Release with Waiver (Form #403ES) and none responded to the notice of right to demand a hearing, or filed any objection to the Proposal for Distribution or Application for Settlement. See Wentworth Aff. ¶18; Moss Aff. ¶24. None of the directors or officers of the Foundation contested the probate process, its revocation of exempt status on November 15, 2017, or the subsequent dissolution of the Foundation. See Wentworth Aff. ¶19; Moss Aff. ¶25.

The Probate Court issued an Order closing the Estate on December 31, 2018. See Order filed 12.31.18. The assets of the Estate were distributed in accordance with the terms of the Will as shown on the Proposal for Distribution. See Wentworth Aff. ¶20. Deeds of distribution involving the various real estate owned by Sonny were duly executed and recorded with the Registers of Deed for the appropriate counties. Id. The assets of the Estate have already been distributed in accordance with the terms and provisions of Sonny's Will. Id.

On March 13, 2020, notwithstanding the dissolution of the Foundation and the forfeiture of its charter, the SCAG filed the instant action in the Probate Court in his *parens patriae* capacity

purportedly on behalf of the Foundation's beneficiaries, even though the Foundation no longer exists and lacks the right to sue. See Petition filed 3.13.20. The SCAG's lawsuit alleges the Foundation was a qualifying devisee under the terms and provisions of Sonny's Will and the Foundation should have been distributed all or a portion of the Decedent's residuary estate. The SCAG's action seeks to reopen Sonny's Estate and formally probate his Will and Codicils, to have a special administrator appointed for the Estate, and to impose a constructive trust for the benefit of the Foundation over the assets that were previously distributed from the Estate to Minnie.

On the very same day the SCAG filed the action, and without prior notice to Minnie or opportunity to be heard and despite the fact the SCAG had been engaged in active dialogue with Minnie's counsel for several months, the SCAG obtained an *ex parte* TRO from Associate Probate Judge Tamara Curry based solely on the SCAG's uncontested submissions to the Court. See Motion for Ex Parte TRO; Order Granting Ex Parte TRO; Correspondence.³ In the same Order, Judge Curry reopened Sonny's estate and appointed a Special Administrator for the Estate when a hearing on those matters was not previously noticed or conducted. See Order Granting Ex Parte TRO. Judge Curry set a hearing to take place on March 23, 2020, but did not specify the purpose of the hearing. See Notice of Hearing. The hearing notice merely states the hearing is "Per Temporary Restraining Order Dated March 13, 2020." Id. Minnie and her counsel were served with the SCAG's Petition, *ex parte* TRO, and Notice of Hearing on March 17, 2020. See Affs. Of Service.

Probate Judge Irvin G. Condon conducted a hearing on March 23, 2020. See Transcript 3.23.20 Hearing. Minnie and her counsel appeared and opposed the continuation of the TRO. Judge

³ Prior to the SCAG's *ex parte* proceedings, Minnie's legal counsel had been actively communicating with the SCAG concerning these subject matters for several months, her counsel had repeatedly responded to the SCAG's numerous requests for information, and she had been cooperating with the SCAG's inquiries. See Correspondence.

Condon verbally indicated at the hearing his preliminary ruling, but also stated that he would issue a written Order setting forth his final findings and rulings.⁴ Judge Condon did not issue a written Order until June 29, 2020.

In the interim, on April 10, 2020, Minnie filed her Return to the SCAG's Petition in the Probate Court along with Counterclaims, Cross-Claims, and Third-Party Claims against the SCAG as well as the Special Administrator. See Return filed 4.10.20. Minnie raised numerous defenses (including the SCAG's lack of standing, lack of capacity, the fact he is not a real party in interest, and failure to state a claim as a matter of law) and also asserted claims involving the construction of Sonny's Will and Codicils. In the same pleading, Minnie also filed a petition in which she asserts the right to an elective share of Sonny's probate estate in accordance with S.C. CODE ANN. §§ 62-2-201 *et seq.* and a claim for attorneys' fees under S.C. CODE ANN. § 62-1-111. Id.

By Reply dated May 4, 2020, the Special Administrator answered the Counterclaims, Cross-Claims, and Third-Party Claims. See Reply dated 5.4.20. By Reply dated May 8, 2020, the SCAG answered the Counterclaims, Cross-Claims, and Third-Party Claims. See Reply dated 5.8.20.

On May 12, 2020, Minnie timely filed and served a Notice of Demand for Jury Trial. See Demand for Jury Trial filed 5.12.20. On that same day, in accordance with the provisions of S.C. CODE ANN. § 62-1-302(d), Minnie timely filed and served a Notice of Removal and Motion to Remove Action to Circuit Court. See Notice of Removal filed 5.12.20. The notice removed this action to the Circuit Court pursuant to S.C. CODE ANN. § 62-1-302(d).

⁴ Under state law, until a written order is entered, a binding ruling has not been issued by the Court. Bayne v. Bass, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990); Bowman v. Richland Mem'l Hosp., 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999); Christy v. Christy, 347 S.C. 503, 510, 556 S.E.2d 701, 704 (Ct. App. 2001). Judge Condon was free to change his mind or modify his rulings until he issued a written Order.

On June 29, 2020, notwithstanding the prior removal notice, Judge Condon nevertheless entered a written Order granting a preliminary injunction and other relief. See Order dated 6.29.20. In addition to granting injunctive relief, the Order further requires Minnie to render a “complete accounting” to the Special Administrator. Id.

On July 10, 2020, Minnie timely filed and served a Motion to Alter, Amend, and/or Vacate the June 29, 2020 Order pursuant to Rule 59(e). See Motion filed 7.10.20. On August 28, 2020, Minnie also timely filed and served a Motion to Vacate Order pursuant to Rule 60(b). See Motion filed 8.28.20. Minnie requested a hearing on her motions. See Letter dated 8.28.20. However, on September 10, 2020, the Probate Court entered an Order denying Minnie’s motions without a hearing. See Order filed 9.10.20.

On September 11, 2020, Minnie filed a timely Notice of Intent to Appeal to this Court from the Probate Court’s Orders entered on March 13, 2020, June 29, 2020, and September 10, 2020. See Notice of Appeal. Minnie’s appeal is pending in this Court as Case No. 2020-CP-10-04036.

On September 15, 2020, the Probate Court then filed a removal of the remainder of the action not subject to the appeal to this Court, which action is also pending in this Court as Case No. 2020-CP-10-04089. See Order filed 9.15.20. On September 16, 2020, the SCAG filed a Motion for Continuance of the TRO issued by the Probate Court or, in the Alternative, Issuance of a Temporary Injunction in Case No. 2020-CP-10-04089. See Motion for Continuance of TRO. On September 22, 2020, after conducting an expedited hearing on the motion, Circuit Judge Bentley D. Price denied the SCAG’s Motion for Continuance of the TRO via a Form 4 Order. See Order dated 9.22.20.

ARGUMENTS

I. STANDARD OF REVIEW.

Appeals from the Probate Court to the Circuit Court are governed by S.C. CODE ANN. § 62-1-308. Section 62-1-308(i) provides that “[t]he circuit court . . . shall hear and determine the appeal according to the rules of law.” Id. § 62-1-308(i). “As used in this statute, the phrase ‘according to the rules of law’ means according to the rules governing appeals.” Univ. of S. California v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (citation omitted); Matter of Howard, 315 S.C. 356, 434 S.E.2d 254, 257 (1993). Therefore, “a circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal.” In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005); Howard, 434 S.E.2d at 257.

“The granting of temporary injunctive relief is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion.” MailSource, LLC v. M.A. Bailey & Assocs., 356 S.C. 363, 367, 588 S.E.2d 635, 637–38 (Ct. App. 2003) (quoting City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 282, 531 S.E.2d 518, 520–21 (2000)). “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Id. (quoting County of Richland v. Simpkins, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct.App.2002)).

Questions of law are reviewed *de novo* and the appellate court will reverse the lower court’s decision when it is controlled by an error of law. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see also Ex parte TLC Laser Eye Centers (Piedmont/Atlanta), LLC, 404 S.C. 385, 392, 745 S.E.2d 105, 109 (2013) (“Questions of law are reviewed *de novo*.”).

II. THE PROBATE COURT ERRED BY GRANTING AN *EX PARTE* TRO AND APPOINTING A SPECIAL ADMINISTRATOR WITHOUT AFFORDING APPELLANT NOTICE OR AN OPPORTUNITY TO BE HEARD.

The Probate Court erroneously granted an *ex parte* TRO and appointed a Special Administrator on March 13, 2020, without requiring that the SCAG first provide Minnie notice of the motion or an opportunity to be heard.

S.C. R. CIV. PRO. 65(b) expressly provides in pertinent part as follows:

No temporary restraining order shall be granted without notice of motion for the order to the adverse party ***unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.*** Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall be served, together with a summons and complaint in the event no summons and complaint have previously been served in the action, upon the adverse party in accordance with the provisions of Rule 4; ***shall define the injury and state why it is irreparable and why the order was granted without notice;*** and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period.

S.C. R. CIV. PRO. 65(b) (emphasis added); see JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 534 (3rd ed. 2010) (“Ex parte temporary restraining orders are disfavored in state practice. TROs are limited to those ‘rare occasions when no adverse interest exists or when exigent circumstances dictate that action be taken prematurely.’”).

“Because a temporary restraining order may be issued *ex parte*, the device is vulnerable to abuse; indeed, the propriety of a court issuing any order that would subject a person to injunctive restraint without the person’s knowledge has been questioned.” WRIGHT & MILLER, 11A FED. PRAC. & PROC. CIV. § 2952 (3d ed. 2020). Accordingly, “[t]o ensure that the rights of all concerned are protected, Rule 65(b) prescribes certain safeguards for the issuance of temporary restraining orders

that must be scrupulously honored.” Id. “In view of the fact that notice and a hearing usually can be arranged easily, there normally is no reason why the rule’s requirements cannot be carried out promptly.” Id.

The normal circumstances in which a trial court would be justified in proceeding *ex parte* on a TRO motion is when notice to the adverse party is impossible since the adverse party is unknown or cannot be found or when specific evidence is presented that the adverse party would likely take some action that would in turn cause irreparable harm to the movant if notice was given. Guilford v. California, No. 317CV00038RCJVPC, 2017 WL 376153, at *3 (D. Nev. Jan. 25, 2017); First Technology Safety Systems, Inc. v. Depinet, 11 F.3d 641 (6th Cir. 1993). However, when the adverse party’s location is known and no showing is made by sworn affidavit or verified complaint that immediate and irreparable harm will result before notice can be given to the adverse party or his or her attorney, then an *ex parte* TRO is improper and must be vacated. See, e.g., Rabbi Jacob Joseph School v. Province of Mendoza, 342 F. Supp. 2d 124 (E.D. N.Y. 2004) (vacating *ex parte* TRO issued by a state court after removal to the federal court when the TRO had been issued without notice to the defendant’s attorney whose identity was known and without declaring in an affidavit or verified complaint that immediate and irreparable harm would result before the adverse party or his attorney could be heard in opposition); Reno Air Racing Ass’n, Inc. v. McCord, 452 F.3d 1126, 1131-32 (9th Cir. 2006) (vacating *ex parte* TRO that was issued based on moving party’s conclusory allegation that there was a “significant risk” that the defendant may leave the area and destroy or conceal evidence if notice was given; court noted that defendant “was no stranger to” the plaintiff and the plaintiff had not advised the trial court of its prior communications with the defendant regarding the matter in dispute).

A party's delay in seeking injunctive relief militates against a finding that immediate and irreparable injury, loss, or damage will result to the party before notice can be served and a hearing conducted. See Quince Orchard Valley Citizens Ass'n v. Hodel, 872 F.2d 75, 79-80 (4th Cir. 1989). In Wangson Biotechnology Grp., Inc. v. Tan Tan Trading Co., 2008 WL 4239155 (N.D. Cal. Sept. 11, 2008), for instance, the Court found that a party's delay for two months in requesting an *ex parte* TRO warranted its denial. The Court observed that "[p]arties spurred on by the threat of or actual immediate irreparable harm, file for TROs as quickly as possible to head or stave it off," but in the case before it the plaintiff was aware of the defendants' alleged counterfeiting activities since July 2008, but did not file suit until September 2008. Id. at *6.

The South Carolina Probate Code likewise provides that a Special Administrator may be appointed "in a formal proceeding by order of the court on the petition of any interested person and finding, ***after notice and hearing***, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act." S.C. CODE ANN. § 62-3-614(2) (emphasis added). The requirement of notice and a hearing can be dispensed with only if "***an emergency exists.***" Id. (emphasis added).

Minnie and her counsel were served with the SCAG's Petition, Motion for TRO and request for appointment of a Special Administrator, and *ex parte* Order granting a TRO and appointing a Special Administrator on March 17, 2020. See Affs. Of Service. The SCAG had initially contacted Minnie about this matter on November 14, 2019. See Correspondence. The SCAG waited for four months before seeking an *ex parte* TRO in the Probate Court, which strongly militates against a finding that immediate and irreparable injury will result.

The SCAG knew where Minnie was located and had written letters to Minnie and her legal counsel beginning on November 14, 2019, in which the SCAG requested information and records relating to the Foundation and Sonny's Estate. For several months prior to the SCAG's filing of this lawsuit, Minnie's legal counsel had been actively engaged in dialogue and the exchange of information with the SCAG involving the very subject matters in this case. See Correspondence. Through her legal counsel, Minnie promptly responded to the SCAG's inquiries on each occasion they were received and expressed her desire to cooperate with the SCAG's investigation. In fact, on February 11, 2020, Minnie's counsel sent a detailed letter to the SCAG and suggested that "[a]t this juncture, a phone call to discuss these matters further may be most effective." See Oberly letter 2.11.20. Minnie and her counsel had repeatedly responded to the SCAG's requests and Minnie was fully cooperating with the SCAG's inquiries. Despite this cooperation, the SCAG made no attempt to contact Minnie or her counsel and notify them about a hearing before obtaining the *ex parte* TRO and the appointment of a Special Administrator.

The SCAG presented no specific facts by affidavit or verified complaint showing that an emergency existed or that immediate and irreparable injury, loss, or damage will result to the SCAG before notice could be served on Minnie or her counsel and a hearing conducted. To the contrary, this case involves an Estate that had been fully administered and closed on December 31, 2018 (15 months before the SCAG filed this action) and the Estate's assets (which predominantly comprised real estate) had already been distributed approximately 1½ years before this case was commenced. The SCAG made no showing whatsoever that Minnie was on the verge of disposing of any property or assets that she had received from Sonny's Estate 1½ years earlier.

The most the SCAG could muster was the following weak claim: "Ms. Newman, through her counsel, declined the State's request for an assurance that she would refrain from dissipating

Foundation assets pending resolution of this matter.” See Motion ¶5. In other words, the SCAG had no evidence that Minnie was planning to dispose of or secrete any assets that she received from Sonny’s Estate as residual beneficiary and which she still may hold. Rather, the SCAG sought the extraordinary remedy of an *ex parte* TRO based on the thinnest of grounds—that the SCAG was unsure whether Minnie would dispose of properties she received as residual beneficiary and which she still may hold. If such a meager showing were sufficient to satisfy the “immediate and irreparable injury, loss or damage” language of Rule 65(b), then the rule’s protections are illusory. The issuance of *ex parte* TROs will become the norm, not the exception.

The Probate Court had no evidentiary grounds on which to grant a TRO or appoint a Special Administrator on an *ex parte* basis without affording Minnie notice and an opportunity to be heard. This Court must reverse the Probate Court given its failure to provide Minnie with advance notice of the SCAG’s motion or an opportunity to be heard prior to issuance of the TRO.

III. THE PROBATE COURT ERRED BY EXTENDING THE TRO BEYOND TEN DAYS AND BY PRELIMINARY ENJOINING APPELLANT FOR AN INDEFINITE DURATION AND ORDERING HER TO ACCOUNT WHEN THE SCAG DID NOT MOVE FOR SUCH RELIEF.

The SCAG’s motion simply requested an *ex parte* TRO pursuant to Rule 65(b) “effective from the date and time of issuance and for a period of 10 days thereafter.” See Motion for TRO. The SCAG’s motion nowhere asked the Probate Court to extend or enlarge the TRO beyond the time limitations imposed by Rule 65(b). The SCAG did not file any motion seeking a preliminary injunction or seeking to require Minnie to render an accounting. The SCAG’s Petition also did not request or seek a preliminary injunction or other injunctive relief.

Rule of Civil Procedure 65(b) expressly provides that a TRO “shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the

order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period.” See S.C. R. CIV. PRO. 65(b). As such, a TRO expires no later than ten days after it is issued. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 602, 553 S.E.2d 110, 121 (2001) (“Rule 65(b), SCRCF states that an ex parte TRO will expire in ten days. Because more than ten days has elapsed, the TRO has expired as a matter of law and the remaining issues involving the TRO are moot.”). The rule allows the Court to extend the time for another ten days for “good cause shown” absent the restrained party’s consent. However, nothing in the rule allows the Court to extend a TRO beyond a maximum of twenty days.

In this case, the *ex parte* TRO issued on March 13, 2020 expired ten days after its issuance in accordance with the unambiguous provisions of Rule 65(b). When the Probate Court conducted a hearing on March 23, 2020, the maximum amount of time the Court could extend the TRO was by another ten days. However, the Probate Court disregarded the clear limitations of Rule 65(b) and entered a Preliminary Injunction on June 29, 2020 for an indefinite duration as well as ordered Minnie to render an accounting. Minnie was not provided notice of any such motion. The issues of a preliminary injunction and an accounting were not before the Probate Court when it conducted a hearing on March 23, 2020 because the SCAG had never moved for or requested such relief in its motion and the Probate Court had never noticed a hearing on such a motion or request.

The Probate Court erred by extending the *ex parte* TRO for a duration beyond that authorized by Rule 65(b) and by granting a preliminary injunction and ordering an accounting when such relief had not been requested in the SCAG’s motion. The Probate Court further compounded its error by refusing Minnie’s request for leave to file additional affidavits in response to matters which the SCAG raised for the first time at the hearing conducted on March 23, 2020. At the hearing, Minnie’s counsel requested leave to file additional affidavits addressing certain tax issues which the

SCAG had raised for the first time during the hearing. See Hearing Trans. pp. 38, 88-96. Minnie had no notice of those matters prior to learning of them during the hearing. The Probate Court initially indicated at the hearing that it was inclined to accommodate Minnie's request and grant her time to submit additional affidavits. However, the Probate Court later changed its mind and denied Minnie's request for more time to submit additional affidavits. See Order filed 6.29.20 p.14.

The Court must reverse the Probate Court's Order given its noncompliance with Rule 65(b).

IV. THE PROBATE COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT A PRELIMINARY INJUNCTION OR TO REQUIRE APPELLANT TO ACCOUNT AFTER A NOTICE OF REMOVAL TO THE CIRCUIT COURT HAD BEEN FILED AND SERVED.

The Probate Court entered its June 29, 2020 Preliminary Injunction and ordered Minnie to render an accounting *after* Minnie had already filed and served a Notice of Removal and Motion to Remove Action to Circuit Court pursuant to S.C. CODE ANN. § 62-1-302(d) on May 12, 2020. The filing of the notice of removal divested the Probate Court of jurisdiction over the matter and required the Probate Court to remove the action to the Circuit Court without conducting further proceedings.

Pursuant to the clear terms of § 62-1-302(d), the action "*must be removed* to the circuit court and in these cases *the circuit court shall proceed upon the matter de novo.*" S.C. CODE ANN. § 62-1-302(d) (emphasis added); see Thomas v. Gathings, 304 S.C. 308, 312, 403 S.E.2d 682, 684 (Ct. App. 1991) (statute require removal when it is raised by motion of any party or by motion of the probate judge on his own). The statute is mandatory and not discretionary with the Probate Court. Once the notice of removal is filed, the Probate Court is divested of subject matter jurisdiction over the matter that was removed to the Circuit Court. Ex parte Cannon, 385 S.C. 643, 657, 685 S.E.2d 814, 822 (Ct. App. 2009). The Circuit Court determines the removed matter "*de novo.*" S.C. CODE ANN. § 62-1-302(d). *De novo* means to begin again "as if no proceeding whatsoever had been had in

the first instance.” Nat’l Health Corp. v. DHEC, 298 S.C. 373, 378, n.1, 380 S.E.2d 841, 844, n.1 (Ct. App. 1989).

Minnie filed and served a Notice of Removal and Motion to Remove Action to Circuit Court pursuant to § 62-1-302(d) on May 12, 2020. As such, the Probate Court no longer had subject matter jurisdiction over the matter. The Probate Court erred in issuing a Preliminary Injunction and ordering Minnie to account after the notice of removal had been filed and served. The Probate Court’s June 29, 2020 Order is void for lack of subject matter jurisdiction and must be reversed.

V. THE PROBATE COURT ERRED BY FINDING THAT THE SCAG SATISFIED THE NECESSARY REQUIREMENTS FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION.

Even disregarding the fact that the SCAG failed to move for or give Minnie timely notice of the hearing on its request for a preliminary injunction and even ignoring the fact that the Probate Court lacked subject matter jurisdiction to grant a preliminary injunction once the case had been removed to the Circuit Court, the Probate Court also erred on the merits in finding that the SCAG satisfied the prerequisites for the issuance of a preliminary injunction.

Notably, Circuit Judge Bentley D. Price has already ruled against the SCAG on this exact issue in the related case pending in this Court as Case No. 2020-CP-10-04089. On September 16, 2020, the SCAG filed a Motion for Continuance of the TRO issued by the Probate Court or, in the Alternative, Issuance of a Temporary Injunction in that case. See Motion for TRO. On September 22, 2020, after conducting an expedited hearing on the SCAG’s motion, Judge Price denied the requested TRO. See Order dated 9.22.20. As such, this Court has already determined that the SCAG is not entitled to a TRO or preliminary injunction.⁵

⁵ Judge Price’s Order was entered after the Probate Court entered its Orders granting an *ex parte* TRO and Preliminary Injunction. However, this Court can take judicial notice of Judge Price’s

Under South Carolina law, a party seeking a preliminary injunction “must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); Hook Point, LLC v. Branch Banking and Trust Co., 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012). The sole purpose of a temporary injunction is to preserve the *status quo* during litigation to prevent irreparable injury to the requesting party and to preserve the ability of the court to render complete relief. County Council of Charleston v. Felkel, 244 S.C. 480, 484, 137 S.E.2d 577, 578 (1964).

A preliminary injunction is an “extraordinary remedy . . . which is to be applied only in the limited circumstances which clearly demand it.” Dao Travels, LLC v. Charleston Black Cab Co., 2015 WL 631137, *4 (D.S.C. Feb. 13, 2015) (quoting Centro Tepeyac v. Montgomery Cnty., 722 F.3d 184, 188 (4th Cir. 2013)); see Munaf v. Geren, 553 U.S. 674, 689-90 (2008) (“A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” (internal citation and quotation marks omitted)).

In this case, the Probate Court erred in finding that the SCAG satisfied the necessary requirements for issuance of a preliminary injunction. The Probate Court erred in finding that the SCAG had shown irreparable harm if the injunction is not granted, that he is likely to succeed on the merits of his claims, and that there is not an adequate remedy at law.

(1) The SCAG Did Not Show Irreparable Harm:

The SCAG failed to show he will suffer irreparable harm if a preliminary injunction is refused. The assets that Minnie received pursuant to Sonny’s Will were almost exclusively real

Order as part of its own records, files, and proceedings. Wise v. Wise, 394 S.C. 591, 716 S.E.2d 117, 122 (Ct. App. 2011); Freeman v. McBee, 280 S.C. 490, 313 S.E.2d 325, 327 (Ct. App. 1984).

estate holdings. The SCAG made no showing whatsoever that Minnie intends to dispose of any real estate that she received as residual beneficiary of Sonny's Estate during the pendency of this lawsuit. One of the properties that Minnie received from Sonny's Estate is 17 East Battery, which is situated in the historic district of Charleston and overlooks the Cooper River. This house was the couple's home before and after their marriage. It is where Minnie still resides. The house has been in Sonny's family for nearly 125 years. Selling that house would be the last thing Minnie would ever do and she has absolutely no plans or intention of selling the property.

The SCAG weakly asserts that Minnie has declined the SCAG's request for an assurance that she will refrain from dissipating assets she received from Sonny's Estate pending resolution of this matter. Of course, this assertion assumes without proving that the Foundation will be entitled to recover those assets. Even if it is assumed for argument's sake that the SCAG can assert the Foundation's rights in this case and that the Foundation was entitled to Sonny's residuary estate, the SCAG still has offered no evidence showing that Minnie is on the verge of disposing of any assets that she received from Sonny's Estate as residual beneficiary and which she still held when this lawsuit was filed.⁶ Rather, the SCAG seeks the extraordinary remedy of a preliminary injunction based on the barest of claims—that Minnie would not affirmatively “assure” the SCAG that she will refrain from selling any assets she received as residual beneficiary. If such a meager showing were

⁶ The SCAG ignores the fact that Minnie not only took under Sonny's Will pursuant to the *residuary clause*, but she also was a *specific devisee* under other provisions of the Will. See Art. IX.1 of Will dated 11.16.15 (devising \$350,000 to Minnie); Codicil dated 8.4.17 (devising all personal property to Minnie). Even if the SCAG were to be successful on its claim that the Foundation was the residuary beneficiary, it would not divest Minnie of her rights as a specific devisee under the Will. The SCAG has no right to restrain Minnie from using or disposing of any such property or assets. The SCAG further ignores the fact that Minnie was Sonny's surviving spouse at the time of his death. As such, she is entitled to an elective share equal to one-third of Sonny's entire probate estate in accordance with S.C. CODE ANN. §§ 62-2-201 et seq. The SCAG also has no right to restrain Minnie from using or disposing of those assets.

sufficient to establish “irreparable harm,” then the “extraordinary remedy” of a preliminary injunction during the pendency of litigation becomes the rule and not the exception.

Further assuming for argument’s sake that the SCAG had shown that Minnie was on the verge of disposing of an asset she received from Sonny’s Estate as residual beneficiary, which would potentially cause a financial harm to the Foundation if the asset cannot later be returned should the Foundation (via the SCAG’s lawsuit) obtain a judgment in its favor, “pure economic loss is not sufficient to satisfy the requirement of showing an irreparable harm where an adequate remedy is available at law.” Professional Wiring Installers, Inc. v. Sims, 2008 WL 9840409, *3 (S.C. Ct. App. 2008).

A preliminary injunction is unwarranted when the purported harm to the SCAG can be remedied by monetary relief. See, e.g., MailSource, 356 S.C. at 369-70, 588 S.E.2d at 639; Hughes Network Sys., Inc. v. InterDigital Communications Corp., 17 F.3d 691, 694 (4th Cir. 1994). The United States Supreme Court has instructed that:

The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974) (emphasis in original).

This principle was illustrated in Schwartz v. Wellin, No. 2:13-CV-3595-DCN, 2014 WL 51212, at *1 (D.S.C. Jan. 7, 2014), which reversed a TRO granted by Probate Judge Irvin G. Condon. In that case, which originated in the Probate Court but was removed to the federal district court, three co-trustees (the “Wellin children”) of a trust created by their father had liquidated and distributed over \$95.6 million of the trust’s estimated \$154 million in assets to themselves personally. Id. at *1; McDevitt v. Wellin, No. 2:13-CV-3595-DCN, 2016 WL 199626 (D.S.C. Jan.

15, 2016). The Wellin children had also used millions of dollars they took from the trust to pay their own attorneys, experts, and consultants. McDevitt, 2016 WL 199626 at *2. The trust protector and another co-trustee sued the three co-trustees, *inter alia*, to compel them to restore the trust's assets to the trusts and for temporary and permanent injunctive relief.

While the case was pending in the Probate Court, Judge Condon issued an *ex parte* TRO enjoining the Wellin children from disposing of or using the trust assets. Schwartz, 2014 WL 51212 at *2. After the case had been removed to the federal district court, a motion was then made to extend the TRO and for a preliminary injunction. Id. In denying the motion, Judge Norton pointed out that the lawsuit primarily sought to force the Wellin children to return the \$95.6 million in trust assets which they had distributed to themselves and, as such, it sought monetary relief. Id. at *4. Because “the harm at issue can be remedied by money damages,” Judge Norton held the “irreparable harm” element could not be satisfied. Id. (citing Bethesda Softworks, LLC v. Interplay Entm't Corp., 452 F. App'x 351, 353 (4th Cir. 2011)).

The same principles apply in the instant case. Even assuming *arguendo* the SCAG could show the Foundation will suffer some financial harm resulting from Minnie's disposition of any property she received from Sonny's estate as residual beneficiary during the pendency of this action and further assuming the SCAG has authority to sue Minnie in such a circumstance, any such harm could be remedied by an award of damages at end of this case after a trial on the merits. The SCAG has failed to satisfy the irreparable harm element.

(2) *The SCAG Did Not Show Likelihood of Success on the Merits:*

The SCAG also failed to show that he is “likely” to succeed on the merits of the litigation. In fact, his claims fail on the merits because (i) he is improperly seeking to pursue the rights of the Foundation, which was a private foundation that was dissolved over 2½ years ago, no longer exists,

and no longer has the right, power, or ability to pursue any claims; (ii) he lacks standing or capacity to sue on the Foundation's behalf to enforce any rights it may have to receive Sonny's residuary estate—any such claims belong to the Foundation, not to the SCAG; and (iii) the Foundation—even assuming *arguendo* the SCAG can sue to enforce its rights—did not have any right to receive any portion of Sonny's estate because the Foundation did not meet the express conditions or qualifications set forth in his Will and Codicils. Each of these issues is addressed below.

a. The Foundation Was Dissolved, Has Not Been Reinstated, and Cannot Pursue Any Claims Against Appellant:

The Foundation was dissolved as an entity with the South Carolina Secretary of State effective on January 24, 2018. See Art. of Dissolution. The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the Secretary of State on January 24, 2018, and thereby forfeited its charter. S.C. CODE ANN. § 33-31-1404(b) provides that “[a] corporation is dissolved upon the effective date of its articles of dissolution.” The Foundation has been dissolved for over 2½ years.

Section 33-31-1405(a) provides that the Foundation could have revoked its dissolution within 120 days of its effective date, which did not occur. The statutory period for the Foundation to revoke its dissolution expired on May 24, 2018. See S.C. CODE ANN. § 33-31-1405(a) (“A corporation may revoke its dissolution within one hundred twenty days of its effective date.”). No such revocation of dissolution was applied for or occurred.

The Georgia Supreme Court addressed this same scenario in Gas Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc., 436 S.E.2d 207, 208 (Ga. 1993). In that case, a corporation was dissolved in May of 1988 due to its failure to comply with state filing and fee requirements. In 1991, the corporation later filed a lawsuit against several defendants alleging violations of the federal antitrust

laws. The trial court dismissed the lawsuit on the grounds that the plaintiff corporation lacked standing to pursue the case as a matter of law because it had been dissolved and never reinstated.

On certification to the Georgia Supreme Court, the Court pointed out that Georgia's statutes give a dissolved corporation two years in which it may seek reinstatement. Because the corporation had not filed for reinstatement within this two-year period, the Court held it no longer existed and, as such, it lacked capacity to sue the defendants. Id. at 207 (holding the corporation lacked capacity to bring the antitrust action because of "the expiration of the time in which an administratively-dissolved corporation continues its existence"). The Court explained:

The expiration of the time for reinstatement puts a stamp of finality on the demise of the corporation—it can no longer be resuscitated. The unavoidable conclusion is that the corporation cannot, after the time its demise is deemed complete, initiate any activity. To permit a suit to be initiated in the name of the dissolved corporation after that time would be to sanction a form of legal necromancy, reanimation of the empty husk of a dead corporate entity.

Id. at 208.

Numerous other state courts have reached the same holding or conclusion as the Georgia Supreme Court in the Gas Pump case. See, e.g., Pacesetter Real Estate, Inc. v. Fasules, 767 P.2d 961, 964-65 (Wash. 1989) (holding that corporation that had been dissolved and which had not timely sought reinstatement following such dissolution within two-year reinstatement period set forth in statute "results in irrevocable dissolution" and, following expiration of reinstatement period, corporation cannot maintain an action; court observed "[t]his view is consistent with case law across the country"); Abrams v. Porter, 920 P.2d 386, 388-89 (Idaho 1996) (action taken by a dissolved corporation beyond the two-year limitation period for the corporation to seek reinstatement is ineffective because the dissolution becomes irrevocable at that time and the corporation ceased to have any existence); Bio-Thrust, Inc. v. Div. of Corps., 80 P.3d 164, 166 (Utah 2003) (dismissing

corporation's lawsuit for lack of standing when the corporation had been dissolved and had not been reinstated within the statutory one-year limitation period for the corporation to seek reinstatement); Metered Appliances, Inc. v. 75 Owners Corp., 225 A.D.2d 338, 338 (N.Y. App. Div. 1996) (dismissal of the complaint was warranted when corporation had been dissolved and had not sought reinstatement, thus it had no legal capacity to commence the action); see also Deere & Co. v. JPS Dev., Inc., 592 S.E.2d 175 (Ga. Ct. App. 2003) (dissolved corporation could not file action to revive breach of warranty and negligent misrepresentation action against seller of tractors since two-year statutory period for bringing a renewal action had run and corporation had no legal existence).

Likewise, at the time when the SCAG filed this lawsuit, and even to this day, the Foundation had been dissolved. The 120-day statutory period for the Foundation to revoke its dissolution expired on May 24, 2018, which was over 1½ years before the SCAG filed this lawsuit. At that time, the Foundation no longer existed as an entity, had forfeited its charter, and could not sue or be sued. Because the SCAG is attempting to bring a lawsuit on the Foundation's behalf and seeks to enforce the Foundation's rights and claims against Minnie (albeit improperly as discussed below), the SCAG likewise lacks standing, capacity, or right to bring this lawsuit. The SCAG cannot sue to enforce rights on the Foundation's behalf when the Foundation itself cannot bring such an action.

b. The SCAG Lacks Standing or Capacity to Pursue any Rights the Foundation May Have to Decedent's Estate:

Even if it were assumed that the Foundation had not been dissolved years ago and was still an existing corporation with the right and power to sue, the SCAG still cannot bring this lawsuit against Minnie because any claims belong ***to the Foundation***, not to the SCAG or to the Foundation's "unspecified charitable beneficiaries."

“Standing to sue is a fundamental requirement in instituting any action.” Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). Standing is “[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.” S.C. Pub. Interest Found. v. S.C. Dep’t of Transportation, 421 S.C. 110, 117, 804 S.E.2d 854, 858 (2017) (quoting BLACK’S LAW DICTIONARY 1625 (10th ed. 2014)). Standing must be assessed at the time the action is commenced. See S.C. Dep’t of Soc. Servs. v. Boulware, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018). “To have standing, one must have a personal stake in the subject matter of the lawsuit; i.e., one must be the ‘real party in interest.’” Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424, 427 (1996) (citation omitted).

Rule of Civil Procedure 17(a) also provides that “[e]very action shall be prosecuted in the name of the real party in interest.” S.C. R. CIV. PRO. 17(a). “A real party in interest is one who ‘has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.’” Townsend, 323 S.C. at 309, 474 S.E.2d at 427. “[T]he real party in interest is ‘the party who, by the substantive law, has the right sought to be enforced.’” and “[i]t is ownership of the right sought to be enforced which qualifies one as a real party in interest.” Fisher on behalf of estate of Shaw-Baker v. Huckabee, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018) (quoting Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013)).

The SCAG’s Petition alleges that it has a “statutory and common law duty to represent the interests of the unspecified charitable beneficiaries [of the Foundation] and the interests of the public at large.” See Petition ¶ 1. It is critical to appreciate that the SCAG’s lawsuit is attempting to enforce ***the Foundation’s rights*** as a putative beneficiary of Sonny’s Will. The Foundation’s “unspecified charitable beneficiaries” are not beneficiaries of Sonny’s Will or Codicil. Instead, the

Foundation itself was named as the initial residuary beneficiary conditioned upon its satisfaction of requirements specified in the Will and Codicil. The SCAG is trying to enforce the distribution of the residuary estate to the Foundation as a charitable gift, notwithstanding the Foundation's ineligibility to receive it. In so doing, the SCAG is attempting to re-open the Estate and then represent the Foundation's putative interests in this proceeding. However, the SCAG erroneously relies on law authorizing him to **prosecute** private corporations and hold them accountable, rather than represent them in actions against third parties.

The Foundation is a corporation. In Davis v. Hamm, 300 S.C. 284, 387 S.E.2d 676 (Ct. App. 1989), our Court of Appeals held it is well-established that the assets of a corporation belong to the corporation (and not the individual stockholders) and that a loss caused to a corporation because of mismanagement is an asset of the corporation, thus any recovery on such a cause of action belongs solely to the corporation (not its shareholders). Id. at 287–88, 387 S.E.2d at 678; see also Babb v. Rothrock, 303 S.C. 462, 401 S.E.2d 418 (1991) (shareholders lacked standing to assert claim based on alleged misappropriation of corporate property); In re Greenwood Supply Co., 295 B.R. 787, 795 (Bankr. D.S.C. 2002) (holding that a cause of action for an accounting based upon a diversion of corporate assets is a claim that must be brought by the corporation, not its shareholders individually). Thus, South Carolina law is clear that any recovery on behalf of a corporation must be pursued by the corporation itself, not by its shareholders or owners individually.

Even assuming *arguendo* that the SCAG's allegation is correct that Minnie misappropriated assets rightfully belonging to the Foundation, which is disputed, **the Foundation's beneficiaries** have no cause of action against Minnie. Instead, it is the **Foundation itself**—not its shareholders or ultimate beneficiaries—that would have a potential cause of action against Minnie for any such alleged misappropriation. However, the Foundation itself has not commenced any such claim.

The SCAG has not cited any law holding that he has the right, power, or authority to step in place of the Foundation purportedly on behalf of its “unspecified” beneficiaries or to bring an action on the Foundation’s behalf to enforce any rights the Foundation may have against Minnie. As the purported basis for his authority to bring this action, the SCAG incorrectly relies on a statute which authorizes the SCAG **to hold nonprofit corporations** (not their officers or directors) accountable concerning their use of their charitable assets and on common-law case law providing that under limited circumstances the SCAG can file an action in its *parens patriae* capacity **on behalf of the beneficiaries of a charitable foundation or charitable trust**. Neither of these bases support the SCAG’s claim of standing in this matter.

The SCAG cites to a statute authorizing him to sue nonprofit corporations to hold them accountable for their use of their charitable assets. See S.C. CODE ANN. § 1-7-130 (“The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law.”). However, this statute is inapplicable to the SCAG’s claims in this case for a couple of reasons.

First, subsequent to § 1-7-130, the South Carolina General Assembly enacted the South Carolina Nonprofit Corporation Act, S.C. CODE ANN. §§ 33-31-101 to -31-1708. The Nonprofit Corporation Act establishes a comprehensive scheme governing the duties owed by directors and officers to private foundations such as the Foundation. Unlike § 1-7-130, the Nonprofit Corporation Act specifically addresses the enforcement actions that can be brought against the officers and directors of private foundations. While § 1-7-130 expresses the SCAG’s general authority with respect to “public charities,” §§ 33-31-101 to -31-1708 of the Nonprofit Corporation Act specifically govern enforcement actions involving private foundations and their officers and directors.

Settled law holds that “[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” Denman v. City of Columbia, 387 S.C. 131, 691 S.E.2d 465, 468–69 (2010) (citing Spectre, LLC v. S.C. Dept. of Health and Envtl. Control, 386 S.C. 357, 688 S.E.2d 844, 851 (2010)). As a result, the SCAG cannot circumvent the specific enforcement provisions of the Nonprofit Corporation Act by relying upon the general provisions of § 1-7-130. See Van de Kamp v. Gumbiner, 270 Cal. Rptr. 907, 921-22 (Ct. App. 1990) (provisions of California’s comprehensive Nonprofit Corporation Law governing authority to enjoin or otherwise remedy breaches of the statute superseded the attorney general’s common law authority as *parens patriae* to bring actions for breaches of charitable trusts); People ex rel. Spitzer v. Grasso, 893 N.E.2d 105, 110 (N.Y. 2008) (attorney general lacked standing under *parens patriae* doctrine to circumvent comprehensive legislative scheme of New York Not-For-Profit Corporation Law governing duties and liability of officers and directors of not-for-profit organizations by asserting non-statutory claims for constructive trust and unjust enrichment against chairman and chief executive officer of not-for-profit corporation seeking recovery of compensation payments made to executive).

In this case, the SCAG’s authority to bring actions against the Foundation’s officers and directors is governed by §§ 33-31-101 to -31-1708, not by § 1-7-130. Importantly, the Nonprofit Corporation Act does not authorize the SCAG to file a lawsuit against the directors or officers of a private foundation to enforce any duties owed by them to the private foundation. See S.C. CODE ANN. § 33-31-304 rptr.’s cmt. (“This new nonprofit statute differs from the Business Corporation statute.... There was consideration of adopting language more similar to the South Carolina Business Corporation Act. However, ***the South Carolina Business Corporation Act, as noted, provides for***

damage actions against the board which was viewed as undesirable in the context of nonprofit corporations.”) (emphasis added). The Nonprofit Corporation Act merely authorizes the SCAG to bring actions to remove directors or to dissolve the private foundation. See S.C. CODE ANN. §§ 33-31-810, -31-1430; see also State ex rel. Butterworth v. Anclote Manor Hosp., Inc., 566 So. 2d 296, 298-99 (Fla. Dist. Ct. App. 1990) (statute allowing attorney general to institute proceedings to revoke a nonprofit corporation’s charter or to prevent the corporation from being used for purposes inconsistent with its charter did not authorize the attorney general to sue the corporation’s directors to recover profits the directors might have received from the sale of the corporation’s assets).

Second, even assuming *arguendo* that § 1-7-130 governs enforcement actions involving private foundations notwithstanding the enactment of the Nonprofit Corporation Act, § 1-7-130 does not authorize the SCAT to bring actions against the Foundation’s officers and directors. Section 1-7-130 merely authorizes the Attorney General to sue ***the nonprofit corporation*** to hold it accountable. However, the SCAG’s lawsuit is not an action against the Foundation itself. The SCAG has not filed any action against the Foundation seeking to hold it accountable for its application or administration of its charitable assets.

Rather, the SCAG is attempting to bring an action on the Foundation’s behalf to enforce alleged rights the Foundation may have against Minnie for alleged breaches of fiduciary duties owed by Minnie to the Foundation. Section 1-7-130 does not authorize the SCAG to prosecute any such derivative claims for or on behalf of the Foundation. Instead, the Foundation itself must bring any such claims. See Butterworth, 566 So. 2d at 298 (holding that the attorney general lacked standing to initiate a derivative action on behalf of nonprofit corporation); Lefkowitz v. Lebensfeld, 68 A.D.2d 488, 417 N.Y.S.2d 715 (1979), aff’d, 51 N.Y.2d 442, 415 N.E.2d 919 (1980) (holding that attorney general lacked standing to step into the shoes of charitable organizations and bring what was in

effect a shareholders' derivative action on behalf of the charitable organizations alleging breaches of fiduciary duties); Lefkowitz v. Lebensfeld, 408 N.Y.S.2d 216, 219 (Sup. Ct. 1978) (“[N]ot-for-profit corporations . . . have the right to prosecute an action in their own names for the protection of their ultimate beneficiaries . . . and thus no need exists for the Attorney General to act in their behalf.”); James J. Fishman, Improving Charitable Accountability, 62 MD. L. REV. 218, 262 (2003) (“Despite the authority to supervise charities, the attorney general does not have the power to manage charities in their everyday affairs. Thus, courts have prohibited the attorney general from intervening in suits contesting wills involving charities, from ordering deviations from trust provisions, or from enforcing obligations owing to charities.” (citing cases)).

In addition to § 1-7-130, the SCAG also attempts to invoke the *parens patriae* doctrine. See Petition ¶ 2. *Parens patriae* is a common-law standing doctrine that allows states to bring suit on behalf of their citizens in certain circumstances by asserting a “quasi-sovereign interest,” such as the safety, health, or welfare of its citizens. Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 601, 607 (1982); Grasso, 893 N.E.2d at 107 n.4. To invoke the doctrine, the SCAG must prove a quasi-sovereign interest distinct from that of a particular party and injury to a substantial segment of the state’s population. The doctrine of *parens patriae* derives from the common-law principle that a sovereign, as “parent of the country,” may step in on behalf of its citizens to prevent “injury to those who cannot protect themselves.” Snapp, 458 U.S. at 600 (citation and internal quotation marks omitted).

“[A] state’s mere assertion of quasi-sovereign interests is not sufficient to grant *parens patriae* standing if the relief sought is limited to monetary damages for injuries suffered to individual parties; such an award will not compensate the state for any harm done to its quasi-sovereign interest.” In re Racing Servs., Inc., 619 B.R. 681, 684-85 (B.A.P. 8th Cir. 2020); see People of State

of N.Y. by Abrams v. Seneci, 817 F.2d 1015, 1017 (2nd Cir. 1987) (“A state that sues as *parens patriae* must seek to redress an injury to an interest that is separate from the interests of particular individuals. The state cannot merely litigate as a volunteer the personal claims of its competent citizens. Where the complaint only seeks to recover money damages for injuries suffered by individuals, the award of money damages will not compensate the state for any harm done to its quasi-sovereign interests. Thus, the state as *parens patriae* lacks standing to prosecute such a suit.” (citations omitted)).

As a result, “[p]arens patriae standing is rarely appropriate in ‘the presence of a more appropriate party or parties capable of bringing suit,’ and such suits ‘cannot be brought to collect the damages claim of one legally entitled to sue in his own right.’” In re Tobacco/Governmental Health Care Costs Litig., 83 F. Supp. 2d 125, 134 (D.D.C. 1999) (internal citations omitted); Com. of Pa., by Shapp v. Kleppe, 533 F.2d 668, 675-76 (D.C. Cir. 1976) (In determining whether state has *parens patriae* standing to sue on basis of generalized economic injury to its citizens, an important factor to be considered is presence or absence of more appropriate party or parties capable of bringing suit.); Pfizer, Inc. v. Lord, 522 F.2d 612, 616 (8th Cir. 1975) (“A *Parens patriae* action cannot be brought to collect the damage claim of one legally entitled to sue in his own right.”).

These principles negate the existence of *parens patriae* standing in this case. The Foundation itself was more than capable of filing suit against Minnie if it had wanted to do so. The SCAG’s lawsuit seeks to recover the damages claim of the Foundation, which was a private foundation fully entitled to sue in its own right. The present lawsuit is nothing more than the SCAG’s attempt to pursue claims against Minnie for money damages allegedly suffered by the Foundation. The award of money damages would not compensate the State for any harm done to its quasi-sovereign interests, but would compensate the Foundation itself.

The SCAG relies on the cases of Watson v. Wall, 229 S.C. 500, 93 S.E.2d 918 (1956) and Furman Univ. v. McLeod, 238 S.C. 475, 120 S.E.2d 865 (1961) as alleged support for his position. Both of those cases involved the SCAG's participation either as an intervenor or as a named defendant in ongoing lawsuits when a decedent's will or real estate deeds contained language creating public or charitable trusts, the litigation involved the determination of rights under the will or deeds, and there was no trustee or representative in place who could represent the interests of the public or charitable trusts in the litigation. Neither of those cases involved a scenario, like the present case, in which the SCAG is attempting to sue in place of a previously created private foundation fully capable of protecting its own rights and to leap frog or skip the foundation's own board, officers, and managers so as to prosecute the foundation's putative rights or claims even though the foundation itself did not initiate any such action.

In the past, our state Supreme Court has not hesitated to curtail the SCAG's efforts to overreach his powers. In Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013), the SCAG intervened in an active case involving a contested will and attempted to usurp control of a charitable trust, ostensibly to protect the charitable trust's unspecified beneficiaries. Our Supreme Court emphatically rebuked the SCAG's actions and made pointed remarks that the SCAG is not a "super administrator of charities." Id. at 446, 743 S.E.2d at 765. The Court explained that:

the [SCAG] has no authority to become completely entrenched in an action that began here as one to set aside a will and for statutory shares, direct the settlement negotiations, and then fashion a settlement that discards [the decedent's] will and his 2000 Irrevocable Trust and replaces them with new trusts, only to give himself sole authority to select the managing trustee. By so doing, the [SCAG] has effectively obtained control over the bulk of [the decedent's] assets and has given his office unprecedented authority to oversee the affairs of the parties that has not heretofor been recognized in our jurisprudence.

Id. at 445-46, 743 S.E.2d at 765.

The SCAG has engaged in a similar overreach in this case. He wants to usurp the Foundation's own board, officers, and managers and force a lawsuit against Minnie which the Foundation itself does not want and has not sought. The Foundation is the real party in interest. It is the owner of the right sought to be enforced. However, the Foundation itself has not initiated any lawsuit or claim against Minnie because it does not believe there is any basis for such a claim.

Despite this fact, the SCAG has taken it upon himself to effectively intervene and file an action for or on behalf the Foundation trying to radically reinterpret the terms of Sonny's Will and Codicils supposedly in his role as protector of the Foundation's potential beneficiaries. The SCAG is attempting to initiate a case on behalf of the Foundation by intervening in a probate process that had already been closed, in order to facilitate a forced distribution of assets to the Foundation, when the Foundation itself has not sought any such relief, by improperly relying on a statute authorizing the SCAG to prosecute the Foundation for misuse of charitable assets and on case law simply allowing the SCAG to intervene on behalf of the beneficiaries of a yet-to-be-funded charity. Neither of those situations apply to the present case.

c. The Foundation Did Not Satisfy the Conditions and Qualifications in Decedent's Will and Codicils:

The SCAG's lawsuit is based entirely on his faulty premise that the Foundation was a residuary beneficiary under Sonny's Will, but the SCAG ignores the fact that the Foundation was disqualified from receiving under the Will because at the time of Sonny's death and when the Estate was distributed (a) it could not qualify as a charitable organization within the meaning of Section 2055 of the IRC and (b) a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes, both of which were necessary conditions to the Foundation's receipt of any benefits under the terms of the Will.

The SCPC mandates in its introductory sections that “[t]his Code shall be liberally construed and applied to promote its underlying purposes and policies” including “to discover and *make effective the intent of a decedent* in the distribution of his property.” S.C. CODE ANN. § 62-1-102(b)(2) (emphasis added). As codified in the SCPC, a paramount goal is to ascertain and make effective the decedent’s intent regarding the disposition of his estate. Holcombe-Burdette v. Bank of Am., 371 S.C. 648, 655, 640 S.E.2d 480, 483 (Ct. App. 2006).

“[O]ne of the basic rights known to our civilization is the privilege of disposing of property by Will as one elects.” In re Last Will & Testament of Smoak, 286 S.C. 419, 427, 334 S.E.2d 806, 811 (1985). South Carolina law has long recognized that “[t]he power to dispose of property by will includes the right to attach to testamentary gifts such terms, conditions, or restrictions as the testator pleases, provided they are not contrary to public policy or forbidden by law.” Brown v. Drake, 275 S.C. 299, 302, 270 S.E.2d 130, 131 (1980). In the present case, Sonny’s Will sets forth specific conditions the Foundation must satisfy to qualify for receipt of the gift of his residuary estate. The SCAG does not claim these conditions in Sonny’s Will violate public policy or are forbidden by law.

Article XII of Sonny’s original Will, which was made before he married Minnie, specifically provided for the disposition of his residuary estate:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE “SONNY MEVERS” FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

See Will dated 11.16.15.

After Sonny married Minnie on September 12, 2016, he later executed a Codicil to his Will amending Article XII so as to add the following sentence to the conclusion of that article:

Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, **MINNIE LEE NEWMAN MEYERS**, absolutely and in fee simple, forever, on the condition that she shall survive me.

See Codicil dated 4.12.17.

Under the terms and provisions of the Will and Codicil, the Foundation's status as the beneficiary of Sonny's residuary estate would only vest at the time of Sonny's death **provided** the Foundation was in existence at that time **and** it satisfied the other "conditions" set forth in Article XII—that (1) it is an organization which is charitable within the meaning of Section 2055 of the IRC and (2) that the gift is permitted as a charitable deduction from Sonny's Estate for federal estate tax purposes. See Wentworth Aff. ¶12; Moss Aff. ¶15.

If either of those conditions were not satisfied either at the time of Sonny's death or when the estate assets were to be distributed, then the devise or gift to the Foundation either did not vest or, if it vested, it lapsed or was cancelled and instead devolved to Minnie. See Wentworth Aff. ¶13; Moss Aff. ¶14; Shuman v. Heldman, 63 S.C. 474, 41 S.E. 510, 515-16 (1902) ("No precise form of words is necessary in order to create conditions in wills. Any expressions disclosing the intention will have that effect. These conditions may be either conditions precedent or conditions subsequent. . . . If the language of the particular clause or of the whole will shows that the act on which the estate depends must be performed before the estate can vest, the condition is, of course, precedent; and, unless it is performed, the devisee can take nothing. If, on the contrary, the act does not necessarily precede the vesting of the estate, but may accompany or follow it,—if this is to be collected from the whole will,—the condition is subsequent."); Joanne R. Sternliefb, Uses of Charitable Giving in Estate Planning, C118 ALI-ABA 69, 74 (ALI-ABA March 1, 1995) ("In order for an estate to receive an estate tax charitable deduction for a bequest to charity, the charity must be a Qualified Charity on the date of distribution. If the client wants to make sure she receives a charitable deduction, the will

should say that the bequest will only be made if the organization is a Qualified Charity. For example, a bequest might take the following form: ‘I give \$10,000 to the Legal Aid Society, New York, New York, if it is a Qualified Charity.’ Under this scenario, if the Legal Aid Society is not a Qualified Charity when the distribution is to be made, the bequest would lapse.”).

Minnie retained well-qualified attorneys and advisors to assist her in the administration of Sonny’s estate. She went above and beyond to hire multiple people who are specialists or experts in probate and tax matters to assist with the estate administration. Minnie not only retained Ms. Wentworth, a probate and estate planning attorney, but also hired Mr. Moss, who is both a CPA and a tax attorney. Mr. Moss advised on the question of whether the Foundation satisfied the conditions in Article XII of the Will. See Wentworth Aff. ¶¶5-6; Moss Aff. ¶17. He investigated the matter and concluded that the Foundation was a sham and it had no real substance. See Moss Aff. ¶¶18-19.

Among other things, the Foundation had not filed the legally required tax information returns (Form 990-PF) for the fiscal years 2014, 2015, and 2016 and had no other reporting or other documentation to the IRS or another regulatory body concerning its operations or activities during these periods. See Moss Aff. ¶18; Wentworth Aff. ¶14. The Foundation had no real corporate records or documentation (outside its initial formation documents) that evidenced the Foundation had been, and was continuing, to be organized and operated exclusively for charitable purposes. Id. Almost the entirety of the Foundation’s Board members had conflicts of interest as they primarily comprised persons with whom Sonny transacted business raising a number of self-dealing concerns under Section 4941 of the IRC. Id. There were no records of when and how long these individuals were serving as directors, whether they were in fact appointed, or had ever approved any transactions, the compensation arrangements, or any charitable activities, grants, or any other matters required of individuals acting as directors. Id. The Foundation had no bookkeeping or records, had

not conducted periodic meetings or recorded minutes of meetings as required in the bylaws, had no records of appointments of directors or officers, had no staff or employees, and had no office. Id. In short, the Foundation had no substance and/or documentation that could demonstrate it had been actually operated by a board of directors to further charitable purposes. Id.

Based on his considerable experience in the field of taxation and with tax audits by the IRS, Mr. Moss concluded that the Foundation could not withstand an IRS audit, it did not qualify as a charitable organization within the meaning of Section 2055 of the IRC, and that a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes. See Moss Aff. ¶19; Wentworth Aff. ¶15. Mr. Moss communicated his conclusions to Ms. Wentworth and Minnie. See Moss Aff. ¶20; Wentworth Aff. ¶15. Mr. Moss's conclusion about the Foundation was confirmed by the IRS, which revoked the Foundation's federal tax-exempt status under IRC § 501(c)(3) effective on November 15, 2017. See Moss Aff. ¶21; Wentworth Aff. ¶16. Therefore, the gift of Sonny's residual estate devolved to Minnie.

On January 23, 2018, the Foundation's Board voted to dissolve the Foundation for the reasons pointed out by Mr. Moss—that the Foundation did not qualify as a tax-exempt entity and it had no real substance. See Moss Aff. ¶22. The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the South Carolina Secretary of State on January 24, 2018, and the Foundation ceased to exist. Id.

In straightforward terms, Minnie—not the Foundation—was the residuary beneficiary under Sonny's Will because the Foundation did not meet the express conditions set forth in the Will. Minnie and Ms. Wentworth took proper steps to probate Sonny's Will and administer his estate based on the reasoned and good faith determination that the Foundation had not satisfied the conditions in the Will, that the devise or gift to the Foundation had lapsed or was canceled, and that

Minnie was the residuary beneficiary under the Will. See Wentworth Aff. ¶17; Moss Aff. ¶23. Because the Foundation was not a proper residuary beneficiary, these actions were completely proper and were mandated by the terms and provisions of Sonny's Will. Id.

The SCAG selectively quotes an excerpt from S.C. CODE ANN. § 62-3-101 to argue that the bequest of Sonny's real estate immediately "devolved" to the Foundation upon Sonny's death and thus the Foundation purportedly became a "vested" beneficiary at that time. See Petition ¶ 17. However, the SCAG inexplicably omits the remainder of § 62-3-101, which clarifies that a bequest of real estate does not "devolve" to the beneficiary in cases involving the lapse of a gift or other circumstances affecting the devolution of testate estates. See S.C. CODE ANN. § 62-3-101 ("Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will ***or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates . . .***").

Sonny's real property would not devolve to the Foundation upon his death if the gift lapsed or was canceled under the terms of his Will, including the Foundation's failure to satisfy the conditions for it to receive the residuary estate—i.e., that it be an organization which is charitable within the meaning of Section 2055 of the IRC and that the gift would be permitted as a charitable deduction from Sonny's Estate for federal estate tax purposes. See Wentworth Aff. ¶21; Moss Aff. ¶26. Because the Foundation did not satisfy the conditions in Article XII of Sonny's Will to qualify for the gift of the residuary estate either at the time of Sonny's death or when the distributions were made from the estate, the devise or gift to the Foundation either did not vest or, if it vested, lapsed or was cancelled and instead devolved to Minnie. See Wentworth Aff. ¶¶22-23; Moss Aff. ¶27.

To support its allegation that the Foundation was a tax-exempt organization on the date of Sonny's death and when the Estate was distributed, the SCAG relies almost entirely on the IRS

determination letter issued **on July 21, 2005**, which granted the Foundation tax-exempt status as a private, nonoperating foundation under § 501(c)(3) of the IRC. See Petition ¶ 10. That letter was issued over 15 years ago and was revoked by the IRS effective on November 15, 2017. The SCAG did not submit any affidavit or other evidence of any kind demonstrating that Mr. Moss was incorrect that the Foundation did not satisfy the conditions in Article XII of the Will on the date of Sonny's death or when the Estate was distributed. The SCAG also did not dispute that the Foundation's tax-exempt status was revoked by the IRS effective on November 15, 2017, which was only two days after Minnie had been appointed as Personal Representative.

To make up for these deficiencies, the SCAG made the rather incredible argument that Minnie had a "fiduciary duty" to commit perjury as well as fraud upon the federal government.

According to the SCAG's Petition:

Upon information and belief, Ms. Newman was aware of the administrative revocation and knew or should have known that the Foundation could have its tax exempt status restored. She was obliged to do so as a fiduciary of the Foundation and Ms. Newman was also required to do so pursuant to her legal and fiduciary obligations as Personal Representative of the Estate.

See Petition ¶ 24. The SCAG further claims in conclusory fashion that "the Foundation's tax exempt status was and remains eligible to be restored retroactively at all times relevant to this Petition." Id. ¶ 23. The SCAG is wrong.

Mr. Moss, a CPA and tax attorney with over 35 years of experience who regularly prepares tax returns for clients and handles IRS matters, including tax audits and appeals within the IRS and U.S. Tax Court appeals, gave an affidavit specifically addressing the SCAG's contentions. He made clear that the SCAG's assertion that "the Foundation's tax exempt status could be 'restored retroactively' is a gross over-simplification of the situation and a distortion of the facts." See Moss Aff. ¶36. He explains that "it would not have been possible to retroactively restore the Foundation's

tax exempt status” and that “[r]etroactively restoring a private foundation’s tax exempt status is not an easy process and the IRS has no automatic or guaranteed procedure to have an organization’s revoked tax-exempt status retroactively reinstated.” Id. The SCAG submitted nothing to contradict Mr. Moss’s affidavit.

To obtain retroactive reinstatement of tax-exempt status, the Foundation would be required to submit a Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code). See Moss Aff. ¶36. In Revenue Procedure 2014-11, the IRS set forth procedures for retroactively reinstating the tax-exempt status of an organization that had that status automatically revoked for failure to file the required annual returns for three consecutive years. See REV. PROC. 2014-11, 2014-3 I.R.B. 411 (2014). “Generally, to obtain retroactive reinstatement of the organization’s tax-exempt status, it must apply not later than 15 months after the later of (1) the date of the revocation letter or (2) the date on which the IRS posted the organization’s name on the Revocation List.” Martin J. McMahon, Jr. et. al., Recent Developments in Federal Income Taxation: The Year 2014, 17 FLA. TAX REV. 97, 270 (2015). The decision to grant retroactive reinstatement is discretionary with the IRS. It is not automatic that any organization will obtain such reinstatement even if all of the qualifications for it are satisfied.

Under the procedures in Revenue Procedure 2014-11, the organization must still show that it was “eligible” to file reports as a tax-exempt organization for each of the three years that it failed to file them, which means it must satisfy the organizational and operational tests for all periods it seeks to be exempt. See REV. PROC. 2014-11 §§4-6. This is based on the submission of financial, corporate, and programmatic documentation to evidence, to the satisfaction of the IRS, that it was, and continues to be, organized and operated exclusively for charitable purposes in accordance with Section 501(c)(3) and applicable Treasury Regulations for the time periods it failed to file. It must

also demonstrate that it had “reasonable cause” for its failure to file the annual information returns. Id. §§ 8.01-8.02. This “reasonable cause” showing involves a weighing of various “factors,” including whether the organization’s failure to file “was due to its reasonable, good faith reliance on erroneous written information from the IRS, stating that the organization was not required to file a return or notice” or “arose from events beyond the organization’s control . . . that made it impossible for the organization to file a return or notice for the year.” Id. § 8.05. In determining whether reasonable cause exists, the IRS will only consider a factor if the organization shows to the IRS’s satisfaction evidence to substantiate the factor.

Critically, these representations by the organization must be made under penalty of perjury. The reasonable cause statement submitted by the organization must “include an original declaration, dated and signed ***under penalties of perjury*** by an officer, director, trustee, or other official who is authorized to sign for the organization.” Id. § 8.06 (emphasis added). This sworn declaration must state: “I, (Name), (Title) declare, under penalties of perjury, that I am authorized to sign this request for retroactive reinstatement on behalf of [Name of Organization], and I further declare that I have examined this request for retroactive reinstatement, including the written explanation of all the facts of the claim for reasonable cause, and to the best of my knowledge and belief, this request is true, correct, and complete.” Id.

Of course, based on the information that Mr. Moss learned during his work and of which Minnie and Ms. Wentworth were made aware, Minnie would know that none of these assertions would be “true, correct, and complete.” See Wentworth Aff. ¶15 (“Minnie and I were concerned that it would be fraudulent or possibly even criminal to file papers taking the position that the Foundation was a tax exempt organization.”); Moss Aff. ¶36 (“Based on the information I was made aware of relating to the Foundation, it would have been fraudulent for the Foundation to seek retroactive

restoration of its tax exempt status from the IRS and I, as well as any other competent CPA, would have refused to file such a fraudulent application.”).

Minnie would know that the Foundation was **not** “eligible” to file reports as a tax-exempt organization for each of the three years that it failed to file them. She would know that the Foundation did **not** satisfy the organizational and operational tests for all periods it would seek to qualify as tax-exempt. She also would know that the Foundation did **not** have “reasonable cause” for its failure to file the annual information returns. The Foundation had not failed to file the returns based on any reasonable, good faith reliance on erroneous written information from the IRS or because of events beyond the Foundation’s control that made it impossible for it to file the returns.

In sum, the SCAG is claiming that Minnie should have committed perjury and filed a false application with the IRS seeking retroactive restoration of the Foundation’s tax-exempt status. The absurdity of the SCAG’s position is obvious. The Probate Court erred in finding that the SCAG is “likely” to prevail in this action.

(3) *The SCAG Did Not Show an Inadequate Remedy at Law:*

In MailSource, the South Carolina Court of Appeals held that “[a]n injunction is an equitable remedy; as such, it is available only where no remedy at law exists or where the legal remedy would fail to make the party whole.” 356 S.C. at 369-70, 588 S.E.2d at 639; see also Scratch Golf, 361 S.C. at 121, 603 S.E.2d at 907 (reversing preliminary injunction and finding that the plaintiff had adequate remedy at law). In MailSource, which involved an employer’s action to enforce a non-compete agreement executed by the defendants, the Court pointed out that in addition to seeking an injunction, the plaintiff also should be able to prove money damages from any breach of the agreement by the defendants. 356 S.C. at 369, 588 S.E.2d at 639. As a result, the Court of Appeals

affirmed the trial court's denial of the plaintiff's motion for a preliminary injunction because of the availability of an adequate remedy at law—an award of monetary damages.

SCAG likewise failed to show an inadequate remedy at law. The SCAG's Petition alleges that Minnie "breached her fiduciary and legal duties to the Estate and the Foundation and improperly took possession of assets which should have been transferred to the Foundation and used assets for her own personal benefit and enjoyment" See Petition ¶ 30. Minnie vehemently denies these claims. However, even assuming *arguendo* they were true, any harm to SCAJ can be remedied by an award of money damages. Because the SCAJ has an adequate remedy at law, the Probate Court erred in granting a preliminary injunction in the SCAG's favor.

CONCLUSION

For the reasons stated, this Court should reverse the Probate Court's Order.

Respectfully submitted,

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November 20, 2020.

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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS**

Appeal from Charleston County
Probate Court

Irvin G. Condon, Probate Judge

Common Pleas Case No. 2020-CP-10-04036
Probate Case No. 2017-ES-10-01946

In the Matter of:
The Estate of Roy E. Mevers, Jr.

South Carolina Attorney General,

Respondent on appeal/
Petitioner and
Counter-Claim Defendant
in Lower Court,

v.

Minnie Lee Newman Mevers,

Appellant on appeal/
Respondent-Counter-Claim,
Plaintiff Cross-Claim, and
Plaintiff Third-Party
in lower court,

v.

J. James Duggan, as Special Administrator of The Estate of
Roy E. Mevers, Jr.,

Respondent on appeal/
Cross-Claim Defendant and
Third-Party Defendant
in lower court.

**INITIAL BRIEF OF RESPONDENT
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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
I. Statement of the Case	1
II. Orders Not Appealable	3
III. Statement of Facts.....	4
IV. Standard of Review.....	11
V. Law/Analysis.....	12
A. The Probate Court properly issued the Temporary Restraining Order in this case.	12
i. All appellate issues related to the issuance of the Temporary Restraining Order are moot.....	13
ii. The Temporary Restraining Order was properly issued in accordance with the SCRCF and applicable case law.....	14
B. The Probate Court properly issued the Temporary Injunction in this case.....	17
C. The Probate Court had subject matter jurisdiction to grant the temporary injunction...	19
D. The Probate Court Properly determined all requirements were met for the issuance of a temporary injunction.....	21
i. The Attorney General established irreparable harm.....	21
ii. The Attorney General established a likelihood of success on the merits.	23
iii. Judge Price's ruling is inapplicable to the issues before the court.	26
E. The Attorney General has standing to pursue rights of beneficiaries of the Foundation.	26
VI. Conclusion	29

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>AJG Holdings, LLC v. Dunn</i> , 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)	15, 18
<i>City of Columbia v. Pic-A-Flick Video, Inc.</i> , 340 S.C. 278, 531 S.E.2d 518 (2000).....	11
<i>County Council of Charleston v. Felkel</i> , 244 S.C. 480, 137 S.E.2d 577 (1964)	12
<i>County of Richland v. Simpkins</i> , 348 S.C. 664, 560 S.E.2d 902 (Ct.App.2002)	11
<i>Curtis v. State of South Carolina</i> , 345 S.C. 557, 549 S.E.2d 591 (2001).....	13, 14
<i>Epworth Children 's Home v. Beasley</i> , 365 S.C. 157, 616 S.E.2d 710 (2005)	27
<i>Ex Parte Cannon</i> , 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009).....	20
<i>Fulmer v. Cain</i> , 380 S.C. 466, 670 S.E.2d 652 (2008).....	4
<i>Furman Univ. v. McLeod</i> , 238 S.C. 475, 120 S.E.2d 865 (1961).....	27
<i>Gas Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc.</i> , 436 S.E.2d 207 (Ga. 1993).....	24
<i>Kirk v. Clark</i> , 191 S.C. 205, 4 S.E.2d 13 (1939)	22
<i>Levine v. Spartanburg Regional Services District Inc.</i> 367 S.C. 458 (Ct. App. 2005).....	25
<i>Love Chevrolet Olds, Inc.</i> , 339 S.C. 89, 529 S.E.2d 11 (2000)	4
<i>MailSource, LLC v. M.A. Bailey & Assocs.</i> , 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003)	22
<i>Mathis v. S.C. State Highway Dep't</i> , 260 S.C. 344, 195 S.E.2d 713 (1973)	14
<i>McDevitt v. Wellin</i> , 2016 WL 199626 (D.S.C. Jan. 15, 2016)	21
<i>Peek v. Spartanburg Regional Medical Healthcare System</i> , 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2006)	22, 24
<i>Powell v. Immanuel Baptist Church</i> , 261 S.C. 219, 199 S.E.2d 60 (1973)	12
<i>Regions Bank v. Wingard Properties, Inc.</i> , 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011)..	17, 20
<i>Roach v. Combined Util. Comm'n</i> , 290 S.C. 437, 351 S.E.2d 168 (Ct.App.1986).....	11
<i>Sloan v. Friends of the Hunley, Inc.</i> , 369 S.C. 20, 630 S.E.2d 474 (2006)	14
<i>South Carolina State Ports Authority v. Jasper County</i> , 368 S.C. 388, 629 S.E.2d 624 (2006)..	26
<i>Thomas v. Gathings</i> , 304 S.C. 308, 403 S.E.2d 682 (Ct. App. 1991)	20
<i>Transcon. Gas Pipe Line Corp. v. Porter</i> , 252 S.C. 478, 167 S.E.2d 313 (1969).....	11, 12
<i>Wardlaw v. South Carolina Department of Social Services</i> , 427 S.C. 197, 829 S.E.2d 718 (Ct. App. 2019)	14
<i>Watson v. Underwood</i> , 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014).....	4

<i>Watson v. Wall</i> , 229 S.C. 500, 93 S.E.2d 918 (1956)	28
<i>Williams v. Jones</i> , 92 S.C. 342, 75 S.E.705	23
<i>Wilson v. Dallas</i> , 403 S.C. 411, 743 S.E.2d 746 (2013)	27

Statutes

S.C. Code Ann. § 1-7-130(2005)	27
S.C. Code Ann. § 33-31-202	5
S.C. Code Ann. § 33-31-1403(a)	9, 25
S.C. Code Ann. § 33-31-1403(b)	9, 25
S.C. Code Ann. § 62-1-302	3, 20
S.C. Code Ann. § 62-1-308	3, 4
S.C. Code Ann. § 62-2-602	7
S.C. Code Ann. § 62-3-101	6
S.C. Code Ann. § 62-3-709	8
S.C. Code Ann. § 62-7-405(c) (2009)	27
Section 501(c)(3) of the Internal Revenue Code	5, 7

Other Authorities

14 C.J.S. Charities § 61	29
15 Am. Jur. 2d Charities § 132 (2015)	27
42 Am. Jur. 2d §325 Injunctions (2000)	14

STATEMENT OF ISSUES ON APPEAL

- A. **The Probate Court properly issued the Temporary Restraining Order in this case.**
 - i. **All appellate issues related to the issuance of the Temporary Restraining Order are moot.**
 - ii. **The Temporary Restraining Order was properly issued in accordance with the SCRCP and applicable case law.**
- B. **The Probate Court properly issued the Temporary Injunction in this case.**
- C. **The Probate Court had subject matter jurisdiction to grant the temporary injunction.**
- D. **The Probate Court Properly determined all requirements were met for the issuance of a temporary injunction.**
 - i. **The Attorney General established irreparable harm.**
 - ii. **The Attorney General established a likelihood of success on the merits.**
 - iii. **Judge Price’s ruling is inapplicable to the issues before the court.**
- E. **The Attorney General has standing to pursue rights of beneficiaries of the Foundation.**

The South Carolina Attorney General (“Attorney General”) respectfully submits this Brief of Respondent. For the reasons discussed below, the Attorney General requests that the appeal be dismissed as interlocutory or moot, or in the alternative, that the rulings of the Charleston County Probate Court be affirmed.

I. Statement of the Case

This matter was commenced in the Charleston County Probate Court by the filing of a verified Petition by the Attorney General, pursuant to Rule 65, SCRCP, seeking various relief including an Application to Re-Open Estate, Appoint Special Administrator, Impose Constructive Trust to Protect Improperly Distributed Estate Assets, and Obtain Other Relief as Necessary

(“Petition”). (Verified Petition with exhibits). The Attorney General also sought a temporary restraining order relating to all assets which were claimed and taken under the residuary clause of the Last Will and Testament and two (2) codicils of Roy E. Mevers, Jr. (the “Will”) by his spouse, Appellant Minnie Lee Newman-Mevers.¹ (Motion for Temporary Restraining Order).

An Ex Parte Temporary Restraining Order was issued by the Honorable Tamara S. Curry, Associate Probate Judge of Charleston County, on March 13, 2020 (“Temporary Restraining Order”). The Temporary Restraining Order set a date for a hearing on the relief granted. On March 23, 2020, the Honorable Irvin G. Condon, Probate Judge of Charleston County, held a hearing to determine what action(s) were necessary to preserve the status quo, including whether to convert the Temporary Restraining Order into a temporary injunction. (Tr. Pp. 1-97). After hearing arguments from the parties, Judge Condon orally indicated he was granting a Temporary Injunction at that time and a written order would follow. (Tr. Pp. 93-96).

After the hearing, but before the issuance of the written Order Granting Temporary Injunction (“Temporary Injunction”), Appellant filed a Notice and Motion to Remove Action to Circuit Court. (Motion to Remove). Appellant also later filed a Motion to Reconsider the Temporary Injunction granted by the Probate Court. (Motion to Reconsider, Alter or Vacate). Appellant’s position was the Probate Court had no jurisdiction to grant the Temporary Injunction as Appellant had filed a motion to remove to Circuit Court which the Probate Court had not yet addressed before issuing the temporary injunction. The Probate Court ultimately denied the Motion to Reconsider, finding it had authority to issue the Temporary Injunction (“Order Denying Reconsideration). The Probate Court also issued an order removing the matter to Circuit Court

¹ In the pleadings for the companion action or the removed case, which is pending in this court, Mrs. Newman-Mevers was designated as Respondent. In that she is the Appellant in this appeal, for ease of reference and to avoid confusion, she is referred to as Mrs. Newman-Mevers or Appellant throughout this brief.

pursuant to S.C. Code Ann. § 62-1-302(d) on September 10, 2020, and the case was assigned case number 2020-CP-10-4089. It remains pending at this time. At times, this case is referred to as the “removed case” in this brief. Discovery is ongoing in the removed case.

On September 16, 2020, after the removed case was transferred to the Court of Common Pleas, the Attorney General filed a Verified Motion for the Continuance of the Temporary Restraining Order. (Verified Motion to Continue Temporary Restraining Order with exhibits). The motion was heard by Judge Price on September 21, 2020. On September 22, 2020, he issued a one line Form 4 order indicating the Motion for the Continuance of or the Issuance of a Temporary Injunction was denied. No reasons were stated. (Form 4 Order).²

On October 26, 2020, even though Judge Price had denied a continuation of the Temporary Injunction issued by the Probate Court, Appellant filed this appeal raising issues which relate to the issuance of the Temporary Restraining Order or the Temporary Injunction.

II. Orders Not Appealable

Since Judge Price had denied the continuation or issuance of the Temporary Injunction, the Attorney General remains somewhat perplexed as to why Appellant would file this separate action which is allegedly brought as an appeal pursuant to S.C. Code Ann. § 62-1-308(b), governing the filing of a Statement of Issues on Appeal. In citing to subsection (b), Appellant ignores a very important word contained in S.C. Code Ann. § 62-1-308(a), which addresses the circumstances upon which an appeal may be taken. This section provides “[a] person interested in a **final** order, sentence or decree of a probate court may appeal to the circuit court....”

In this case there are two orders on appeal: the Temporary Restraining Order which was only valid for 10 days, and the Temporary Injunction which Judge Price declined to continue.

² Judge Price’s ruling is not at issue in this appeal. It is referenced by the Attorney General to address the arguments that this appeal is moot.

Neither constitutes a “final” order for which an appeal may be sought under S.C. Code Ann. § 62-1-308 or the general rules of appellate practice. No sentence or decree was issued by the Probate Court. As such, this Court should dismiss this appeal as interlocutory. To accept Appellant’s contention would lead to a nonsensical view of appeals from the Probate Court. A party unhappy with any non-final order of a Probate Court could appeal that order and yet continue on with the rest of their case in the Probate Court.

Piecemeal appeals and dispositions of cases are not favored under South Carolina law. “The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted.” *Watson v. Underwood*, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) (citing *Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000)). Based upon the clear language of the statute and the policy considerations set forth by our appellate courts, this “appeal” should be dismissed. *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008) (Orders which do not finally decide anything are not appealable).³

III. Statement of Facts

This action relates to a bequest made by Roy E. “Sonny” Mevers Jr. (“Mr. Mevers”) in his Will. The Will was executed on November 16, 2015. Codicils were executed on April 12, 2017 (“First Codicil”) and on August 4, 2017 (“Second Codicil”). The Will and Codicils are collectively referred to as the “Will.” As detailed in the Verified Petition filed by the Attorney General, the Sonny Mevers Foundation (the “Foundation”), a South Carolina nonprofit corporation Mr. Mevers established during his life for charitable purposes, was to receive Estate assets valued in excess of

³ There are various statutory rights to interlocutory appeals. None are at issue here.

Nineteen Million and 00/100 (\$19,000,000.00) Dollars under the residuary clause of the Will. The Verified Petition alleges Appellant, Mrs. Newman-Mevers — Mr. Mevers' wife of 14 months before his death — wrongfully caused those assets to be diverted from the Foundation and distributed to herself. She has admittedly transferred such assets to various limited liability companies.

On July 23, 2004, Mr. Mevers executed and filed with the Secretary of State, for the State of South Carolina, Articles of Incorporation for the Foundation in accordance with S.C. Code Ann. § 33-31-202. The stated purpose of the Foundation is to “receive and maintain a fund or funds of real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.” (Foundation Articles of Incorporation and Bylaws).

On July 21, 2005, the Internal Revenue Service (“IRS”) issued a letter approving the tax-exempt status of the Foundation under section 501(c)(3) of the Internal Revenue Code with an effective date of June 23, 2004. The Foundation was also “qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055...of the Code.”

Mr. Mevers's Will dated November 16, 2015, contained a residuary clause found in Article XII. This clause provided:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to THE ‘SONNY MEVERS’ FOUNDATION, if it is in existence at the time of my death and on the condition that it is an organization that is

charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

By way of the First Codicil dated April 12, 2017, Article XII of the Will was amended to add the following sentence at its conclusion: “Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, MINNIE LEE NEWMAN MEVERS, absolutely and in fee simple, forever, on the condition that she shall survive me.” Mr. Mevers continued to leave the residuary of his Estate to the Foundation even after he married Mrs. Newman-Mevers and after making various changes to his Will. He also republished his Will in its entirety.

Since its inception in 2004, the Foundation has donated to numerous charities in the Charleston area, which is consistent with Mr. Mevers’s reputation of generosity throughout the community. The Foundation made donations of twenty five thousand dollars (\$25,000.00) or more in multiple years to a variety of charities. Mr. Mevers made periodic contributions to the Foundation over the years to allow these donations and charitable gifts to take place.

The Articles of Incorporation for the Foundation vested Mr. Mevers or his nominee with the authority to appoint the members of the Foundation’s Board of Directors. Article XI of Mr. Mevers’s Will nominates his “friend” Minnie Lee Newman as his successor with the right to appoint further successors to the Board of the Foundation.

Mr. Mevers passed away on November 3, 2017. Appellant, who married Mr. Mevers fourteen (14) months earlier, replaced Mr. Mevers as President of the Board of the Foundation. At the time of Mr. Mevers’s death on November 3, 2017, the residuary clause of his Will imposed a trust upon the remainder of the Estate which also devolved to the Foundation. S.C. Code Ann. § 62-3-101 (“Upon the death of a person, his real property devolves to the persons to whom it is left

by his last will...); S.C. Code Ann. § 62-2-602 (“a will is construed to pass all property which the testator owns at the testator’s death...”).

Two days after his funeral, on November 13, 2017, Mrs. Newman-Mevers filed an Application for Informal Probate of Mr. Mevers’s estate (the “Estate”) in the Charleston County Probate Court. She petitioned the Court for Appointment as Personal Representative of the Estate and was so appointed. In the Application for Informal Probate, Mrs. Newman-Mevers specifically listed that she was Mr. Mevers’s wife and that she was left a bequest of “\$350,000 and all personal and household effects.” **She went on to list other bequests made under the Will, specifically noting the “SONNY MEVERS FOUNDATION...CHARITY-All of the Rest and Residue of the Estate.” Mrs. Newman-Mevers verified these statements under oath.** (emphasis added).

The Appellant now argues, based upon information provided to her by Christopher Moss and his investigation of the late 2017-early 2018 time period that the Foundation was a “sham.” (Tr. pp. 68-69, 72; Affidavit of Christopher Moss; Affidavit of Jessica Wentworth). The evidence presented to the Probate Court presented a far different picture. Mr. Mevers’s obituary stated “[i]n Lieu (*sic*) of flowers, **donations may be made to the Sonny Mevers Foundation**, CresCom Bank, Attn. Holly Edwards, 288 Meeting Street, Charleston SC 29401.”(emphasis added). It further stated his funeral was held on November 11, 2017.⁴

On the date of Mr. Mevers’s death, the Foundation was in existence, was recognized as a charitable organization within the meaning of Section 2055 of the Internal Revenue Code, as amended, and permitted as a charitable deduction from Mr. Mevers’s estate for federal estate tax

⁴ This alleged “sham” of a Foundation donated \$3 million dollars to the Berkeley Charter School Association in November 2017 after Mr. Mevers’ death upon the authorization of Appellant. (Foundation banking records). This is a substantial sum for an alleged sham entity. These funds are NOT included in the \$19 million dollars in dispute in this litigation.

purposes. The Foundation was, therefore, entitled to the residuary of the Estate and the funds and assets were impressed with a charitable trust. (Tr. Pp. 33-34).

S.C. Code Ann. § 62-3-709 mandated that Appellant, as Personal Representative, “take all steps reasonably necessary for the management, protection and preservation of the estate in [her] possession.” She did not do so. Instead, she fired her deceased husband’s long-time counsel and brought on board Christopher Moss. (Tr. p. 78). Mr. Moss’ role with Appellant and the Foundation caused concern with the Probate Court. (Tr. pp. 78, 95-97). The Probate Court ordered the Attorney General to report Mr. Moss’ actions for determination if they constituted the unlawful practice of law. Suddenly the Foundation, which was by all evidence an important accomplishment of Mr. Mevers, was no longer receiving the rest and residue, i.e. \$19 million dollars of the Estate. Rather, Appellant, based upon Mr. Moss opining the Foundation was a “sham,” dismissed the Foundation board except for one other member. She and the one remaining Foundation board member dissolved the Foundation without providing the legally required notice to the Attorney General. She then claimed the approximately \$19 million dollars which constituted the residuary of Mr. Mevers’ will as her own, allegedly as the secondary beneficiary.

When Appellant undertook these actions, she clearly faced a conflict of interest. If she were to claim that the Foundation was a sham and not entitled to the residuary of Mr. Mevers’ estate (as she and Mr. Moss ultimately did), she could take the \$19 million dollars residuary of the Estate which was left to the Foundation plus receive the \$350,000 dollars she was specifically left as a bequest in Mr. Mevers’ will. As the president of the Foundation, however, she owed it a duty of care. In light of her conflict, she should have sought a special administrator who could represent the interest of the Foundation. She did not do so. Instead, she simply took the \$19 million dollars and attempted to dissolve the Foundation.

In order to prevent individuals such as Appellant from doing exactly what she did, the South Carolina legislature enacted S.C. Code Ann. § 33-31-1403(b). This code section provides that no transfers or conveyances from entities such as the Foundation can be made unless notice of the plan of dissolution is provided to and approved or not acted upon within a certain number of days by the Attorney General.

It is undisputed no notice of intent to dissolve the Foundation was provided by Mrs. Newman-Mevers to the Attorney General. S.C. Code Ann. § 33-31-1403(a) provides in relevant part that a nonprofit organization “**shall** give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution.”

Notwithstanding the clear and unambiguous language found in the statutory provisions, Appellant and her counsel have repeatedly stated that nothing in the code specifically states failure to give notice is fatal to the dissolution of the Foundation. (Tr. pp. 65-66). One thing is clear. Had Mrs. Newman-Mevers complied with the requirements of the code, the Attorney General could have immediately appeared to protect the interest of the beneficiaries of the Foundation. Such a role (protecting the public interest) is both statutorily required and also grounded in the common law. The Attorney General has a mandate and a responsibility to protect beneficiaries of foundations, such as the Sonny Mevers’ Foundation, from actions such as those taken by Appellant.

The IRS issued an Auto-Revocation for the Foundation’s non-profit status with a stated revocation date of November 15, 2017 and a Revocation Posting date of March 12, 2018⁵. This action was taken by the IRS based on the Foundation’s failure to file Forms 990-PF with the IRS

⁵ The Revocation Posting date, i.e. March 12, 2018 is the actual date the Foundation would have lost its non-profit status. Mrs. Newman-Mevers had already made her attempt to dissolve the Foundation on June 24, 2018.

for a three-year period. The evidence establishes this was an administrative suspension which Appellant only discovered after she had dissolved the Foundation. Her statements about the IRS “confirming her beliefs about the Foundation” is simply wrong. Appellant attempted to make sure the Foundation was long gone before the revocation posted on March 12, 2018.

As the secondary beneficiary of the residuary clause in the Will and as personal representative of the Estate, Appellant took no action and sought no independent counsel for the Foundation. Instead, to make her conflict even more pronounced, Appellant terminated the majority of the Foundation’s board and then allegedly voted by telephone (one person besides Appellant) to dissolve the Foundation. The only two board members allegedly voting were Appellant and Scott Myers. The alleged telephone vote of Appellant and one other board member allegedly took place on January 23, 2018. Articles of Dissolution for a Nonprofit Corporation were filed with the Secretary of State on January 24, 2018. Again, had proper notice been given to the Attorney General, it could have moved to intervene in its statutory and common law capacity to see the beneficiaries of the Foundation were represented.

At the time of Mr. Mevers’s death, the value of the residuary bequest to the Foundation was valued in excess of nineteen million dollars (\$19,000,000.00). As a part of Mr. Mevers’ obituary, donations were solicited for the Foundation as a memorial. At the date of dissolution (i.e. January 24, 2018) the Foundation asserted it had no assets other than a burial plot for Mrs. Newman-Mevers, though Mrs. Newman-Mevers failed to file final Form 990 with the IRS.

In the Proposal for Distribution dated November 15, 2018 and filed with the Probate Court on November 18, 2018, the Foundation was no longer listed as receiving the residuary distribution as it was in the Application for Informal Probate. Rather, Mrs. Newman-Mevers was now listed as receiving the residuary distribution. The Proposal for Distribution contained no reference to

the Foundation or its entitlement to assets under the residuary clause. The funds in the residuary were subsequently distributed to Mrs. Newman-Mevers, not the Foundation⁶. It is on these facts that the Probate Court felt it appropriate to issue a Temporary Restraining Order and a Temporary Injunction following a hearing at which both parties were present and heard. Such actions were appropriate, called for by the facts and the law, and should be affirmed.

IV. Standard of Review

“The granting of temporary injunctive relief is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion.” *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520–21 (2000). “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct.App.2002).

To warrant a temporary injunction, the complaint must allege facts sufficient to constitute a cause of action for injunction and the information offered by both sides must demonstrate the injunction to be reasonably necessary to protect the legal rights of the plaintiff pending in the litigation. *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 480–81, 167 S.E.2d 313, 315 (1969). Generally, to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law. *Roach v. Combined Util. Comm'n*, 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct.App.1986).

It is well settled that, in determining whether a temporary injunction should issue, the merits of the case are not to be considered, except in so far as they may enable the court to

⁶ One factual issue of key importance to the case is did the Foundation have any independent representation during these relevant time periods? Simply stated, Mrs. Newman-Mevers gave no notice to the Attorney General regarding her decision to dissolve the Foundation, and who (if anyone) was representing its' interest?

determine whether a *prima facie* showing has been made. When a *prima facie* showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be **granted** without regard to the ultimate termination of the case on the merits. *Transcon.*, 252 S.C. at 481, 167 S.E.2d at 315. “[T]he sole purpose of a temporary injunction is to preserve the status quo....” *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). “[A] temporary injunction is [used] to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation....” *County Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964) (citations omitted). “A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and the court should be guided by general principles of equity.

V. Law/Analysis

As noted, Appellant raises numerous issues on appeal, many of which overlap one another. These can be broken down into several combined areas each of which is addressed below.

A. The Probate Court properly issued the Temporary Restraining Order in this case.

Appellant spends significant time arguing the Temporary Restraining Order was not properly issued by the Probate Court. The Attorney General believes any issues relating to the issuance of the Temporary Restraining Order are moot unless the Temporary Restraining Order was not complied with during its existence. As such, they should not be considered on appeal. However, if this Court is inclined to address the merits of the issuance of a now dissolved Temporary Restraining Order, the record shows the Probate Court had more than adequate factual

and legal support to issue the Temporary Restraining Order in order to preserve the status quo and until a hearing could be scheduled on the Attorney General's verified petition for relief, which in fact took place within ten days of the issuance of the Temporary Restraining Order. This is simply a red herring utilized by Appellant to divert attention from her self-dealing, breach of fiduciary duty and improperly taking \$19 million dollars which should have gone to the Foundation.

i. All appellate issues related to the issuance of the Temporary Restraining Order are moot.

The Temporary Restraining Order in this case was issued by the Probate Court on March 13, 2020. The Probate Court held a hearing on the Temporary Restraining Order on March 23, 2020. (Tr. pp. 1-97). This was during the time period when Covid-19 was rapidly morphing from an issue to a substantial crisis. Courts were constrained by requirements of limiting contact with the public, quarantining people and documents all the while trying to maintain the administration of justice in our state. At the hearing, the Attorney General set forth the basis for why a Temporary Restraining Order had previously been sought. (Tr. Pp. 11-12). On June 29, 2020, the Probate Court reduced the terms of the Temporary Injunction issued at the hearing to a written order granting a Temporary Injunction as well as granting other relief such as confirming the appointment of a Special Administrator. As such, no Temporary Restraining Order was in existence and has not been since the date of the Probate Court hearing. Any appeal relating to it is moot. *C.f. Curtis v. State of South Carolina*, 345 S.C. 557, 549 S.E.2d 591 (2001) (Moot appeals result where intervening events render a case nonjusticiable.)⁷

“A case becomes moot when judgment, if rendered, will have no practical legal effect upon [an] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Mathis v. S.C. State Highway Dep’t*, 260 S.C. 344, 346,

⁷ *Curtis* also sets forth the three exceptions to the mootness doctrine. None are implicated in this appeal.

195 S.E.2d 713, 715 (1973). Generally, courts will not address moot issues. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006); *Wardlaw v. South Carolina Department of Social Services*, 427 S.C. 197, 829 S.E.2d 718 (Ct. App. 2019).

As our Supreme Court noted in *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001), “the rule that an appellate court limits its review to the issues necessary to a proper disposition of an appeal, and will not consider immaterial or moot questions, applies when reviewing decrees and orders relating to injunctions.” *Id. citing* 42 Am. Jur. 2d §325 Injunctions (2000). This appeal will not have any practical legal effect on the Temporary Restraining Order, the term of which expired. As such, this Court should consider any appeal of the Temporary Restraining Order moot.

ii. The Temporary Restraining Order was properly issued in accordance with the SCRCP and applicable case law.

When the Probate Court was presented with a motion for the issuance of a temporary restraining order, it had before it evidence by way of a verified petition and a motion establishing Appellant had:

- Dissolved the Foundation which was created by her husband and by the express terms of his will was arguably entitled to the \$19 million dollar residuary of his estate;
- Changed the plan of distribution filed with the Probate Court showing that she, rather than the Foundation, would be receiving these funds without bringing the matter to the attention of the Probate Court or any other agency or entity;
- Already sold properties (which the Attorney General asserted should have passed to the Foundation) for many millions of dollars;

- All other properties that had not been sold had been transferred to LLCs, the ownership of which was and remains unknown to this Court or the Probate Court;
- Failed to give the required notice to the Attorney General when she and only one other member of the Foundation's board (after the others were terminated or asked to resign by Appellant) voted to dissolve the Foundation so Appellant could personally claim an entitlement to the \$19 million dollar residuary of the Estate;
- Counsel or "advisors" who were being less than truthful or forthcoming with the Attorney General as his office attempted to comply with applicable laws relating to the attempts at the dissolution of the Foundation once the matter came to his attention; and
- Appellant was unwilling to agree via consent that she would refrain from dissipating Foundation assets pending the resolution of this matter.

A temporary restraining order is designed to maintain the status quo until a court can bring the parties before it and determine what steps, if any, should be taken so that no party or person suffers irreparable harm. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). Counsel for the Attorney General explained in great detail to the Probate Court why a temporary restraining order was sought:

I'm just giving you a reason why we had to do a temporary restraining order - - Mr. Oberly got back with me. He had talked to his client, and then he wanted to talk to the probate attorney, and she was out. So I said, okay. Now, I said, we've got to get - - we've got to get the status quo on this because we've got to make sure everybody's staying where they are.

We'll work with you and try to get it resolved if we can, but we've got to keep a level playing field here, because I'm getting calls from my Chief Deputy and Solicitor General, and they were about to try it as the Attorney General. This is a serious matter if on its face it is what it is, and we think it is.

So I sent an e-mail to Mr. Oberly after that conversation on Wednesday before - - week and a half before the Friday we did a Temporary Restraining Order. And I mentioned to him on a call that we're going to have to do what we've got to do. And I sent an e-mail to him saying, per our conversation, we'll maintain the status quo until you get back. So I was good with that I sort of advised the front office. . .

And I said, okay, if we're going to try to resolve something here and see what our differences are, I need to make sure there's a status quo. And he apprises me that, wait a minute. I don't think she's going to do something. I said - - and I picked up on the "think."

I said, wait a minute. If you can't guarantee while we're talking and trying to resolve it that nothing is going to be transferred, we've got to do what we've got to do here. He said, okay.

(Tr. Pp. 11-12).

Appellant would not agree to a stand-still agreement after continuous efforts at an amicable agreement to maintain the status quo by the Attorney General. She would likewise not agree to do so at the hearing in this case. This was all done in the midst of a pandemic when \$19 million dollars had, based upon the initial investigation by the Attorney General, been misappropriated by Appellant.

Appellant's Chicago counsel (the only one of record at that time) was aware the Attorney General would move for a temporary restraining order to preserve the status quo based upon the failure of Appellant, after her return from international travel, to agree to hold on to the disputed assets until the matter could be resolved. All Appellant had to do to avoid the issue of the Temporary Restraining Order was agree to not sell or transfer assets which the Attorney General

contends belong to the Foundation. She blatantly said no twice. As such, seeking and obtaining a Temporary Restraining Order was the appropriate action.⁸

B. The Probate Court properly issued the Temporary Injunction in this case.

As previously noted, the Circuit Court (in the removed case) refused to continue or re-issue the temporary injunction once the case was removed. As such, the restrictions on Appellant's use of the \$19 million dollars of cash and property the Attorney General believed was improperly diverted from the Foundation was no longer in place. In that the Temporary Injunction was discontinued, the specific issues raised by the Appellant are moot for the reasons set forth in Section A, *infra*.

Upon consideration of the merits of the issues raised by the Appellant, this Court should also determine that the issuance of a temporary injunction was appropriate. Appellant argues the Attorney General did not request that the Temporary Restraining Order be extended or that a Temporary Injunction be issued. As such, Appellant surmises the Temporary Restraining Order should have expired on the day of the hearing and the Probate Court had no remedy to maintain the status quo. Acceptance of such an argument would undermine the inherent powers of the Courts to maintain the status quo when such action is needed. Courts have the inherent power to do all things reasonable and necessary to ensure that just results are reached to the fullest extent possible. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011).

As noted in the transcript of the Probate Court hearing, the hearing was set by the Probate Court to address the issues raised in the Temporary Restraining Order. (Tr.p.1). Judge Condon saw

⁸ As detailed in this memorandum, Appellant likely could not agree as all real property assets had already been transferred, sold or conveyed by her. Still unknown is what has happened to over \$600,000 in cash noted as passing to Appellant in the probate records under the residuary clause in dispute.

and asked very clearly if Appellant was trying to take the position that the Temporary Restraining Order would expire on the day of the hearing and that the assets in issue were not subject to any restrictions necessary to maintain the status quo as they had already been sold or transferred to various LLCs. As noted in the transcript, Appellant's counsel made clear that was what was being argued. (Tr. pp. 92-93). As such the Probate Court immediately issued an injunction from the bench until it could be reduced to a written order.⁹

Upon a proper showing of all required elements, a court may issue a temporary injunction to preserve the status quo. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009.) Appellant's position was she would not sell the assets, however, she had already done so with regard to millions of dollars' worth of property which the Attorney General contends should have passed to the Foundation. (Tr. pp. 29-32). No one could state what had already been sold and which assets were already transferred to various LLCs which she may or may not own. Appellant's counsel boldly stated and inferred that since the properties had already been transferred and he could not state who owned the various LLCs that the Temporary Restraining Order and the Temporary Injunction were essentially worthless. The Probate Court properly issued the Temporary Injunction to try to preserve the assets moving forward. Appellant cites no case law which would limit the authority of the court to enjoin any sales or transfers so as to try and preserve the status quo.

Appellant's counsel claims the Probate Court erred in refusing his "request for leave to file additional affidavits...." (Appellant's memo. p. 21). The transcript reveals counsel was offered the opportunity to file whatever he wished to file but decided not to do so when the Probate Court

⁹ The Attorney General's counsel made clear at the beginning of the hearing they sought to convert the Temporary Restraining Order into a Temporary Injunction. (Tr. P.9).

indicated the Temporary Restraining Order would be converted to a Temporary Injunction. (Tr. Pp. 88-93). The Probate Court noted in its order on this issue:

At the hearing, counsel for ...Minnie Lee Newman Mevers requested leave until March 30, 2020 to file additional affidavits with this Court addressing tax issues raised at the hearing before the Court made its decision on the motion. The Court initially was inclined to accommodate this request. However, the Court decided to immediately announce its decision at the conclusion of the hearing when the [Appellant's]... counsel was unable to consent to extend the Temporary Restraining Order during the additional time interval that would have been granted after the hearing for the submission of additional affidavits. This necessarily would have meant the Temporary Restraining Order would have expired by its terms on March 23, 2020 if the Court had not immediately issued its ruling on the motion. Accordingly, because the Motion is being granted, the submission of additional affidavits at this point would serve no purpose.

(Order Granting Temporary Injunction p.14)

Judge Price's later ruling against keeping the Temporary Injunction in place after the case was removed to Circuit Court in no manner undercuts, overrules or bears upon the well-reasoned decisions of the Probate Court.¹⁰

C. The Probate Court had subject matter jurisdiction to grant the temporary injunction.

Appellant argues the Probate Court lacked jurisdiction to enter a formal written ruling on the motion for a temporary injunction and for other relief because Appellant made a motion to remove the case to Circuit Court on May 12, 2020 before the Temporary Injunction was issued by way of a written order (June 29, 2020). As such, on August 28, 2020 Appellant filed a motion to

¹⁰ Two Probate Court judges entered orders in this matter. The Temporary Restraining Order was issued by Judge Currie. The Temporary Injunction and other relief was granted by Judge Condon. Both issued well-reasoned orders supporting their rulings. As judges of the Probate Court, both are familiar with the statutory requirements for non-profits such as the Foundation and the role of the Attorney General in such matters.

alter, amend or vacate the Temporary Injunction and all relief set forth therein. The Probate Court considered the motions and found the motion raised no new grounds not considered by the court and denied all such motions.

As to Appellant's motion to vacate based upon the motion for removal allegedly depriving the Probate Court of subject matter jurisdiction, the Probate Court clearly determined its jurisdiction was not impacted by the motion for removal as no order allowing removal had been entered. Specifically, the Probate Court held "the matter is not removed until the Court grants the motion for removal." (Order Denying Motion to Alter, Amend or Vacate dated Sept. 10, 2020). The Probate Court further noted it ruled from the bench that the Attorney General's request for a temporary injunction was granted on March 23, 2020. As such, the Probate Court determined it had clear jurisdiction to issue such rulings from the bench and as such was under no obligation to vacate its prior rulings. (Id. at 4).¹¹

Appellants reliance on *Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009) provides no support to Appellant, as it does not hold that a Probate Court loses jurisdiction at the time a motion to remove is filed. The same holds true for *Thomas v. Gathings*, 304 S.C. 308, 403 S.E.2d 682 (Ct. App. 1991). The Probate Court, like all courts, has an inherent authority to see its ruling are complete and complied with by the parties. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011). Once the order of removal was issued, Appellant may seek *de novo* review at the Circuit Court. At any time prior to removal, the rulings and holdings of the Probate Court remain within its jurisdiction to address.

¹¹ When a matter is removed to Circuit Court from Probate Court, the matter is determined *de novo*. S.C. Code Ann. § 62-1-302. This begs the question what practical and meaningful relief can this court grant even if it reverses the decision of the Probate Court? Further, why is the reversal of orders no longer applicable (but applicable and enforceable when entered and during the time period until removed by the Circuit Court) of such importance to Appellant? The rulings in this appeal will have no impact on the removed case which is also currently pending.

D. The Probate Court Properly determined all requirements were met for the issuance of a temporary injunction.

i. The Attorney General established irreparable harm.

Appellant contends there was no evidence of irreparable harm presented. Specifically, Appellant extrapolates that since she was left \$350,000 as a specific bequest by her husband, she has assets and thus a money judgment could remedy any harm which may take place. If this were litigation over a \$100,000 bequest to the Foundation, then perhaps this argument would be more compelling. Rather, Appellant has taken possession of \$19 million dollars which the Attorney General asserts she is not entitled to receive.¹² Moreover, as the Probate Court found:

Specifically, the verified Petition, Application, and Motion filed with this Court sets forth valid issues as to whether the [Appellant] did not preserve or protect the Estate so she could improperly assert her entitlement to the residuary clause of the Will, enriching herself at the expense of the Foundation.

It is alleged in her capacity as a secondary beneficiary of the residuary of the Estate, the [Appellant] placed her interest above those of the Foundation. The [Appellant] never sought the appointment of an independent personal representative or special administrator by this Court to remove herself from any potential conflict. Instead, the Attorney General alleges that the [Appellant] unilaterally decided without permission or guidance from this Court, or notice to this Court or the Attorney General that she was entitled to approximately Nineteen Million Dollars (\$19,000,000.00) as the secondary beneficiary of the residuary clause.

(Order Granting Temporary Injunction p.8).

¹² This is the key distinction with *McDevitt v. Wellin*, 2016 WL 199626 (D.S.C. Jan. 15, 2016), the uncited decision of Judge Norton relied upon by Appellant. The Wellin children and their father (and ultimately their step-mother after the death of their father) each possessed such substantial means that one need not worry about the other dissipating the funds in issue. As noted by Judge Condon, Appellant had sold substantial assets of the estate and has transferred all properties into LLCs which may or may not be controlled by her. Likewise, one cannot trace ownership of interests in LLCs.

Public records establish that ...[Appellant] began selling and transferring assets which she received by virtue of the residuary clause of the Will and which the Attorney General alleges legally belong to the Foundation. The [Appellant] conceded through her counsel that some or all of the assets set forth the Second Amended Inventory and Appraisement of Probate Property dated May 25, 2018 (“Second Amended Inventory”) had been transferred to various LLCs including Newman Rentals, LLC and Ms. Grace Family, LLC. Counsel also indicated the [Appellant] “may” no longer have an interest or sole interest in these LLCs or proceeds from the sale of the Sullivan’s Island Property which sold for in excess of \$1.8 Million Dollars. The [Appellant’s] counsel noted he had been retained only a few days before the hearing, which was conducted on an expedited basis, and he had not yet had an opportunity to obtain or review records relating to any transfers of properties and was unable to verify what transfers had occurred. The Second Amended Inventory and Appraisement shows the gross value of the Estate as \$19,962,700.00 with a total probate estate value of \$18,862, 70.00. The Second Amended Inventory and Appraisement was completed under oath by ... [Appellant]. (Order Granting Temporary Injunction p. 11).

Whether a wrong is irreparable is a question that should not be decided by “narrow and artificial rules.” *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13 (1939). Before granting an injunction, the trial court should balance the equities. The court should look at the particular facts of each case and determine which side is more entitled to equitable relief. *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003). The only purpose of an injunction is to preserve the status quo so as to avoid irreparable injury pending litigation. *Peek v. Spartanburg Regional Medical Healthcare System*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2006). The facts set forth above as found by the Probate Court fully support the issuance of the Temporary Injunction.

As the Probate Court aptly noted, an unsatisfied money judgment is not the equivalent of preserving the primary assets in issue in this dispute.

There is no adequate remedy at law available if the [Appellant] is allowed to continue to use Foundation assets to fund her lifestyle, travel, expenses, and gifts to others. Failing to issue a temporary restraining order against the [Appellant's] use of the assets, to include any proceeds thereof, will irreparably harm the Foundation and the public interest it is meant to serve. Furthermore, each use of the assets by the [Appellant] unduly diminishes the Foundation's chances of ever fully recovering that which she has purportedly taken from it. The irreparable harm is clearly established by the distribution by the [Appellant] of the properties in dispute and the inability of her counsel, due to time constraints, to inform the Court as to the current ownership status of such property. As such, the status quo should be preserved.

(Order Granting Temporary Injunction pp.12-13)

In reviewing and balancing all of the equities and potential irreparable harm to the Foundation's potential beneficiaries, the Probate Court reached the correct conclusion in attempting to place all potential Foundation assets under a temporary injunction. Its holding, although now moot, should be affirmed.

ii. The Attorney General established a likelihood of success on the merits.

Appellant raises numerous reasons which allegedly show the Attorney General has failed to establish a likelihood of success on the merits. The reasons strain logic and common sense in an effort to preserve what has been to date a successful gain of \$19 million dollars by Appellant at the expense of the potential beneficiaries of her husband's Foundation.

A likelihood of success on the merits does not require the Attorney General in this case to prove an absolute legal right; the Plaintiff need only present a fair question to raise as to the existence of such a right. *Williams v. Jones*, 92 S.C. 342, 75 S.E.705, *Peek v. Spartanburg Regional Medical Healthcare System*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2006). The determination of whether to grant an injunction should not be based on the merits of the underlying

case except insofar as the merits may assist the court in determining whether a *prima facie* case for injunctive relief has been established.¹³ *Id.*

Appellant's first argument is that the Attorney General did not show a likelihood of success on the merits as the Foundation has been dissolved. She concludes as such, it cannot assert claims against her. This argument is riddled with errors. The claims brought here are not claims of the Foundation, which Appellant controlled, and which had no independent counsel. At all relevant times, she was the Foundation.

Appellant essentially attempts to cast this as a derivative action where only the Foundation could ever assert claims against her. Appellant and her one remaining board member would never vote to sue themselves. It is for this reason the Attorney General has a common law and statutory role in overseeing the dissolution of foundations such as that established by her husband. Simply put, this is not a corporate derivative matter as Appellant claims. Likewise, the fact that a dissolved corporation cannot bring suit in Georgia is of no import to this case.¹⁴ *Gas Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc.*, 436 S.E.2d 207 (Ga. 1993). Dissolved or not, it is not the Foundation but the Attorney General bringing this action. Appellant manufactured a situation where she, one Foundation member and a "financial advisor" whose review of the Foundation was very questionable determined they would do away with the Foundation, making Appellant \$19 million dollars richer. The Probate Court ruled "this Court finds a significant question is raised as to the actions taken by the [Appellant] in regards to the Estate and the Foundation. *Levine v. Spartanburg Regional Services District Inc.* 367 S.C. 458 (Ct. App. 2005)" (Order Granting Temporary

¹³ Appellant attempts to argue the merits of her defense in this brief. Such is improper. She has requested a jury trial. A jury will decide the merits of her actions and the Attorney General's contentions in the removed action.

¹⁴ Appellant misses this point purposefully. The Attorney General is acting on behalf of the potential beneficiaries of the Foundation, not on behalf of the Foundation itself. It has the right and the obligation to do so. It is not a defunct corporation seeking to bring suit on behalf of the corporation after it has been dissolved for one reason or another.

Injunction p.7). This finding was fully supported by the facts. As such, the requirements for a reasonable likelihood of success on the merits was satisfied.

Appellant also asserts even though the General Assembly mandates that notice “shall” be given to the Attorney General, such does not impact her ability to dissolve the Foundation because the statute contains no such language. Counsel for Appellant stated:

There certainly is a notice requirement to the AG when a charitable foundation dissolves. When they submit their articles of dissolution to the Secretary of State, there is a notice requirement, and we can see that that notice was not sent. **The statute does not say that the dissolution is dependent on that notice being sent. So the organization still dissolves.** The AG has authority over the plan of distribution, in essence, for the charitable organization’s assets.

(Tr. pp. 65-66) (emphasis added).¹⁵

Appellant’s argument is even with the notice requirement of S.C. Code Ann. § 33-31-1403(a) (“A nonprofit organization shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers Articles of Dissolution to the Secretary of State.”), the statute does not say that the dissolution is dependent on that notice being sent. What Appellant ignores is the very next portion of the statutory provisions, S.C. Code Ann. § 33-31-1403(b). This prohibits any transfer or conveyance of assets of a public benefit corporation until twenty days after notice has been given as required by subsection (a) to the Attorney General. Appellant’s position is clearly contradicted by the clear and unambiguous language of the remainder of the statute, which must be read as a whole. *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 629 S.E.2d 624 (2006) (Statutes must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect).

¹⁵ Counsel believes the words “can see” were actually “concede.” Either way, the concession of no notice is not disputed by Appellant.

The assets of the Foundation cannot be sold or conveyed unless notice was given to the Attorney General. She concedes notice was not given. As such, the Attorney General contends such transfers to Appellant and third-parties will come back to and ultimately benefit the Foundation's beneficiaries. If the Attorney General prevails, not only will Mrs. Newman-Mevers ultimately have to return the substantial funds, her husband's home and properties over to the Foundation, as they were transferred in violation of the statute, but she will also be called upon to refund the millions of dollars she has reaped off of improper sales of Foundation property. Simply put, the statutory provisions establish the Attorney General has standing in this litigation.

iii. Judge Price's ruling is inapplicable to the issues before the court.

As noted, Judge Price denied a continuation of the Temporary Injunction in the removed case without comment by way of a Form 4 order. Such a ruling has nothing to do with the fact that two separate judges in the Probate Court found the issuance of a temporary injunction under the facts of this case was appropriate. Review of the facts and case law demonstrates the issuance of the Temporary Injunction was correct under South Carolina law.

E. The Attorney General has standing to pursue rights of beneficiaries of the Foundation.

Appellant is misguided as to the law and the role applicable to the Attorney General in litigation such as this. The Attorney General, in his *parens patriae* capacity, has the duty to protect the public interest and the authority to do so as granted to him by the state constitution, statutory law, and common law. Concerning charitable trusts, the Attorney General has the statutory and common law duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. *Wilson v. Dallas*, 403 S.C. 411, 431, 743 S.E.2d 746, 757 (2013) (“[W]here the trust involves charitable entities, the trustee has a duty to defend the trust, and the

Attorney General has the duty to represent the unspecified charitable beneficiaries.”); *see also* S.C. Code Ann. § 1-7-130(2005) (“The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State.”); S.C. Code Ann. § 62-7-405(c) (2009) (“The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.”); *Epworth Children 's Home v. Beasley*, 365 S.C. 157, 164 n.3, 616 S.E.2d 710, 714 n.3 (2005) (“The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts.” (*citing Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961))); *see generally* 15 *Am. Jur.* 2d Charities § 132 (2015) (“Because of the public interest necessarily involved in a charitable trust or gift to charity and essential to its legal classification as a charity, it generally is recognized that the Attorney General, in his or her capacity as a representative of the state and of the public, is the, or at least, a proper party to institute and maintain proceedings for the enforcement of such gift or trust.”).

It is important to note in this matter that while the Attorney General represents the public at large and must protect the potential charitable beneficiaries, he does not represent the individual charities. It is also significant that the Attorney General is the only person representing the charitable beneficiaries.

In the present case, the Attorney General protects the charitable beneficiaries – i.e., the unspecified citizens who would benefit from the Foundation. He does not represent the Foundation itself, and he has never purported to represent the Foundation. The Attorney General is charged with protection of the public interest. Contrary to the Appellant’s argument, the Attorney General did not file this action “on behalf of” the Foundation. Rather, the Attorney General filed it as part

of this duty to protect the charitable beneficiaries who would benefit from the gift to the Foundation.

Watson v. Wall, 229 S.C. 500, 507–08, 93 S.E.2d 918, 921 (1956) supports the Attorney General’s filing of this action. In *Watson*, our Supreme Court recognized the power of the Attorney General to advocate for the public interest when a will contest threatened to divert funds devised to a charitable trust. In that case, the decedent’s heirs sought a judicial finding that an item in the will did not create a charitable trust. *Id.* at 507, 93 S.E.2d at 921. Because the heirs had already convinced the lower court that two “renounced devises . . . passed as intestate property to the testators heirs,” a ruling that the charitable trust was invalid would have caused the renounced devises to flow to them. *Id.* In that the charitable trust was valid, the heirs appealed.

The Attorney General petitioned to intervene at the appellate level for “the purpose of protecting the interest of the public in the charitable trust.” *Id.* at 508, 93 S.E.2d at 921. The Supreme Court granted the petition and “granted [the Attorney General] permission to file exceptions to so much of the circuit decree as held that the renounced devises . . . passed to the heirs at law.” *Id.* The Supreme Court affirmed the lower court’s ruling that the will created a valid charitable trust, reversed its finding that the renounced devises passed to the heirs, and found they flowed via the “residuary provisions . . . into the charitable trust.” *Id.* at 518, 93 S.E.2d at 927.

This case demonstrates that the Attorney General’s mandate to protect charitable beneficiaries is so strong that his intervention was allowed at the appellate stage of litigation. Similarly, if the public interest requires it, the Attorney General may bring an action to protect the charitable beneficiaries, as this is in the public interest. If the Attorney General were not allowed to bring, intervene, or otherwise be a part of actions the impact the interests of charitable beneficiaries, there would be nobody to look out for this interest. Indeed, these unknown and

unascertained beneficiaries would not otherwise be represented, and “[i]t is the duty of the Attorney General with regard to charitable trusts to proceed in the prosecution or to decline so to proceed as the public interests may require.” 14 C.J.S. Charities § 61.

The Attorney General handles matters such as this on a regular basis. Probate Courts and the vast majority of Circuit Courts are well aware of the responsibilities of the Attorney General in matters such as this. Appellant may be unhappy the Attorney General filed this action, but he has standing and authority to do so. The Probate Court’s rulings, which found standing, should be affirmed.

VI. Conclusion

For the reasons set forth herein, this appeal should be dismissed or in the alternative the Orders of the Probate Court should be affirmed.

Signature on next page

*Signature page for Initial Brief of Respondent South Carolina Attorney General,
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Dated: January 20, 2021
Charleston, SC

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

APPEAL FROM CHARLESTON COUNTY PROBATE COURT
Irvin G. Condon, Judge of Probate

Court of Common Pleas Case No. 2020-CP-10-04036
Probate Court Case No. 2017-ES-10-01946

IN THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,
Petitioner in Probate Court-Respondent on Appeal,

versus

MINNIE LEE NEWMAN-MEVERS,
Respondent-Third-Party Petitioner in Probate Court,

versus

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers, Jr.,
Third-Party Respondent in Probate Court,

Of whom MINNIE LEE NEWMAN-MEVERS is the *Appellant on Appeal.*

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TABLE OF CONTENTS

Table of Authorities	ii
Arguments.....	1
I. DISMISSAL OF THIS APPEAL IS NOT WARRANTED BASED ON MOOTNESS BECAUSE THE ISSUES ARE CAPABLE OF REPETITION BUT EVADING REVIEW.....	1
II. THE PROBATE COURT ERRED BY GRANTING AN <i>EX PARTE</i> TRO AND APPOINTING A SPECIAL ADMINISTRATOR WITHOUT AFFORDING APPELLANT NOTICE OR AN OPPORTUNITY TO BE HEARD.....	3
III. THE PROBATE COURT ERRED BY EXTENDING THE TRO BEYOND TEN DAYS AND BY PRELIMINARY ENJOINING APPELLANT FOR AN INDEFINITE DURATION AND ORDERING HER TO ACCOUNT WHEN THE SCAG DID NOT MOVE FOR SUCH RELIEF AND NO HEARING WAS NOTICED ON SUCH A MOTION.....	5
IV. THE PROBATE COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT A PRELIMINARY INJUNCTION OR TO REQUIRE APPELLANT TO ACCOUNT AFTER THE NOTICE OF REMOVAL TO THE CIRCUIT COURT HAD BEEN FILED AND SERVED	7
V. THE PROBATE COURT ERRED BY FINDING THAT THE SCAG SATISFIED THE NECESSARY REQUIREMENTS FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION	9
(a) <i>Inadequacy of Remedy at Law</i>	9
(b) <i>Irreparable Harm</i>	9
(c) <i>Likelihood of Success on the Merits</i>	12
Conclusion	18

TABLE OF AUTHORITIES

Cases

<u>Abrams v. Porter,</u> 920 P.2d 386 (Idaho 1996)	14
<u>Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez,</u> 458 U.S. 592 (1982)	16
<u>Barrett v. Southern Ry. Co.,</u> 68 F.R.D. 413 (D.S.C. 1975)	8
<u>Bio-Thrust, Inc. v. Div. of Corps.,</u> 80 P.3d 164 (Utah 2003)	14
<u>Bowers v. Bowers,</u> 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991)	3
<u>Brown & Williamson Tobacco Corp. v. Gault,</u> 627 S.E.2d 549 (Ga. 2006)	16
<u>Byrd v. Irmo High School,</u> 321 S.C. 426, 468 S.E.2d 861 (1996)	2
<u>Chapman v. Tristar Prod., Inc.,</u> 940 F.3d 299 (6th Cir. 2019)	16
<u>Charlesbank Equity Fund II v. Blinds To Go, Inc.,</u> 370 F.3d 151 (1st Cir. 2004)	10-11
<u>Com. of Pa., by Shapp v. Kleppe,</u> 533 F.2d 668 (D.C. Cir. 1976)	17
<u>Estate of Vanderbilt,</u> 441 N.Y.S.2d 153 (N.Y. Sur. Ct. 1981)	13
<u>Ex parte Cannon,</u> 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009)	7
<u>Fluor Daniel Argentina, Inc. v. ANZ Bank,</u> 13 F. Supp. 2d 562 (S.D.N.Y. 1998)	11
<u>Gas Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc.,</u> 436 S.E.2d 207 (Ga. 1993)	14

<u>General Textile Printing & Processing Corp. v. Expromtorg Int'l Corp.</u> , 862 F.Supp. 1070 (S.D.N.Y.1994)	11
<u>Gilmore v. Ivey</u> , 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986)	4
<u>Givens v. Isuzu Motors Am.,LLC</u> , 2009 WL 10669837 (M.D. Fla. July 13, 2009)	8
<u>Gladstone v. Waldron & Co.</u> , 1998 WL 150982 (S.D.N.Y. Mar. 31, 1998)	11
<u>Hodges v. Abraham</u> , 253 F. Supp. 2d 846 (D.S.C. 2002)	11
<u>In re Darlene C.</u> , 278 S.C. 664, 301 S.E.2d 136 (1983)	1
<u>In re Gebbie's Will</u> , 307 N.Y.S.2d 1002 (N.Y. Sup. Ct. 1970)	13
<u>In re Tobacco/Governmental Health Care Costs Litig.</u> , 83 F. Supp. 2d 125 (D.D.C. 1999)	17
<u>Lefkowitz v. Lebensfeld</u> , 68 A.D.2d 488, 417 N.Y.S.2d 715 (1979), <u>aff'd</u> , 51 N.Y.2d 442, 415 N.E.2d 919 (1980)	15
<u>Lefkowitz v. Lebensfeld</u> , 408 N.Y.S.2d 216, 219 (Sup. Ct. 1978)	14
<u>Maseda v. Honda Motor Co.</u> , 861 F.2d 1248 (11th Cir.1988)	8
<u>McManus v. Bank of Greenwood</u> , 171 S.C. 84, 89, 171 S.E. 473 (1933)	4
<u>Metered Appliances, Inc. v. 75 Owners Corp.</u> , 225 A.D.2d 338 (N.Y. App. Div. 1996)	15
<u>Nelson v. Ozmint</u> , 390 S.C. 432, 702 S.E.2d 369 (2010)	2
<u>Pacesetter Real Estate, Inc. v. Fasules</u> , 767 P.2d 961 (Wash. 1989)	14

<u>People v. Grasso,</u> 54 A.D.3d 180 (N.Y. App. Div. 2008)	17
<u>People ex rel. Spitzer v. Grasso,</u> 893 N.E.2d 105 (N.Y. 2008)	16
<u>Professional Wiring Installers, Inc. v. Sims,</u> 2008 WL 9840409 (S.C. Ct. App. 2008)	10
<u>Regions Bank v. Wingard Properties, Inc.,</u> 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011)	5
<u>Roe v. Wade,</u> 410 U.S. 113 (1973)	1
<u>Rosenberg v. Lexington Ins. Co.,</u> 2009 WL 10677929 (D.S.C. Mar. 19, 2009)	8
<u>S.C. Dept. of Transp. v. Thompson,</u> 357 S.C. 101, 590 S.E.2d 511 (Ct. App. 2003)	4
<u>State v. Passmore,</u> 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005)	2
<u>State ex rel. Butterworth v. Anclothe Manor Hosp., Inc.,</u> 566 So. 2d 296 (Fla. Dist. Ct. App. 1990)	15
<u>Steamship Co. v. Tugman,</u> 106 U.S. 118 (1882)	8
<u>Surplec, Inc. v. Maine Pub. Serv. Co.,</u> 495 F. Supp. 2d 147 (D. Me. 2007)	11
<u>Thomas v. Gathings,</u> 304 S.C. 308, 403 S.E.2d 682 (Ct. App. 1991)	7
<u>Watson v. Wall,</u> 229 S.C. 500, 93 S.E.2d 918 (1956)	17
<u>Yarnevic v. Brink's, Inc.,</u> 102 F.3d 753 (4th Cir. 1996)	7
<u>Statutes, Rules, and Regulations</u>	
28 U.S.C. § 1446(d)	7

S.C. CODE ANN. §§ 33-31-101 to -31-1708 17

S.C. CODE ANN. § 33-31-1403(b) 14

S.C. CODE ANN. § 62-1-302(d) 7

S.C. CODE ANN. §§ 62-2-201 et seq. 12

S.C. CODE ANN. § 62-3-614(2) 1

S.C. R. CIV. PRO. 65(b) 1-3

Other Authorities

JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE (3rd ed. 2010) 6

ARGUMENTS

I. DISMISSAL OF THIS APPEAL IS NOT WARRANTED BASED ON MOOTNESS BECAUSE THE ISSUES ARE CAPABLE OF REPETITION BUT EVADING REVIEW.

In her opening brief, Appellant Minnie Lee Newman-Mevers (“Minnie”) demonstrated that the Probate Court erroneously granted an *ex parte* TRO and appointed a Special Administrator on March 13, 2020, without requiring that Respondent South Carolina Attorney General’s (“SCAG”) first provide Minnie notice of the motion or an opportunity to be heard as mandated by S.C. R. CIV. PRO. 65(b) and S.C. CODE ANN. § 62-3-614(2). SCAG now argues that Minnie’s appeal is “moot” because the TRO has since “expired” and because Circuit Court Judge Bentley D. Price later denied the SCAG’s motion to continue the TRO or to grant a temporary injunction after the case was removed to that Court. See Resp. Brief pp.3, 13-14.

Minnie agrees that Judge Price denied the SCAG’s motion to continue the TRO or to grant a temporary injunction in the separate case removed to this Court (Case No. 2020-CP-10-04089). See Motion for Continuance of TRO; Order dated 9.22.20. Minnie further agrees with the SCAG that Judge Price’s Order means that the Probate Court’s March 13, 2020 *ex parte* TRO and its June 29, 2020 preliminary injunction are no longer in effect. See Resp. Brief p.17 (“[T]he Circuit (in the removed case) refused to continue or re-issue the temporary injunction once the case was removed. As such, the restrictions on [Minnie’s] use of the \$19 million (sic) dollars of cash and property the Attorney General believed was improperly diverted from the Foundation was no longer in place.”). However, this does not warrant dismissal of Minnie’s current appeal on mootness grounds.

In the case of In re Darlene C., 278 S.C. 664, 301 S.E.2d 136 (1983), our state Supreme Court adopted the position taken by the United States Supreme Court in Roe v. Wade, 410 U.S. 113 (1973), holding that when an issue is “capable of repetition but evading review” the court will not

refuse to consider the issue based on mootness. In Byrd v. Irmo High School, 321 S.C. 426, 468 S.E.2d 861 (1996), our Supreme Court clarified that our state follows the “less restrictive approach” to this exception to mootness, which “does not require a reasonable expectation that the same complaining party be subjected to the action again,” but merely requires that the issue be one that “is capable of repetition, but which will evade review.” Id. at 432, 468 S.E.2d at 864.

That is precisely the situation in the current case. The nature of a TRO is that it is short-lived. See S.C. R. CIV. PRO. 65(b) (providing that TRO “shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period”). Because a TRO will expire long before an appellate court can review the issues that it implicates and the Probate Court certainly could issue a TRO in the future without requiring that a defendant be given notice of the motion or an opportunity to be heard, an appeal from an *ex parte* TRO clearly fits into the evading review exception to the mootness doctrine. See, e.g., Byrd, 321 S.C. at 432, 468 S.E.2d at 864 (holding that student’s appeal from school’s suspension order fell within the exception since “[s]hort-term student suspensions, by their very nature, are completed long before an appellate court can review the issues they implicate”); Nelson v. Ozmint, 390 S.C. 432, 434-35, 702 S.E.2d 369, 370 (2010) (applying exception to inmate’s appeal of statute imposing mandatory one-year sentence even though prisoner had been released from prison when the issue was one that is capable of repetition, yet will usually evade review, because most inmates will have served the year required by the statute before the lawfulness of the statutory interpretation can be reviewed); State v. Passmore, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005) (applying exception to family court litigant’s appeal of one-year contempt sentence when the sentence was too brief to be fully litigated through appeal prior to

its expiration and the alleged constitutional violation suffered by the appellant could be inflicted on a contemnor in the future).

Even if the Court should find that this particular case is somehow moot, the Court should still decide the appeal because the same situation could arise again, yet evade review. Moreover, the SCAG's argument simply ignores the fact that the *ex parte* TRO and the preliminary injunction not only restrained Minnie, but they also simultaneously appointed a Special Administrator. The appointment of the Special Administrator is still in place. In short, Minnie's appeal should not be dismissed based on the mootness doctrine.

II. THE PROBATE COURT ERRED BY GRANTING AN *EX PARTE* TRO AND APPOINTING A SPECIAL ADMINISTRATOR WITHOUT AFFORDING APPELLANT NOTICE OR AN OPPORTUNITY TO BE HEARD.

Minnie's opening brief points out the clear requirement of Rule 65(b) that an *ex parte* TRO cannot be issued "unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon." S.C. R. CIV. PRO. 65(b). The SCAG's response brief does not even attempt to cite to any "specific facts" in any "affidavit" or "verified complaint" filed with the Probate Court **prior to** the *ex parte* TRO was issued showing that immediate and irreparable damage would result to the SCAG before notice could be served on Minnie and a hearing had on the SCAG's motion. Instead, the SCAG recites the **lawyer arguments** that his counsel made at a hearing **ten days after the *ex parte* TRO had already been issued**. See Resp. Brief pp.15-16.

Of course, the SCAG cannot bootstrap the arguments his lawyers made **after** the *ex parte* TRO had already been granted to satisfy Rule 65(b)'s requirements that he show specific facts via affidavit or verified complaint **before** the *ex parte* TRO could be granted. Additionally, the law is well-settled that lawyer arguments made at a hearing are not evidence in the first place. Bowers v.

Bowers, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991); McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933); Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986); S.C. Dept. of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003).

Even if the SCAG's after-the-fact lawyer arguments could be considered "evidence," the SCAG's lawyers did not even claim that it was impossible to give Minnie or her lawyer advance notice of a hearing on the SCAG's TRO motion before it was granted on an *ex parte* basis. The lawyers did not assert that Minnie's whereabouts was unknown or that she could not be found. Indeed, such an assertion would have been frivolous because the record clearly shows that the SCAG had been actively engaged in dialogue and exchanging information with Minnie and her legal counsel for several months immediately prior to the commencement of this action. Not even the SCAG suggested that Minnie or her counsel failed to promptly respond to the SCAG's inquiries on each occasion they were made or that they had refused to cooperate with the SCAG's investigation.

The SCAG also does not claim that an emergency existed or that immediate and irreparable injury, loss, or damage would result before he could serve notice of a hearing on Minnie or her counsel. The SCAG cites to no evidence showing that Minnie was on the verge of disposing of or secreting any property or assets before the SCAG filed this lawsuit or that Minnie or her lawyers had notified the SCAG during their communications with him that Minnie had any intention of disposing of any assets. The only purported justification the SCAG can articulate for his obtaining a TRO on an *ex parte* basis is his lawyer's after-the-fact argument that Minnie "would not agree to a stand-still agreement." See Resp. Brief p.16. The SCAG equates a party's refusal to voluntarily agree to refrain from disposing of their assets while litigation is ongoing with a showing that the party must be on the verge of disposing of or secreting their assets to cause harm to the other party. If such a

contention were sufficient to satisfy the “immediate and irreparable injury, loss or damage” language of Rule 65(b), then the rule’s protections are worthless.

The Probate Court had no evidentiary grounds on which to grant a TRO or appoint a Special Administrator on an *ex parte* basis without affording Minnie notice and an opportunity to be heard. This Court must reverse the Probate Court given its failure to provide Minnie with advance notice of the SCAG’s motion or an opportunity to be heard prior to issuance of the TRO.

III. THE PROBATE COURT ERRED BY EXTENDING THE TRO BEYOND TEN DAYS AND BY PRELIMINARY ENJOINING APPELLANT FOR AN INDEFINITE DURATION AND ORDERING HER TO ACCOUNT WHEN THE SCAG DID NOT MOVE FOR SUCH RELIEF AND NO HEARING WAS NOTICED ON SUCH A MOTION.

Minnie’s opening brief shows that the SCAG’s TRO motion nowhere asked the Probate Court to extend or enlarge the TRO beyond the time limitations imposed by Rule 65(b), thus the TRO expired by its terms after ten days as a matter of law. The SCAG’s opposition brief does not quarrel with the fact that he did not file any motion in the Probate Court requesting a preliminary or temporary injunction. He also does not dispute the fact that the Probate Court never issued notice of a hearing on any such motion. The SCAG’s response to the forgoing is that the Probate Court can nevertheless issue a temporary injunction based on its “inherent power to do all things reasonable and necessary to ensure that just results are reached to the fullest extent possible.” See Resp. Brief p.17 (citing Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011)).

As a threshold point, the Probate Court’s Orders themselves do not state that the Court granted a temporary injunction pursuant to its “inherent powers.” Instead, the Orders cite to Rule 65. Thus, the SCAG’s purported justification for the Probate Court’s temporary injunction is not one that the Court itself articulated. Even assuming *arguendo* that the Probate Court purportedly granted

the temporary injunction based on its “inherent powers,” the powers utilized in the Regions Bank case did not involve granting injunctive relief ***without first affording proper notice to the parties***. Nothing in Regions Bank excuses the failure to give a party proper and adequate notice before the Court exercises any power to grant a temporary injunction. See JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 535 (3rd ed. 2010) (“[A temporary injunction] differs from a temporary restraining order only in that it is granted ***after notice to the parties***, and does not automatically expire after ten days. Rule 65(a) ***emphasizes the requirement of notice.***”) (emphasis added).

The Probate Court erred by extending the *ex parte* TRO for a duration beyond that authorized by Rule 65(b) and by granting a preliminary injunction and ordering an accounting when such relief had not been requested in the SCAG’s motion and the Court had not noticed any hearing on such a motion.

The Probate Court also compounded this error by refusing Minnie’s request for leave to file additional affidavits in response to matters which the SCAG raised for the first time at the hearing conducted on March 23, 2020. The SCAG argues for the first time that Minnie’s counsel simply decided not to submit additional affidavits after being granted the opportunity to do so, apparently contending that Minnie waived this right. See Resp. Brief p.18. However, the Probate Court’s June 29, 2020 preliminary injunction makes very clear that although the Court “initially was inclined to accommodate” Minnie’s request at the March 23, 2020 hearing for leave to submit additional affidavits to respond to the SCAG’s arguments, the Court later denied her request and “decided to immediately announce its decision at the conclusion of the hearing....” See Order filed 6.29.20 p.14. As a result, “the submission of additional affidavits ... would serve no purpose.” Id.

IV. THE PROBATE COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT A PRELIMINARY INJUNCTION OR TO REQUIRE APPELLANT TO ACCOUNT AFTER A NOTICE OF REMOVAL TO THE CIRCUIT COURT HAD BEEN FILED AND SERVED.

The Probate Court entered its June 29, 2020 Preliminary Injunction and ordered Minnie to render an accounting *after* Minnie had already filed and served a Notice of Removal and Motion to Remove Action to Circuit Court pursuant to S.C. CODE ANN. § 62-1-302(d) on May 12, 2020. The SCAG argues that the filing of the notice of removal did not divest the Probate Court of jurisdiction over the matter. See Resp. Brief p.20. The SCAG argues that the Probate Court retained jurisdiction because it had not entered an Order granting removal.

Neither the SCAG nor the Probate Court assert that the case was not properly removable to this Court. The SCAG omits any discussion of § 62-1-302(d), which mandates that the action “*must be removed* to the circuit court” once the notice of removal was filed. S.C. CODE ANN. § 62-1-302(d) (emphasis added); see also Thomas v. Gathings, 304 S.C. 308, 312, 403 S.E.2d 682, 684 (Ct. App. 1991); Ex parte Cannon, 385 S.C. 643, 657, 685 S.E.2d 814, 822 (Ct. App. 2009). To follow the SCAG’s logic would necessarily mean that the Probate Court can simply disregard a proper notice of removal, refuse to enter or delay entry of an Order formally granting removal, and continue to issue rulings affecting the merits of the case as if it had not been removed to the Circuit Court. This result is nonsensical and inconsistent with the mandate of § 62-1-302(d).

The removal of an action from the Probate Court to the Circuit Court pursuant to § 62-1-302(d) is analogous to the removal of an action from state court to the federal court pursuant to 28 U.S.C. § 1446(d). Once a party in a state court action files a notice to remove the case to the federal court, the filing of the notice of removal immediately divests the state court of jurisdiction over the case. Yarnevic v. Brink's, Inc., 102 F.3d 753, 754 (4th Cir. 1996) (“A proper filing of a notice of

removal immediately strips the state court of its jurisdiction.”); Givens v. Isuzu Motors Am., LLC, 2009 WL 10669837, at *1 (M.D. Fla. July 13, 2009) (“[T]he removal of the instant action to this Court was effectuated, and the state court was divested of jurisdiction over this matter, upon [defendant’s] filing of a copy of the Notice of Removal in state court and serving the same upon Plaintiff.”).

Unless and until the federal court enters an order remanding the case to the state court, “anything that has occurred in state court since the removal is void for want of jurisdiction.” Givens, 2009 WL 10669837 at *1; see Rosenberg v. Lexington Ins. Co., 2009 WL 10677929, at *2 (D.S.C. Mar. 19, 2009) (“Any further proceedings in the state court are considered *coram non judice* and will be vacated by the federal court.”). In Barrett v. Southern Ry. Co., 68 F.R.D. 413, 422 (D.S.C. 1975), the court held that the state court’s entry of a default judgment was null and void for lack of jurisdiction because the notice of removal was filed two days prior to the entry of the default judgment. See also Maseda v. Honda Motor Co., 861 F.2d 1248, 1254-55 (11th Cir.1988) (citing Steamship Co. v. Tugman, 106 U.S. 118 (1882) (stating “after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case. Any subsequent proceedings in state court on the case are void *ab initio*.”)).

A similar rule should be followed when a party removes an action from the Probate Court to the Circuit Court. In this case, Minnie filed and served a Notice of Removal and Motion to Remove Action to Circuit Court pursuant to § 62-1-302(d) on May 12, 2020. As such, the Probate Court no longer had subject matter jurisdiction over the matter. The Probate Court erred in subsequently issuing a Preliminary Injunction and ordering Minnie to account after the notice of removal had been filed and served. The Probate Court’s June 29, 2020 Order is void for lack of subject matter jurisdiction and must be reversed.

V. THE PROBATE COURT ERRED BY FINDING THAT THE SCAG SATISFIED THE NECESSARY REQUIREMENTS FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION.

The Probate Court erred by finding that the prerequisites for the issuance of a preliminary injunction were satisfied; namely, (1) that irreparable harm will be suffered if the injunction is not granted; (2) the SCAG will likely succeed on the merits of the litigation; and (3) there is not an adequate remedy at law.

As a threshold point, Judge Price has already ruled against the SCAG on these exact issues in the related case pending in this Court as Case No. 2020-CP-10-04089. He denied the SCAG's motion to continue the TRO issued by the Probate Court or to issue a temporary injunction. See Order dated 9.22.20. The SCAG did not appeal his ruling. As a result, this Court has already determined that the SCAG cannot satisfy the prerequisites for the issuance of a preliminary injunction.

Even if Judge Price's ruling is disregarded, the Probate Court's Orders should be reversed because the SCAG cannot satisfy the elements for a preliminary injunction.

(a) *Inadequacy of Remedy at Law.*

The SCAG's opposition brief does not even address the adequacy of legal remedy factor. For the reasons discussed in Minnie's opening brief, the Probate Court's Orders should be reversed because the SCAG failed to show an inadequate remedy at law. The SCAG has an adequate remedy at law in the form of monetary damages at the end of the case.

(b) *Irreparable Harm.*

The SCAG's opposition brief simply alleges that "irreparable harm" is present because "Appellant has taken possession of \$19 million (sic) dollars which the Attorney General asserts she is not entitled to receive," but this is clearly insufficient to satisfy the irreparable harm element. See

Resp. Brief p.21. The mere fact that Minnie has possession of and is using the assets in controversy does not warrant injunctive relief. In Charlesbank Equity Fund II v. Blinds To Go, Inc., 370 F.3d 151 (1st Cir. 2004), an investor in a company suing for breach of contract moved for a preliminary injunction to prevent the company from disposing of its assets (i.e., the invested funds) pending adjudication of the investor's claims. The Court denied the injunction because the investor failed to show irreparable harm—it could recover an award of pecuniary damages against the company at end of the case. Id. at 162; see also Professional Wiring Installers, Inc. v. Sims, 2008 WL 9840409, *3 (S.C. Ct. App. 2008) (“pure economic loss is not sufficient to satisfy the requirement of showing an irreparable harm where an adequate remedy is available at law”).

In its attempt to show irreparable harm, the investor in Charlesbank argued that “a denial of preliminary injunctive relief will allow ‘[the company] to enjoy the fruits of [the investor’s] investment in the company without any reciprocal obligations.’” 370 F.3d at 162. However, the Court rejected the argument and said “[t]his assertion begs the question” because the investor had “not yet proven its mettle,” “[i]f and when it does (by prevailing on the merits of its claim), it will be entitled to execute upon the judgment entered against [the company],” and “[u]nless and until that happens, [the investor] must identify some *independent* reason why it will be irreparably harmed without the imposition of interim relief.” Id.

The same situation exists here. The SCAG has not prevailed on its claims—i.e., he has not proven his mettle. If and when he does prevail on the merits of his claims, then he could recover monetary damages. Unless and until that occurs, the SCAG must identify some independent reason why he will be irreparably harmed without the imposition of interim relief. The SCAG failed to make that showing, thus the Probate Court erred in granting injunctive relief.

Although the SCAG's brief is somewhat vague on this point, he seems to intimate that irreparable harm exists because Minnie allegedly would not be able to satisfy a money judgment. See Resp. Brief p.22 (“[A]n unsatisfied money judgment is not the equivalent of preserving the primary assets at issue in this dispute.”). However, even if the SCAG is attempting to raise some alleged insolvency or financial weakness on Minnie's part, his allegation is insufficient as a matter of law. “A fear of speculative or remote future injury cannot constitute irreparable harm.” Hodges v. Abraham, 253 F. Supp. 2d 846, 864 (D.S.C. 2002). “There must be a likelihood that immediate irreparable harm will occur.” Id. “[T]he irreparable harm must be concrete; that is, it ‘must be grounded on something more than conjecture, surmise, or a party’s unsubstantiated fears of what the future may have in store.’” Surplec, Inc. v. Maine Pub. Serv. Co., 495 F. Supp. 2d 147, 150 (D. Me. 2007) (quoting Charlesbank, 370 F.3d at 162).

“[C]onclusory assertions of defendants’ financial weakness do not demonstrate a likelihood of irreparable harm.” Gladstone v. Waldron & Co., 1998 WL 150982, at *2 (S.D.N.Y. Mar. 31, 1998) (citing cases); General Textile Printing & Processing Corp. v. Expromtorg Int'l Corp., 862 F.Supp. 1070 (S.D.N.Y.1994) (plaintiff's allegation that defendant may be insolvent was insufficient to compel issuance of injunction); Fluor Daniel Argentina, Inc. v. ANZ Bank, 13 F. Supp. 2d 562, 564 (S.D.N.Y. 1998) (“[A]s to the likelihood of irreparable harm, plaintiff contends that ‘it is highly unlikely that [Minera] will have assets which FDA can reach to satisfy any final judgment it may obtain in its favor.’ But its showing in support of this contention is neither legally nor factually sufficient.... [E]ven in those unusual circumstances where monetary loss may support a finding of irreparable harm, such as ‘where insolvency threatens to frustrate a damage award,’ ‘conclusory assertions of [a] defendant[’s] financial weakness do not demonstrate a likelihood of’ such harm. Yet

here FDA offers little more than speculation and surmise in support of its claim of inordinate financial risk.”) (internal citations omitted).

In this case, the SCAG has made nothing other than conclusory and unsubstantiated claims that Minnie would be unable to satisfy a judgment against her. The SCAG also grossly overstates what he can hope to achieve in this litigation. The decedent Roy E. Mevers, Jr.’s (“Sonny”) estate had a “total probate estate value” of \$18,862,700.00 according to the Amended Inventory and Appraisement filed in the Probate Court. See Amend. Inventory filed 11.25.18. As Sonny’s surviving spouse, Minnie is entitled to an elective share of Sonny’s entire probate estate in accordance with S.C. CODE ANN. §§ 62-2-201 et seq. even if the SCAG prevails in this case. The elective share is provided by law and includes a one-third (1/3) share of Sonny’s entire probate estate, thus Minnie is entitled to receive at least \$6,287,566.67 from Sonny’s estate even if the SCAG has a meritorious claim, which has not yet been proven. The SCAG has made no showing whatsoever that Minnie has spent or dissipated more than \$6 million of the assets she received in late 2018. The SCAG has offered nothing more than conjecture that Minnie is insolvent.

(c) *Likelihood of Success on Merits.*

Finally, the SCAG has failed to show that he is “likely” to succeed on the merits of the litigation. Minnie’s opening brief shows that the SCAG’s claims fail on the merits because (a) he is improperly seeking to pursue the rights of The “Sonny Mevers” Foundation (“Foundation”), which was a private foundation that was dissolved over 2½ years ago, no longer exists, and no longer has the right, power, or ability to pursue any claims; (b) he lacks standing or capacity to sue on the Foundation’s behalf to enforce any rights it may have to receive Sonny’s residuary estate—any such claims belong to the Foundation, not to the SCAG; and (c) the Foundation—even assuming *arguendo* the SCAG can sue to enforce its rights—did not have any right to receive any portion of

Sonny's estate because the Foundation did not meet the express conditions or qualifications set forth in his Will and Codicils. See Appellant's Brief pp. 27-48.

In response, the SCAG's opposition brief argues that "[t]he claims brought here are not claims of the Foundation," "this is not a corporate derivative matter as [Minnie] claims," "it is not the Foundation but the Attorney General bringing this action," and the SCAG "is acting on behalf of the potential beneficiaries of the Foundation, not on behalf of the Foundation itself." See Resp. Brief p.24 & n.14. The SCAG's brief cites absolutely no law to support his arguments on these points. His arguments are contrary to the law.

In In re Gebbie's Will, 307 N.Y.S.2d 1002 (N.Y. Sup. Ct. 1970), the New York court elucidated the attorney general's standing to sue as follows:

We agree with appellant Rogerson that the Attorney-General in his capacity as supervisor of charitable trusts has no direct right to sue in behalf of a charitable trust such as the Gebbie Foundation, Inc., and has only a derivative right which he may pursue upon alleging that the trustee of such trust, namely the Gebbie Foundation, Inc., has failed to act to protect the rights of the beneficiaries of the trust after notice and demand for action therefor. The petition lacks such allegations, and so the Attorney-General has no standing to institute this proceeding.

Id. at 1002 (citations omitted); Estate of Vanderbilt, 441 N.Y.S.2d 153, 159 (N.Y. Sur. Ct. 1981) ("The attorney general, on the other hand, does not have the direct right to sue but his right to maintain an action is merely a derivative right which he may pursue only after he has first made a demand upon the trustees [of charitable trust] to commence an appropriate action and which demand has been refused.").

Despite the SCAG's protestations to the contrary, his claims in this case are derivative in nature. The SCAG's lawsuit is attempting to enforce *the Foundation's rights* as a putative beneficiary of Sonny's Will and Codicils. The Foundation's "unspecified charitable beneficiaries" are not named as beneficiaries of Sonny's Will or Codicil and have no rights under those documents.

Indeed, although the SCAG states that he represents the Foundation's "unspecified charitable beneficiaries" and not the Foundation, he points to nothing in Sonny's Will or Codicil devising any assets or property to the Foundation's beneficiaries. Instead, the Foundation itself (not its beneficiaries) was named as the initial residuary beneficiary in Sonny's Will and Codicil conditioned upon its satisfaction of requirements specified in those instruments. The loss, if any, is to Foundation, thus any recovery belongs to the Foundation. It is the Foundation that must bring the claim, not the SCAG. Lefkowitz v. Lebensfeld, 408 N.Y.S.2d 216, 219 (N.Y. Sup. Ct. 1978) ("[N]ot-for-profit corporations ... have the right to prosecute an action in their own names for the protection of their ultimate beneficiaries ... and thus no need exists for the Attorney General to act in their behalf.").

The SCAG is attempting to pursue claims belonging to the Foundation, which was dissolved on January 24, 2018. It is axiomatic that a dissolved entity cannot pursue claims on its own behalf.¹ Gas Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc., 436 S.E.2d 207, 208 (Ga. 1993); Pacesetter Real Estate, Inc. v. Fasules, 767 P.2d 961, 964-65 (Wash. 1989); Abrams v. Porter, 920 P.2d 386, 388-89 (Idaho 1996); Bio-Thrust, Inc. v. Div. of Corps., 80 P.3d 164, 166 (Utah 2003);

¹ The SCAG does not dispute that the Foundation was dissolved on January 24, 2018. Rather, he argues that the corporate code barred Minnie from transferring or conveying assets of the Foundation. The statute provides that "[n]o assets may be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) to the Attorney General or until the Attorney General has consented in writing to the dissolution, or indicated in writing that he will take no action in respect to the transfer or conveyance, whichever is earlier." S.C. CODE ANN. § 33-31-1403(b). Of course, the SCAG's argument hinges on the validity of his allegation that the Foundation was a beneficiary of Sonny's Will and Codicil. If he is incorrect in that allegation, then neither Minnie nor the Foundation could have transferred or conveyed any assets of the Foundation as part of the dissolution process because the Foundation had no assets to convey or transfer. As shown in Minnie's opening brief, the Foundation did not own, hold title to, or have any rights to any assets in Sonny's estate. As a result, it had no assets to transfer or convey as part of the dissolution process. Section 33-31-1403(b) is irrelevant.

Metered Appliances, Inc. v. 75 Owners Corp., 225 A.D.2d 338, 338 (N.Y. App. Div. 1996). It necessarily follows that the SCAG cannot sue derivatively on behalf of a dissolved entity which itself cannot sue. In fact, the SCAG's opposition brief fails to cite a single case in which an attorney general was authorized to file suit to recover assets belonging to a dissolved corporation.

Even if the Foundation had not been dissolved, the SCAG still cannot bring this lawsuit against Minnie because he has failed to comply with the necessary predicates for bringing a derivative claim on the Foundation's behalf. The SCAG has no direct right to sue on behalf of a private foundation such as the Foundation. He only has a derivative right which he may pursue upon alleging that the Foundation itself failed to act to protect the rights of its beneficiaries after notice and demand for action therefor were made. No such allegation or showing has been made in this case. The SCAG does not allege that he made any demand upon the Foundation's board to pursue any claims against Minnie or that the board refused his demand. In the absence of such a showing, the SCAG has no standing to institute this proceeding. State ex rel. Butterworth v. Anclothe Manor Hosp., Inc., 566 So. 2d 296, 298-99 (Fla. Dist. Ct. App. 1990); Lefkowitz v. Lebensfeld, 68 A.D.2d 488, 417 N.Y.S.2d 715 (1979), aff'd, 51 N.Y.2d 442, 415 N.E.2d 919 (1980).

The SCAG again resorts to the common-law *parens patriae* doctrine to argue that he has authority to bring this action as part of his duty "to represent the interests of unspecified charitable beneficiaries and the interests of the public at large." See Resp. Brief p.26. *Parens patriae* is a standing doctrine that allows states to bring suit on behalf of their citizens in certain limited circumstances by asserting a "quasi-sovereign interest," such as the safety, health, or welfare of its citizens. *Parens patriae*, which literally means "parent of the country," began as a common-law doctrine that allowed the sovereign (originally the King, later state governments) to assume legal responsibility (including the right to sue or defend suits) over those who are legally incapable of

protecting their own rights. Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 601, 607 (1982); Chapman v. Tristar Prod., Inc., 940 F.3d 299, 305 (6th Cir. 2019); People ex rel. Spitzer v. Grasso, 893 N.E.2d 105, 107 n.4 (N.Y. 2008).

To invoke the doctrine, the SCAG must prove a quasi-sovereign interest distinct from that of a particular party and injury to a substantial segment of the state's population. The doctrine of *parens patriae* derives from the common-law principle that a sovereign, as "parent of the country," may step in on behalf of its citizens to prevent "injury to those who cannot protect themselves." Snapp, 458 U.S. at 600 (citation and internal quotation marks omitted). The State can, as *parens patriae*, maintain an action on behalf of its citizens to seek compensation for sovereign or quasi-sovereign claims, but it may not represent its citizens' private interests. Brown & Williamson Tobacco Corp. v. Gault, 627 S.E.2d 549, 551 (Ga. 2006).

Minnie's opening brief sufficiently explains the various reasons why the *parens patriae* doctrine does not help the SCAG in this case, including, *inter alia*, because the doctrine does not apply when the Foundation itself was capable of filing suit to protect its own interests; the SCAG's lawsuit seeks to recover the damages claim of the Foundation, which was a private foundation fully entitled to sue in its own right; and the award of money damages would not compensate the State for any harm done to its quasi-sovereign interests, but would compensate the Foundation itself. See Appellant's Brief pp. 36-39. The SCAG's opposition brief does not discuss or respond to any of these issues. He simply ignores them.

The SCAG also ignores the fact that on November 15, 2017 the Foundation's status as a tax-exempt non-profit organization under § 501(c)(3) of the IRC was revoked through no fault or involvement of Minnie. See IRS letter posted 3.19.18. The Foundation's tax-exempt status was never reinstated. As of November 15, 2017, the Foundation no longer qualified as a non-profit corporation

under the South Carolina Nonprofit Corporation Act, S.C. CODE ANN. §§ 33-31-101 to -31-1708. The Foundation became an ordinary business corporation. As such, the SCAG's lawsuit on behalf of the Foundation (which was no longer a non-profit corporation) does not vindicate any public interest, but only affects private parties. See People v. Grasso, 54 A.D.3d 180, 194-95 (N.Y. App. Div. 2008) (Holding that attorney general no longer had standing to continue prosecution of claims made on behalf of an entity that had changed from a not-for-profit corporation to a for-profit entity. The Court held the attorney general's continued prosecution of the causes of action "would vindicate only the interests of private parties, not any public interest.").

The SCAG's reliance on Watson v. Wall, 229 S.C. 500, 93 S.E.2d 918 (1956) is misplaced. In that case, and unlike the present case, there was no trustee or other person in place who was a more appropriate party capable of bringing suit to protect the interests of the charitable trust created under the terms of the decedent's will. In Watson, the SCAG was allowed to intervene because the decedent's will had created a charitable trust, the litigation involved the determination of the charitable trust's rights under the will, and there was no trustee or other representative in place who could represent the interests of the charitable trust in the litigation.

However, the present case is not like Watson. Here, there was a Foundation in place that was fully capable of asserting claims in Sonny's estate if it chose to do so. But the Foundation did not choose to bring such a claim. The *parens patriae* doctrine is inapplicable when there is "the presence of a more appropriate party or parties capable of bringing suit." In re Tobacco/Governmental Health Care Costs Litig., 83 F. Supp. 2d 125, 134 (D.D.C. 1999); Com. of Pa., by Shapp v. Kleppe, 533 F.2d 668, 675-76 (D.C. Cir. 1976). It is telling that the SCAG fails to cite a single case involving a scenario, like the present case, in which the SCAG is attempting to sue in place of a previously created private foundation fully capable of protecting its own rights and to leap frog or skip the

foundation's own board, officers, and managers so as to prosecute the foundation's putative rights or claims even though the foundation itself did not initiate any such action.

Finally, Minnie's opening brief shows that the SCAG's lawsuit altogether fails on the merits because the Foundation was disqualified from taking as a residuary beneficiary under Sonny's Will. At the time of Sonny's death and when the Estate was distributed (a) the Foundation could not qualify as a charitable organization within the meaning of Section 2055 of the IRC and (b) a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes, both of which were necessary conditions to the Foundation's receipt of any benefits under the express terms of Sonny's Will. See Appellant's Brief pp. 39-48. The SCAG's opposition brief again does not discuss or respond to any of these issues. He simply ignores them.

CONCLUSION

For the reasons stated above and in Minnie's opening brief, this Court should reverse the Probate Court's Order.

Respectfully submitted,

ROSEN HAGOOD, LLC

By: /s/ Daniel F. Blanchard, III
Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

February 1, 2021.

ATTORNEYS FOR APPELLANT
MINNIE LEE NEWMAN-MEYERS

ROSEN | HAGOOD

DANIEL F. BLANCHARD III
dblanchard@rosenhagood.com

March 23, 2021

VIA ELECTRONIC FILING ONLY:

The Honorable Julie Armstrong
Charleston County Judicial Center
100 Broad St., Suite 106
Charleston, SC 29401-2236

Re: In re Estate of Roy E. Mevers, Jr.
South Carolina Attorney General v. Minnie Lee Newman Mevers
Case No. 2020-CP-10-04036

Dear Julie:

On November 20, 2020, we filed the Brief of Appellant in the above matter. Pages 16-22 of the brief argue that the Probate Court erred by granting an *ex parte* temporary restraining order, a temporary injunction, and appointment of a special administrator without requiring that the Respondent first provide the Appellant with notice or an opportunity to be heard pursuant to South Carolina Rule of Civil Procedure 65(b). These same issues are also discussed at pages 3-6 in the Reply Brief of Appellant that we filed on February 1, 2021.

Since these briefs were filed, the South Carolina Court of Appeals's decision in Spartanburg Buddhist Ctr. of S.C. v. Ork, 417 S.C. 601, 790 S.E.2d 430 (Ct. App. 2016) has been brought to our attention. In that case, the Court of Appeals ruled on the propriety of the issuance of a temporary restraining order or temporary injunction without notice to the party. Pursuant to S.C. CODE ANN. § 62-1-308(g) and SCACR 208(b)(7), we are hereby providing notice of this supplemental citation. We respectfully submit the case is pertinent to the issues addressed in the sections of the Brief of Appellant and Reply Brief of Appellant cited above.

With best regards, I am

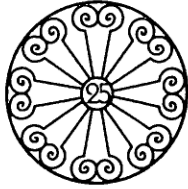
Sincerely,

/s/ Daniel F. Blanchard, III
Daniel F. Blanchard, III

DFB/db

cc: Mrs. Minnie Lee Newman-Mevers
Stephen L. Brown, Esquire
C. Michael Branham, Esquire
C. Havird Jones, Sr. Assistant Deputy Attorney General
J. James Duggan, Esquire

ELECTRONICALLY FILED - 2021 Mar 23 11:40 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004036



CLEMENT RIVERS LLP

ATTORNEYS AT LAW

Stephen L. Brown

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March 30, 2021

VIA EMAIL ONLY

Honorable Jennifer B. McCoy
100 Broad St., Ste. 348
Charleston, SC 29401
jmccoyle@sccourts.org
jmccoysc@sccourts.org

Re: In the matter of: The Estate of Roy E. Mevers, Jr., South Carolina Attorney
General v. Minnie Lee Newman Mevers v. J. James Duggan, as Special
Administrator of the Estate of Roy E. Mevers, Jr.
Case No.: 2020-CP-10-04089
YCR File: 16749-20200179

Dear Judge McCoy:

The parties have reviewed this matter and neither believes that oral arguments are necessary. As such, we are not requesting that this case be set for oral arguments. Should your honor have any issues or concerns please let us know. With best wishes and kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP

Stephen L. Brown

SLB/amj

cc: J. James Duggan, Duggan Law Firm, LLC
Daniel F. Blanchard, III, Esquire, Rosen, Rosen & Hagood, LLC
C. Havird Jones, Jr., Esquire, South Carolina Attorney General's Office
Mary Frances Jowers, Esquire, Office of the Attorney General of SC
Kristin Simons, Esquire, Office of the Attorney General of SC
Rebecca Hartner, Esquire, Office of the Attorney General of SC
Annemarie Mathews, Esquire, Office of the Attorney General of SC

From: [McCoy, Jennifer B. Secretary \(Kathryn B. Stone\)](#)
To: [Bell, Pollyana \(Polly\)](#); [McCoy, Jennifer Law Clerk \(Joseph Grooms\)](#)
Cc: [Frank Blanchard](#); SJones@scag.gov; ksimons@scag.gov; mfjowers@scag.gov; AMathews@scag.gov; rhartner@scag.gov; Wynn@DugganLawFirm.com; Duggan@DugganLawFirm.com; [Justman, Aimee](#); [Brown, Stephen L.](#); [Rowh, Chandler](#)
Subject: RE: The Estate of Roy E. Mevers Appeal; 2020-CP-10-4036; CR 200179
Date: Wednesday, March 31, 2021 2:20:58 PM
Attachments: [image001.png](#)

Thank you. This motion will be decided on brief submissions without a hearing.

Best,

K. Brooke Stone

Administrative Assistant
The Honorable Jennifer B. McCoy
100 Broad Street, Suite 348
Charleston, SC 29401
Phone: (843) 958-5066
Fax: (843) 958-5067

From: Bell, Pollyana (Polly) <pbell@ycrlaw.com>
Sent: Tuesday, March 30, 2021 2:33 PM
To: McCoy, Jennifer Law Clerk (Joseph Grooms) <jmccoyle@sccourts.org>; McCoy, Jennifer B. Secretary (Kathryn B. Stone) <jmccoysc@sccourts.org>
Cc: dblanchard@rosenhagood.com; SJones@scag.gov; ksimons@scag.gov; mfjowers@scag.gov; AMathews@scag.gov; rhartner@scag.gov; Wynn@DugganLawFirm.com; Duggan@DugganLawFirm.com; Justman, Aimee <AJustman@ycrlaw.com>; Brown, Stephen L. <sbrown@ycrlaw.com>; Rowh, Chandler <crowh@ycrlaw.com>
Subject: The Estate of Roy E. Mevers Appeal; 2020-CP-10-4036; CR 200179

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******

Good afternoon, enclosed please find correspondence in the above-referenced matter.

Thank you,
Pollyana Bell
Project Assistant
Commercial Litigation Practice Group
Phone:(843)720-5488 | Fax:(843)579-1369



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|                                       |   |                              |
|---------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS |
|                                       | ) |                              |
| COUNTY OF CHARLESTON                  | ) | CASE NO. 2020-CP-10-04036    |
|                                       | ) |                              |
| IN THE MATTER OF:                     | ) |                              |
| THE ESTATE OF ROY E. MEVERS, JR.      | ) |                              |
|                                       | ) |                              |
| SOUTH CAROLINA ATTORNEY               | ) |                              |
| GENERAL                               | ) |                              |
|                                       | ) | MOTION FOR APPROVAL OF       |
| Respondent on appeal                  | ) | SPECIAL ADMINISTRATOR'S      |
| /Petitioner and Counter-Claim         | ) | FEEES AND COSTS              |
| Defendant in lower court;             | ) |                              |
| -v-                                   | ) |                              |
|                                       | ) |                              |
| MINNIE LEE NEWMAN MEVERS,             | ) |                              |
| Appellant on appeal/                  | ) |                              |
| Respondents-Counter-Claim             | ) |                              |
| Plaintiff/Cross-Claim                 | ) |                              |
| Plaintiff-Third-Party                 | ) |                              |
| Plaintiff in lower court              | ) |                              |
|                                       | ) |                              |
| -v-                                   | ) |                              |
|                                       | ) |                              |
| J. JAMES DUGGAN, as Special           | ) |                              |
| Administrator of the Estate of Roy E. | ) |                              |
| Meyers, Jr.                           | ) |                              |
|                                       | ) |                              |
| Respondent on appeal/Cross-           | ) |                              |
| Claim Defendant-Third-Party           | ) |                              |
| Defendant in lower court,             | ) |                              |
|                                       | ) |                              |

---

**MOVANT**, J. JAMES DUGGAN, ESQUIRE, as Special Administrator of the Estate of Roy E. Mevers, Jr., (hereinafter the "Estate") respectfully asks this Court for an Order approving the Special Administrator's fees and costs. J. JAMES DUGGAN, ESQUIRE, was appointed as Special Administrator of the Estate by the Certificate of Appointment issued by this Court on March 13, 2020. This Motion is based upon the applicable law, Affidavit of Christina D. Wynn, Esquire for Duggan Wynn Law Firm, LLC for Approval of Compensation to Special Administrator, attached hereto as "Exhibit A", and the following itemized billing statements for fees and expenses, attached hereto as "Exhibit B":

March 13, 2020 through August 15, 2020 in the amount of \$14,644.20  
August 18, 2020 through September 15, 2020 in the amount of \$924.50  
September 17, 2020 through October 15, 2020 in the amount of \$2,552.86  
October 19, 2020 through November 15, 2020 in the amount of \$1,021.30  
November 17, 2020 through December 14, 2020 in the amount of \$820.19  
December 16, 2020 through January 15, 2021 in the amount of \$953.52  
January 15, 2021 through February 16, 2021 in the amount of \$433.66  
February 17, 2021 through March 15, 2021 in the amount of \$1,085.63  
March 16, 2021 through April 15, 2021 in the amount of \$685.44

J. JAMES DUGGAN, ESQUIRE is entitled to receive fees and costs in the total amount of \$23,221.30 arising out of this matter for the period covering March 13, 2020 through April 15, 2021.

**WHEREFORE,** J. JAMES DUGGAN, ESQUIRE respectfully requests this honorable Court to Order that (1) J. JAMES DUGGAN, ESQUIRE is hereby awarded attorneys' fees and costs in the amount of \$23,221.30 for the period covering March 13, 2020 through April 15, 2021; (2) said amounts be paid from the Estate Account held by the Special Administrator for this Estate; and (3) to award any such further and other relief this Court deems necessary.

Respectfully submitted this 7th day of June, 2021.

J. JAMES DUGGAN, ESQUIRE  
Special Administrator

---

s\Christina D. Wynn, Esquire  
DUGGAN WYNN LAW FIRM, LLC  
44 Markfield Drive, Suite E  
Charleston, SC 29407  
Telephone: (843) 414-7730

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1004036

Minnie Lee Newman Mevers et al  
PLAINTIFF(S)

Attorney General South Carolina et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
☒ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Appellant's Notice of Intent to Appeal the Order of the Probate Court was filed on September 11, 2020 and the appeal set on a docket for this Court the week of April 12, 2021, to be considered on the briefs. Upon review of the Probate Court Return, along with the briefs from both parties, this court AFFIRMS the rulings of the Probate Court.

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/10/2021 .

W. Jeffrey Young for Attorney General South Carolina  
Roy E Mevers, Jr  
Robert D. Cook for Attorney General South Carolina  
Roy E Mevers Jr Estate  
Clyde H. Jones, Jr. for Attorney General South Carolina

## NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Charleston Common Pleas

**Case Caption:** Minnie Lee Newman Mevers , plaintiff, et al VS Attorney General  
South Carolina , defendant, et al  
**Case Number:** 2020CP1004036  
**Type:** Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-09-10 13:04:43 page 3 of 3

**RECEIVED**

**Oct 08 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Jennifer B. McCoy, Circuit Judge  
Irvin G. Condon, Probate Judge  
Tamara C. Curry, Associate Probate Judge

---

Court of Common Pleas Case No. 2020-CP-10-04036  
Probate Court Case No. 2017-ES-10-01946

---

IN THE MATTER OF THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,

Petitioner in Probate  
Court/Respondent on Appeal,

v.

MINNIE LEE NEWMAN MEVERS,

Respondent and Third-Party  
Petitioner in Probate Court,

v.

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers,  
Jr.,

Third-Party Respondent in  
Probate Court/Respondent on  
Appeal,

Of whom

MINNIE LEE NEWMAN MEVERS is the

Appellant on Appeal.

---

**NOTICE OF APPEAL**

---

Pursuant to S.C. CODE ANN. § 62-1-308 and South Carolina Appellant Court Rule 203(b),  
Appellant Minnie Lee Newman-Mevers (hereinafter "Appellant"), by and through the  
undersigned attorneys, hereby appeals the *ex parte* Temporary Restraining Order of Associate

Probate Judge Tamara C. Curry dated March 13, 2020; the Order Granting Temporary Injunction of Probate Judge Irvin G. Condon dated June 29, 2020; the Order Denying Motion to Alter, Amend, and Vacate Order of Probate Judge Irvin G. Condon dated September 10, 2020; and the Order of Circuit Judge Jennifer B. McCoy dated September 10, 2021 affirming the Orders of the Probate Court. Counsel for Appellant received written notice of the entry of the Circuit Court's Order Affirming the Probate Court's Orders on September 10, 2021, thus this Notice of Intent to Appeal is timely filed pursuant to South Carolina Appellant Court 203(b)(1) and (b)(5) and S.C. CODE ANN. § 62-1-308. Copies of the Probate Court's and Circuit Court's Orders being appealed from are attached hereto.

ROSEN HAGOOD, LLC

By: /s/ Daniel F. Blanchard, III  
Daniel F. Blanchard, III (SC Bar 65342)  
151 Meeting Street, Suite 400  
Post Office Box 893  
Charleston, SC 29402  
(843) 577-6726 telephone  
[dblanchard@rosenhagood.com](mailto:dblanchard@rosenhagood.com)

ATTORNEYS FOR APPELLANT

Charleston, South Carolina  
October 8, 2021.

Other attorneys:

Alan Wilson, South Carolina Attorney General  
W. Jeffrey Young, Chief Deputy Attorney General  
Robert D. Cook, Solicitor General  
C. Havird Jones, Senior Assistant Deputy Attorney General  
Kristin M. Simons, Assistant Attorney General  
Mary Frances G. Jowers, Assistant Deputy Attorney General  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

C. Michael Branham, Esquire  
Stephen L. Brown, Esquire  
Clement Rivers, LLC  
Post Office Box 993  
Charleston, South Carolina 29402

ATTORNEYS FOR PETITIONER

J. James Duggan, Esquire  
Duggan Law Firm, LLC  
44 Markfield Drive, Suite E  
Charleston, SC 29407

SPECIAL ADMINISTRATOR FOR ESTATE OF ROY E. MEVERS, JR.



**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0002 through R\_0010 (Ex Parte Temporary Restraining Order filed March 13, 2020). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0013 through R\_0028 (Order Granting Temporary Injunction filed June 29, 2020). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0029 through R\_0033 (Order Denying Motion to Alter, Amend, and Vacate Order and Granting Motion for Removal to Circuit Court filed September 10, 2020). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0572 through R\_0574 (Order Affirming Probate Court's Orders filed on September 10, 2021). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

**RECEIVED**

**Oct 08 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Jennifer B. McCoy, Circuit Judge  
Irvin G. Condon, Probate Judge  
Tamara C. Curry, Associate Probate Judge

---

Court of Common Pleas Case No. 2020-CP-10-04036  
Probate Court Case No. 2017-ES-10-01946

---

IN THE MATTER OF THE ESTATE OF ROY E. MEVERS, JR.,

SOUTH CAROLINA ATTORNEY GENERAL,

Petitioner in Probate  
Court/Respondent on Appeal,

v.

MINNIE LEE NEWMAN MEVERS,

Respondent and Third-Party  
Petitioner in Probate Court,

v.

J. JAMES DUGGAN, as Special Administrator of the Estate of Roy E. Mevers,  
Jr.,

Third-Party Respondent in  
Probate Court/Respondent on  
Appeal,

Of whom

MINNIE LEE NEWMAN MEVERS is the

Appellant on Appeal.

---

**PROOF OF SERVICE**

---

I certify that I have served the Notice of Appeal on the Petitioner in Probate Court/Respondent on Appeal and Third-Party Respondent in Probate Court/Respondent on Appeal by mailing a copy of it to their attorneys of record on October 8, 2021, by United States first-class mail, with sufficient postage affixed thereto, and addressed as follows:

Alan Wilson, South Carolina Attorney General  
W. Jeffrey Young, Chief Deputy Attorney General  
Robert D. Cook, Solicitor General  
C. Havird Jones, Senior Assistant Deputy Attorney General  
Kristin M. Simons, Assistant Attorney General  
Mary Frances G. Jowers, Assistant Deputy Attorney General  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

C. Michael Branham, Esquire  
Stephen L. Brown, Esquire  
Clement Rivers, LLC  
Post Office Box 993  
Charleston, South Carolina 29402

J. James Duggan, Esquire  
Special Administrator of the Estate of Roy E. Mevers, Jr.  
Duggan Law Firm, LLC  
44 Markfield Drive, Suite E  
Charleston, SC 29407

ROSEN HAGOOD, LLC

By: /s/ Daniel F. Blanchard, III  
Daniel F. Blanchard, III, Esquire  
ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA )  
 )  
 CHARLESTON COUNTY )  
 )  
 IN THE MATTER OF: THE ESTATE OF )  
 THE ESTATE OF ROY E. MEVERS, JR. )  
 )  
 )  
 SOUTH CAROLINA ATTORNEY )  
 GENERAL, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 MINNIE LEE NEWMAN MEVERS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

2020-CP-10-4089  
 IN THE PROBATE COURT  
 CASE NO.: 2017-ES-10-1946

ORDER DENYING  
 MOTION TO ALTER, AMEND  
 AND VACATE ORDER AND  
 ORDER GRANTING MOTION  
 FOR REMOVAL TO CIRCUIT  
 COURT

FILED  
 SEP 15 PM 4:47  
 CLERK OF COURT

**THIS MATTER** comes before the Court upon a Motion to Alter, Amend and/or Vacate Order filed by Respondent Minnie Lee Newman Mevers, by and through her attorney, Daniel F. Blanchard, Esq., on July 10, 2020, with regard to an Order of this Court issued on June 29, 2020. Also before the Court is a Motion to Vacate Order filed by Respondent Minnie Lee Newman Mevers on August 28, 2020 and a Motion to Remove Action to Circuit Court filed by Respondent Minnie Lee Newman Mevers on May 12, 2020. For the reasons set forth below, the Respondents' Motions to Alter, Amend and/or Vacate Order are hereby **DENIED**. The Motion to Remove Action to Circuit Court is hereby **GRANTED**.

The Motion to Alter, Amend and/or Vacate Order filed with this Court on July 10, 2020 is properly considered as a Rule 59(e) motion to alter or amend judgment. The Motion to Vacate Order filed with this Court on August 28, 2020 is properly considered as a Rule 60(b) motion for relief from judgment or order. The filing of motions and other pleadings in the Probate Court is governed by the South Carolina Probate Code and, where not inconsistent, the South Carolina

Rules of Civil Procedure, including Rule 59(e) and Rule 60(b), SCRCP. In re: Estate of Timmerman, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (see also S.C. Code Ann. §§ 14-23-280, 62-1-304). The Court will address each Motion separately and without oral arguments.<sup>1</sup>

### **Motion to Alter, Amend and/or Vacate Order**

A party may not use a Rule 59 motion to re-litigate old matters or present issues that could have been raised prior to the judgment, but were not. Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008); Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

After a review of the relevant pleadings, memoranda, and hearing notes, the Court finds that the Motion to Alter, Amend and/or Vacate Order filed by Respondent Minnie Lee Newman Mevers raises no new argument and presents no new evidence, therefore, the Court respectfully **DENIES** the Motion.

### **Motion to Vacate Order**

Pursuant to Rule 60(b), SCRCP, “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... the judgment is void or it is no longer equitable that the judgment should have prospective application.” Rule 60, SCRCP. In her Motion, the Respondent argues that this Court’s Order dated June 29, 2020 should be vacated because when the Order was issued there was a pending Motion for Removal to Circuit Court, thus, this Court lacked subject matter jurisdiction to issue the Order Granting Temporary Injunction.

---

<sup>1</sup> See Order Regarding the Operation of Trial Courts during the Coronavirus Emergency issued by the South Carolina Supreme Court on April 3, 2020 and as amended on April 14, 2020 and April 22, 2020, whereby “[a] trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.”



Pursuant to S.C. Code Ann. § 62-1-302(a)(1), the Probate Court has exclusive original jurisdiction over all subject matter related to the estates of decedents including the determination of property which the estate of a decedent has an interest. S.C. Code Ann. § 62-1-302. Furthermore, “[t]he probate court has concurrent jurisdiction with the circuit courts of this State of actions and proceedings concerning the external affairs of trusts. These include, but are not limited to, the following proceedings [to] determine the existence or nonexistence of trusts created other than by will.” S.C. Code Ann. § 62-7-201. This subject matter jurisdiction is, however, subject to the provisions of section 62-1-302(d). Id.

Pursuant to S.C. Code Ann. § 62-1-302(d):

“Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo: ... (4) matters involving the internal or external affairs of trusts as provided in Section 62-7-201, excluding matters involving the establishment of a “special needs trust” as described in Article 7;[and] (5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value...”

S.C. Code Ann. § 62-1-302.

In Thomas v. Gathings, the South Carolina Court of Appeals, in interpreting S.C. Code Ann. § 62-1-302, stated “[w]e interpret the statute as requiring removal only where it is raised by motion of any party or by motion of the probate judge on his own.” Thomas v. Gathings, 304 S.C. 308, 312, 403 S.E.2d 682, 684 (Ct. App. 1991). Although removal to circuit court is required if it is warranted under subsection (d) and upon the motion of any party, the matter is not removed until the Court grants the motion for removal. Therefore, although the Motion to Remove Action to

Circuit Court was filed prior to this Court's Order dated June 29, 2020, this Court still had proper subject matter jurisdiction since the Court had not ruled upon the Motion.

Furthermore, at the hearing on March 23, 2020, prior to the Respondent's Motion to Remove Action to Circuit Court, this Court ruled from the bench that the Petitioner's request for a temporary injunction was granted. This Court also ruled at the hearing that Respondent Minnie Lee Newman Mevers was restrained from using or disposing of any assets that were distributed under the residuary clause of the Decedent's Will and that the Respondent shall furnish a full accounting to the Special Administrator. Therefore, even if this Court was divested of subject matter jurisdiction when the Motion to Remove Action to Circuit Court was filed, this Court had proper subject matter jurisdiction when the hearing was held on March 23, 2020 and when the Court issued its ruling from the bench. Based upon the foregoing, this Court respectfully **DENIES** the Respondent's Motion to Vacate Order.

**Motion to Remove Action to Circuit Court**

Pursuant to S.C. Code Ann. §§ 62-7-201 and 62-1-302, removal of this action to Circuit Court is appropriate; therefore, the Respondent's Motion to Remove Action to Circuit Court is **GRANTED**.

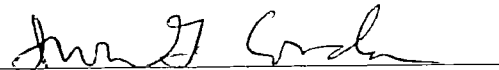
Therefore, based upon the foregoing, it is now hereby:

**ORDERED, ADJUDGED, AND DECREED** that Respondent Minnie Lee Newman Mevers' Motion to Alter, Amend and/or Vacate Order, filed July 10, 2020, is respectfully **DENIED**; it is further

**ORDERED, ADJUDGED, AND DECREED** that Respondent Minnie Lee Newman Mevers' Motion to Vacate Order, filed August 28, 2020, is respectfully **DENIED**; it is further

**ORDERED, ADJUDGED, AND DECREED** that, pursuant to S.C. Code Ann. §§ 62-7-201 and 62-1-302, the Respondent's Motion to Remove Action to Circuit Court, filed May 12, 2020, is hereby **GRANTED** and the matter shall be removed to Circuit Court.

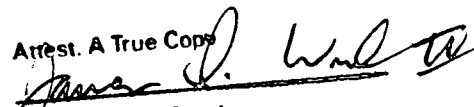
**IT IS SO ORDERED.**



**IRVIN G. CONDON**

Judge of Probate  
Charleston County

This 10<sup>th</sup> day of September, 2020  
Charleston, South Carolina.

Attest. A True Copy  
  
Clerk Probate Court  
Charleston County South Carolina

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1004089

Alan Wilson et al  
PLAINTIFF(S)

Minnie Lee Newman Mevers et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for a Temporary Restraining Order is DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/22/2020 .

Roy E Mevers Jr Estate  
Roy E Mevers, Jr  
Roy E Mevers Jr Estate  
Roy E Mevers, Jr  
Attorney General South Carolina  
Stephen Lynwood Brown for Alan Wilson  
Daniel Francis Blanchard, III for Minnie Lee Newman Mevers

## NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Charleston Common Pleas

**Case Caption:** Alan Wilson , plaintiff, et al VS Minnie Lee Newman Mevers ,  
defendant, et al  
**Case Number:** 2020CP1004089  
**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-09-22 09:34:54 page 3 of 3

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1004089

Alan Wilson et al  
PLAINTIFF(S)

Minnie Lee Newman Mevers et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant Minnie Lee Newman Mevers' Motion for Judgment on the Pleadings is denied as there is a genuine issue of fact for the jury to consider. Defendant Minnie Lee Newman Mevers' Motions to Quash Subpoena are withdrawn at this point.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2020 .

Roy E Mevers Jr Estate  
Roy E Mevers, Jr  
Clyde H. Jones, Jr. for Attorney General South Carolina  
Roy E Mevers Jr Estate  
Roy E Mevers, Jr  
W. Jeffrey Young for Attorney General South Carolina  
Robert D. Cook for Attorney General South Carolina

## NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---





Charleston Common Pleas

**Case Caption:** Alan Wilson , plaintiff, et al VS Minnie Lee Newman Mevers ,  
defendant, et al

**Case Number:** 2020CP1004089

**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-12-21 15:07:24 page 3 of 3

|                                |   |                                     |
|--------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS        |
|                                | ) |                                     |
| COUNTY OF CHARLESTON           | ) | NINTH JUDICIAL CIRCUIT              |
|                                | ) |                                     |
| IN THE MATTER OF:THE ESTATE OF | ) | CASE NO. 2020-CP-10-4089            |
| ROY E. MEVERS                  | ) |                                     |
|                                | ) |                                     |
| SOUTH CAROLINA ATTORNEY        | ) |                                     |
| GENERAL,                       | ) | VERIFIED MOTION FOR CONTINUANCE     |
|                                | ) | OF THE TEMPORARY INJUNCTION         |
| Petitioner,                    | ) | ISSUED BY PROBATE COURT OR, IN THE  |
|                                | ) | ALTERNATIVE, ISSUANCE OF A          |
| v.                             | ) | TEMPORARY INJUNCTION                |
|                                | ) |                                     |
| MINNIE LEE NEWMAN MEVERS,      | ) | <b>(EMERGENCY RELIEF AND</b>        |
|                                | ) | <b>EXPEDITED HEARING REQUESTED)</b> |
| Respondent.                    | ) |                                     |

COMES NOW Alan Wilson, Attorney General for the State of South Carolina (“Attorney General”), by and through his undersigned counsel, pursuant to Rule 65, *SCRCP*, all other applicable law, and on the grounds set forth below, who hereby moves this Honorable Court to issue an order continuing the temporary injunction issued by the Honorable Irvin G. Condon, Judge of Probate, Charleston County (See Order Granting Temporary Injunction dated March 13, 2020, attached hereto as Exhibit A), against Minnie Lee Newman Mevers (“Respondent”), surviving spouse of Roy E. “Sonny” Mevers Jr. (“Mr. Mevers”), deceased November 3, 2017, in respect of certain disputed distributions to Respondent from the Estate of Roy E. Mevers Jr. (the “Estate”), or in the alternative, enter a temporary injunction on the same grounds.

1. This matter was commenced on March 13, 2020 in the Charleston County Probate Court by the filing of a: (a) Verified Petition by the Attorney General, pursuant to Rule 65, *SCRCP*, seeking a Motion for Temporary Restraining Order relating to all assets which were claimed and taken under the residuary clause of the Last Will and Testament and two (2) codicils

of Roy E. Mevers, Jr. (hereinafter the “Will”) by his spouse, Respondent. On March 13, 2020, the Attorney General also filed a Verified Petition and Application to Re-Open Estate, Appoint Special Administrator, Impose Constructive Trust to Protect Improperly Distributed Estate Assets, and Obtain Other Relief as Necessary (hereinafter the “Verified Petition and Application”) (See Verified Petition and Application, attached hereto as Exhibit B).<sup>1</sup>

2. As detailed in the Verified Petition and Application, the Sonny Mevers Foundation (the “Foundation”), a South Carolina nonprofit corporation Mr. Mevers established during his life for charitable purposes, was to receive Estate assets valued in excess of Nineteen Million and 00/100 (\$19,000,000.00) Dollars under the residuary clause of the Will. Respondent—through alleged self-dealing, non-disclosure, manipulation of the Foundation’s legal status/existence, and breach of fiduciary duties owed both to the Estate (as Mr. Mevers’s personal representative) and the Foundation (as president of its board)—wrongfully caused those assets to be diverted away from the Foundation and distributed to herself, and, now, attempts to conceal such assets through various limited liability companies.

3. An *Ex Parte* Temporary Restraining Order (hereinafter “Temporary Restraining Order”) was issued by the Honorable Tamara S. Curry, Associate Judge of Probate, Charleston County, on March 13, 2020. As detailed in the Temporary Restraining Order, the court found “[a]s the personal representative of the Estate and as President of the Foundation, Minnie Lee Newman Mevers had an obligation to protect the non-profit foundation named as the residuary of Mr. Mevers’ Will. This Court finds sufficient verified allegations in this Motion for Temporary

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<sup>1</sup> The Attorney General anticipates it will move for leave to file an Amended Verified Petition based upon banking records obtained by the Special Administrator appointed by the Probate Court. These banking records show Respondent transferred over \$100,000 in cash from the Sonny Mevers’ Foundation to herself after her husband’s death. (See correspondence to Probate Court attached as Exhibit C). A more detailed explanation of these and related issues is set forth in this motion.

Restraining Order and the Verified Application and Petition which indicate Minnie Lee Newman Mevers may have taken actions inconsistent with the law, her fiduciary duties, and contrary to the vested interest of the non-profit foundation so as to circumvent the contents of the residuary clause for her own personal use and benefit.” (See Temporary Restraining Order, attached hereto as Exhibit D).

4. The Probate Court also found “[t]he facts set forth in the Verified Petition and Application show that the Foundation and the Attorney General will likely succeed on the merits of this litigation” and “[t]here is no adequate remedy at law available if Minnie Lee Newman Mevers is allowed to continue to use Foundation assets to fund her lifestyle, travel, expenses, and gifts to others.” (Temporary Restraining Order, Exhibit D at p.7). The Temporary Restraining Order also appointed James Duggan as Special Administrator of the Estate.

5. The Honorable Irvin G. Condon, Judge of Probate, Charleston County, held a hearing on March 23, 2020 to determine whether the Temporary Restraining Order should be continued so as to preserve the status quo pending discovery as well as investigation by the court-appointed Special Administrator, J. James Duggan, Esquire.

6. Prior to the hearing with Judge Condon, on or about March 20, 2020, Respondent filed a Memorandum of Law in Opposition to Motion for Temporary Restraining Order. Among other things, Respondent argued that (1) the Attorney General “has made absolutely no showing whatsoever that [Respondent] intends to dispose of any real estate that she received as residual beneficiary of Sonny’s Estate during the pendency of this lawsuit”; and (2) “the Foundation was a sham and it had no real substance.” (See Memorandum of Law in Opposition to Motion for Temporary Restraining Order with attachments, attached hereto as Exhibit E at p. 15).

At the March 23, 2020 hearing, and based on earlier and contemporaneous filings, it was established that subsequent to Mr. Mevers' death, various residential and commercial properties totaling millions of dollars believed to have passed through the Will's residuary clause to Respondent, as opposed to the Foundation, were subsequently sold or transferred to various limited liability companies. Interestingly enough, at the hearing, counsel for Respondent indicated that Respondent "may" no longer have a sole interest, or any interest, in said limited liability companies. (See Transcript attached hereto as Exhibit F at pp. 47, 88). At the conclusion of the hearing, the Court ordered Respondent to detail where the assets were located and to give a list of the assets to the Special Administrator (Exhibit F, Transcript at p. 95). After repeated requests by the Attorney General to comply with this directive and provide a list of assets to the Special Administrator, by email dated May 27, 2020, Respondents counsel notified the Attorney General he did not believe his client had to comply until a written order was issued, but would then comply. More than 30 days has elapsed since the issuance of the written Order and Respondent has still not provided any information to the Special Administrator<sup>2</sup>.

7. Based on the foregoing, an Order Granting Temporary Injunction (hereinafter "Temporary Injunction") was issued by the Honorable Irvin G. Condon, Judge of Probate, Charleston County, which provided in pertinent part that "[p]ublic records establish that Respondent Minnie Lee Newman Mevers began selling and transferring assets which she received by virtue of the residuary clause of the Will. . . ." (Temporary Injunction, Exhibit A at p. 11). In fact, the Temporary Injunction goes on to state that "Respondent conceded through her

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<sup>2</sup> To date, Respondent has not produced a single document or any of the information mandated by Judge Condon to the Special Administrator or the Attorney General. This is very surprising in that at the March 23, 2020 hearing in Probate Court, counsel for Respondent indicated they would cooperate in providing documents as to where assets went. (Exhibit F, Transcript at p. 92) "We're not going to fight that." (Id.)

counsel that some or all of the assets set forth in the Second Amended Inventory and Appraisal of Probate Property dated May 25, 2018 had been transferred to various LLCs including Newman Rentals, LLC and Ms. Grace Family, LLC.” (Temporary Injunction, Exhibit A at p. 11).

8. Contrary to Respondent’s assertions that the Foundation was a “sham”, the Temporary Injunction further found that “[s]ince its inception, the Foundation has made donations to numerous charities in the Charleston area. . . .” In fact, the Temporary Injunction emphasizes that “[d]onations of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) or more were made in multiple years along with numerous other donations to a variety of charities.” (Temporary Injunction, Exhibit A at p. 6).

9. Most importantly, the Temporary Injunction, like the Temporary Restraining Order, also provided that (1) the facts set forth establish the Foundation and the Attorney General will likely succeed on the merits of the litigation; (2) there is no adequate remedy at law if the Respondent is allowed to continue to use Foundation assets to fund her lifestyle, travel, expenses, and gifts to others; and, lastly, (3) failing to issue a temporary restraining order against the Respondent’s use of the assets, to include any proceeds thereof, will irreparably harm the Foundation and the public interest it meant to serve. (Temporary Injunction, Exhibit A at pp. 12-13).

10. As noted above, one of the key assertions by Respondent and her counsel was that the Foundation was not a functioning foundation, but was a “sham and had no real substance.” (Respondent’s Memorandum of Law, Exhibit E at p. 15; Transcript, Exhibit F at p. 38).

11. At the motion for the issuance of a temporary injunction, counsel for Respondent affirmatively stated to the Probate Court:

One of the things that I did not hear much from opposing counsel is exactly what were the charitable operations that occurred to this foundation in the years before Mr. Mevers died. The people who have looked into that or have filed affidavits that are before the Court show that it did not qualify as a charitable organization. It did not have charitable operations. It did not look, smell or actually constitute a charitable operation and so it was treated as such when Mr. Mevers' will was probated back in 2018.... In actuality what happened over the years is that it never performed any real charitable functions. **We submitted affidavits of Mr. Moss attesting to this. And he looked at the charitable foundation's operations so to speak in early 2018, late 2017, and came to the conclusion that it really was a sham....** (Transcript, Exhibit F at pp. 37-38)(emphasis added).<sup>3</sup>

12. As noted Mr. Mevers died on November 3, 2017. At the time of his death, the Foundation had a balance of over three million one hundred thousand dollars (\$3,100,000.00) in its (i.e. the Foundation's) checking account. On November 12, 2017, nine days after Mr. Mevers' death, Respondent approved a wire transfer from the Foundation to the Berkeley Charter Education Association in the amount of three million dollars (\$3,000,000.00).<sup>4</sup> Contrary to the statements made by Mr. Blanchard and the affidavits provided to the Probate Court, the Foundation was receiving charitable contributions and distributing charitable gifts to qualified charitable organizations as provided in its Articles of Incorporation and Bylaws.(See November 2017 Foundation bank statement, attached as Exhibit G).

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<sup>3</sup> The facts set forth in paragraphs 14-16 of this motion demonstrate the falsity of Mr. Moss' affidavit and the subterfuge engaged in by Respondent. It reached the point where the Probate Court advised Respondent and Mr. Moss that "I think each of you need to consult your attorneys." (Transcript, Exhibit F at p. 97). Noting counsel for Respondent stated Mr. Moss reached his conclusion that the Foundation was a sham and that he acted in his capacity as an attorney even though he was not licensed in South Carolina, the Probate Court ordered the Attorney General to report these actions. (Transcript, Exhibit F. at pp. 68-74, 78, 95).

<sup>4</sup> Included in the Foundation's banking records attached as Exhibit K are documents showing only Mr. Mevers and Respondent were authorized to authorize payments or transfers to or from the Foundation's checking account. Also included is the wire transfer authorization which was used to authorize the \$3,000,000 donation to the Berkeley County Charter Education Association.

13. The December 2017 bank statement for the Foundation shows after Respondent made the three million dollar donation to the Berkeley Charter Education Association from the Foundation, it still had a balance of \$102,940.11 in its checking account. (See December 2018 Foundation bank statement, attached as Exhibit H). None the less, Respondent's "lawyers came to the determination that this Foundation is a - - it's a sham." (Exhibit F, Transcript at pp. 68-69).

14. This balance included memorial contributions to the Foundation as requested in Mr. Mevers' obituary (See Copies of memorial donations, attached as Exhibit I) and show donations from what appear to be Mr. Mevers' friends, his church (The Holy Name Society of Saint Mary's Church), and Hazel M. Blackwell, who is believed to be a relative of Respondent. These memorial contributions were included in the Foundation funds totaling \$102,940.11.

15. On January 12, 2018, Respondent withdrew the entire balance of \$102,940.11 from the Foundation checking account. (See January 2018 final bank statement, attached as Exhibit J). The CresCom transaction forms show the \$102,940.11 was transferred to the Estate of Roy Mevers i.e. Respondent in her alleged role as the residual beneficiary of the Estate. (See Foundation banking documents related to removal of funds and other transactions, attached as Exhibit K). Since Respondent dissolved the Foundation and declared herself the residuary beneficiary as opposed to the Foundation, she ended up taking over \$100,000.00 in Foundation funds for her own use, just as the Attorney General alleges she did with over \$19 million dollars in additional assets left to the Foundation.<sup>5</sup> The transaction appears to have caused some issue at

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<sup>5</sup> Judge Condon succinctly summarized how the facts appeared:

THE COURT: Okay. But she was - - individually, she would receive close to 20 million if she as personal representative potentially did not give notice to the Attorney General that there was a foundation to protect.



the bank as it was noted on the back of the transaction form “cust[omer] died advised to close [and] put in Estate Acct by CPA.” (Foundation banking documents, Exhibit K).

16. The evidence on this issue demonstrates the falsity of statements made to the Probate Court that the Foundation “never performed any real charitable functions.” (Transcript, Exhibit F at pp. 37, 68-69).

17. The facts set forth in this motion, as well as those in the Verified Petition and Application, the Temporary Restraining Order, and Temporary Injunction, all of which are incorporated herein by reference establish: (1) the Foundation and Attorney General will likely succeed on the merits of this litigation; (2) there is no adequate remedy at law if Respondent is allowed to continue to use Foundation assets to fund her lifestyle, travel, expenses, and gifts to others; and (3) failing to issue a temporary injunction, or in the alternative continue the temporary injunction issued by the Honorable Irvin G. Condon, Judge of Probate, Charleston County, will irreparably harm the Foundation and the public interest it is meant to serve.

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And then as president of the foundation, in her capacity as president, she took steps here to dissolve that foundation. Is that - - I mean, that’s what appears is in this filing here.

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THE COURT: Okay. And then it appears she indicated her counsel was Mr. Moss, who is not licensed to practice here in South Carolina. And that’s who she took the advice from.

MR. BLANCHARD: Well, I don’t think that’s - - I’m not sure that’s correct. I don’t know whether she was relying upon advice from Mr. Moss as far as filing that document.

What my understanding was - -

THE COURT: I’m not sure either, but I’m just - - that’s what it indicates it looks like.

(Exhibit F, Transcript at pp. 76-77).

Based on the foregoing, along with those reasons set forth in the Verified Petition and Application, the Temporary Restraining Order, and the Temporary Injunction, the Attorney General asks this Court continue the temporary injunction issued by the Honorable Irvin G. Condon, Judge of Probate, Charleston County, so as to preserve the status quo pending discovery by issuing the same requirements and restrictions on the Respondent set forth in the Probate Court's temporary injunction, or in the alternative, issue a temporary injunction, and grant such other and further relief as this Court deems just and proper. The Attorney General respectfully requests an expedited hearing on this matter for the reasons set forth in this motion.

***[signature block on following page]***

Respectfully submitted,

By: s/C. Havird Jones, Jr.

SOUTH CAROLINA ATTORNEY GENERAL  
ALAN WILSON (S.C. Bar No. 71754)  
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-and-

YCRLAW, LLC  
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Special Counsel for the Attorney General of  
The State of South Carolina

Dated: 9/16/2020  
Columbia, SC

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0013 through R\_0028 (Order Granting Temporary Injunction filed June 29, 2020). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

**NOTE:** These documents are the same documents already set forth in the Record on Appeal at R\_0070 through R\_0125 (Verified Petition to Re-Open Estate filed March 13, 2020 with Exhibits A through I). In lieu of reproducing these documents again here, this note has been substituted in their place to avoid unnecessary duplication.



**EXHIBIT**

C

ALAN WILSON  
ATTORNEY GENERAL

June 1, 2020

**VIA EMAIL ONLY**

The Honorable Irvin G. Condon  
Charleston County Probate Court  
[irvcondon@charlestoncounty.org](mailto:irvcondon@charlestoncounty.org)

Re: Estate of Roy E. Mevers  
Case No.: 2017-ES-10-1946

Dear Judge Condon:

Throughout my career and as a matter of office policy, the Attorney General's Office has always been reluctant to engage in what I refer to as a war of letters with opposing counsel and to involve the court in such exchanges. We would not be contacting the Court now if we did not consider this to be very important. However, we have now received and reviewed a copy of your Honor's hearing transcript and also obtained new materials which cause us serious concern.

My recollection and Stephen Brown's notes indicated Ms. Newman was to immediately provide the Special Administrator with information about the properties and/or the transfer of the properties which made up the residuary of Mr. Mevers' estate. Having now received and reviewed a copy of the transcript from the Probate Court hearing held on March 23, 2020, your Honor specifically ruled Ms. Newman was to take immediate action on several matters while your honor drafted an order addressing protecting the properties and cash at issue. Specifically, addressing Mr. Blanchard, you ruled "I'm ordering your client to detail where the assets are, where the \$20 million are." (Transcript page 93). Your honor went on to further rule, "I'll make it clear then that the temporary injunction will continue. I want your client to list the assets and give those to the Special Administrator." (Transcript p. 95) Copies of all cited transcript pages are attached as Exhibit A.

Ms. Newman has had over two months to put together and provide these documents and information to the Special Administrator and the Attorney General relating to the properties and/or transfers in issue, as ordered by the Court at the hearing. To date, neither the Special Administrator nor the Attorney General have received any of the information or documentation ordered by this Court. We have consulted with Mr. Blanchard regarding this matter. His response was until a written order is issued, neither he nor his client need take any action. In support of

this position he cited case law which a cursory review shows is simply not applicable. A copy of his response is attached as Exhibit B. The law is clear when a judge issues an oral ruling to take some specific action from the bench, such is not stayed until a formal order is entered. Such a rule would not be workable when addressing motions during trials or matters such as this, which require immediate action. From both our notes and a review of the transcript, your Honor was clear that you wanted the Special Administrator to know who was in possession of the nearly twenty million dollars (\$20,000,000.00) which we allege Ms. Newman improperly took from Mr. Mevers' estate and Foundation. To date Ms. Newman and her counsel have not complied with this Court's instructions.

This alone would cause concern as to the preservation of the assets which Ms. Newman allegedly took from the estate and Foundation, however recent documents the Special Administrator obtained from the Foundation's checking account at CresCom vastly magnify our concerns about the actions of Ms. Newman and the statements made by her counsel at the hearing. Mr. Blanchard informed the Court:

One of the things that I did not hear much from opposing counsel is exactly what were the charitable operations that occurred to this foundation in the years before Mr. Mevers died. The people who have looked into that or have filed affidavits that are before the Court show that it did not qualify as a charitable organization. It did not have charitable operations. It did not look smell or actually constitute a charitable operation and so it was treated as such when Mr. Mevers' will was probated back in 2018.... In actuality what happened over the years is that it never performed any real charitable functions. We submitted affidavits of Mr. Moss attesting to this. And he looked at the charitable foundation's operations so to speak in early 2018, late 2017, and came to the conclusion that it really was a sham....

(Exhibit A-Transcript pp. 37-38).

Mr. Mevers died on November 3, 2017. At the time of his death the Foundation had a checking account balance of over three million one hundred thousand dollars (\$3,100,000.00). On November 12, 2017, Ms. Newman approved a wire transfer from the Foundation to the Berkeley Charter Education Association in the amount of three million dollars (\$3,000,000.00). Contrary to the statements made by Mr. Blanchard and the affidavits provided to the Court, in making this contribution, it certainly appears the Foundation was donating money for a charitable purpose. A copy of the November 2017 Foundation bank statement is attached Exhibit C.

The December 2017 bank statement for the Foundation shows after it made the three million dollar (\$3,100,000.00) donation to the Berkeley Charter Education Association, it still had an account balance of \$102,940.11. A copy of the December 2018 Foundation bank statement is attached as Exhibit D. This balance included memorial contributions to the Foundation as requested in Mr. Mevers' obituary. Copies of these memorial donations are attached as Exhibit E and show donations from what appear to be Mr. Mevers' friends, his church (The Holy Name Society of Saint Mary's Church) and Hazel M. Blackwell, who is believed to be a relative of Ms. Newman.

On January 12, 2018, Ms. Newman withdrew the entire balance of \$102,940.11 from the Foundation checking account. The January 2018 final statement is attached as Exhibit F. It is the position of this Office that these funds were charitable assets and were impressed with a charitable trust. Exhibit H is a copy of the Foundation's Articles of Incorporation. Exhibit A to those Articles state where any funds that the Foundation may have upon dissolution shall be distributed, i.e., for another charitable purpose. The CresCom transaction forms show the \$102,940.11 was transferred to the Estate of Roy Mevers. A copy of the forms are attached as Exhibit G. Since Ms. Newman dissolved the Foundation and declared herself the residuary beneficiary, as opposed to the Foundation, it appears she ended up taking over one hundred thousand (\$100,000.00) in Foundation funds for her own use. It appears the transaction may have raised a question at the bank as it was noted on the back of the transaction form "cust[omer] died advised to close [and] put in Estate Acct by CPA." (Exhibit F).

We believe this evidence justifies the concerns of the Attorney General as to the actions of Ms. Newman, those allegedly providing her advice and the statements made by counsel to this Court that the Foundation "never performed any real charitable functions." (Exhibit A-Transcript p. 37). While the order is pending, we respectfully request you require Ms. Newman and her counsel to comply with this Court's oral rulings immediately and that she likewise be required to deposit with the Court the \$102,940.11 which we allege she improperly took for her own benefit from the Foundation checking account.

With best wishes and kindest regards, I am

Sincerely,

OFFICE OF THE ATTORNEY GENERAL OF  
SOUTH CAROLINA



C. Havird "Sonny" Jones, Jr.  
Senior Assistant Deputy Attorney General

/amj

cc: Daniel F. Blanchard, III, [dblanchard@rrhlawfirm.com](mailto:dblanchard@rrhlawfirm.com)  
C. Michael Branham, [mbranham@ycrlaw.com](mailto:mbranham@ycrlaw.com)  
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J. James Duggan, [duggan@dugganlawfirm.com](mailto:duggan@dugganlawfirm.com)



IN THE PROBATE COURT  
FOR THE STATE OF SOUTH CAROLINA  
CHARLESTON COUNTY

TRANSCRIPT OF PROCEEDINGS  
MARCH 23, 2020

IN THE MATTER OF: ROY E. MEVERS

CASE NO. 2017-ES-10-1946

BEFORE  
THE HONORABLE: IRVIN CONDON

TIME: 11:00 AM

LOCATION: CHARLESTON COUNTY JUDICIAL  
CENTER  
CHARLESTON, SOUTH CAROLINA

REPORTED BY: MACKENZIE ALLEN  
CLARK & ASSOCIATES, INC.  
CHARLESTON, SC 29415  
843-762-6294  
WWW.CLARK-ASSOCIATES.COM



1           One of the things that I did not hear  
2 much on from opposing counsel is exactly what  
3 were the charitable operations that occurred to  
4 this foundation in the years before Mr. Mevers  
5 died. The people who have looked into that or  
6 have filed affidavits that are before the Court  
7 show that it did not qualify as a charitable  
8 organization. It did not have charitable  
9 operations. It didn't look, smell, or actually  
10 constitute a charity. And so it was treated as  
11 such when Mr. Mevers' will was probated back in  
12 2018.

13           So Ms. Mevers is the widow of Sonny  
14 Mevers. He died on November 3, 2017. They had  
15 been married since September of 2016, and they  
16 had known each other and dated for a period of  
17 time, several years I believe, before that.

18           In 2004, before Mr. Mevers had even met  
19 Minnie, he had an accountant file paperwork with  
20 the Secretary of State's Office to form the Sonny  
21 Mevers Foundation. It was formed as a charitable  
22 acts organization. In actuality, what has  
23 happened over the years is that it never  
24 performed any real charitable functions.

25           We submitted affidavits of Mr. Moss

1       attesting to this. And he looked at the  
2       charitable foundation's operations so to speak in  
3       early 2018, late 2017, and came to the conclusion  
4       that it really was a sham, and that there's no  
5       way it would qualify for any kind of federal tax  
6       deduction if you made a gift to it; that it did  
7       not qualify as a charitable organization under  
8       the Internal Revenue Code provisions that were  
9       cited in the will.

10               There's been no evidence offered to this  
11       Court to refute that. You've heard some  
12       arguments here today, but there's actually been  
13       no affidavit, testimony, or any evidence  
14       submitted to the Court to that. And the first  
15       time we're actually hearing this argument from  
16       Mr. Branham is today. So we certainly haven't  
17       had a chance to respond to that with affidavits  
18       on our part.

19               But Mr. Mevers did leave behind a will.  
20       He executed a will. He then did two codicils to  
21       it. The will made specific devises to Minnie,  
22       his wife, at the time of his death.

23               It also had a residuary clause. And  
24       that residuary clause, initially, would leave his  
25       residuary estate to this foundation, provided it

1 MR. BLANCHARD: You know, I think  
2 it --

3 THE COURT: Are you telling the  
4 Court we've got to rule today, otherwise, it  
5 expires? One of your counsel back there is  
6 shaking his head yes. If that being the case,  
7 Rule 65(b) I think does turn this temporary  
8 restraining order hearing into a hearing for a  
9 temporary injunction, if I read that correctly.

10 MR. BLANCHARD: Judge, I'm going to  
11 comply with your order.

12 THE COURT: Okay. And we're going  
13 to impose the temporary injunction, and we're  
14 going to appoint the special administrator, Mr.  
15 Duggan. And I'm ordering your client to detail  
16 where the assets are, where the \$20 million are.  
17 Okay?

18 You know, if it's in a different  
19 corporation or who it's owned by, if the house is  
20 in a different corporation, if things have been  
21 sold.

22 MR. BROWN: Yes.

23 THE COURT: And we'll also look at  
24 the inherent power of the Court to order this,  
25 not only just under this injunction.

1 MR. BLANCHARD: Your Honor, it  
2 sounds like you've ruled on the motion, so I'm  
3 kind of --

4 THE COURT: I have ruled because  
5 you indicated that you were going to let this  
6 thing expire today at 5. And if you are going to  
7 agree to continue the restraining order to me,  
8 you can submit whatever affidavit you may have.  
9 Is that a fair statement?

10 MR. BLANCHARD: Your Honor, well,  
11 what I was trying to express to the Court is our  
12 position is that the motion should not be  
13 granted. So I do not want to be deemed as  
14 consenting to the motion. But if the Court was  
15 going to order that it stay in place until we had  
16 five days to submit affidavits, I am going to  
17 comply with that and not take a position that the  
18 TRO would expire.

19 THE COURT: Well, your other  
20 counsel was shaking his head when I asked if it  
21 was going to expire today at 5, and he was  
22 indicating yes.

23 MR. OBERLY: I mean, me shaking my  
24 head I don't think is an affirmative statement to  
25 you, in all due respect.

1 THE COURT: Okay. Well, what is  
2 your ruling -- what is your feeling on the law  
3 then?

4 MR. OBERLY: Well, I'm going to  
5 defer to Frank as lead counsel. I'm back here  
6 from a tax perspective, Your Honor.

7 THE COURT: Okay. Well, I'll make  
8 it clear then that the temporary injunction will  
9 continue. I want your client to list the assets  
10 and give those to the special administrator.

11 And let me ask the Attorney General's  
12 Office, anything else for today?

13 MR. JONES: No, sir, Your Honor.  
14 think that will get us started. And per that --

15 THE COURT: And also, you need to  
16 look at -- I think your office investigates the  
17 unauthorized practice of the law?

18 MR. JONES: Yes, sir.

19 THE COURT: Then you need to look  
20 at Mr. Moss for that.

21 MR. JONES: Okay.

22 MR. BROWN: Can I clarify a  
23 question just for clarity, Your Honor?

24 THE COURT: Yes.

25 MR. BROWN: Your temporary



**Brown, Stephen L.**

**From:** Frank Blanchard <dblanchard@rosenhagood.com>  
**Sent:** Wednesday, May 27, 2020 4:22 PM  
**To:** Brown, Stephen L.  
**Cc:** Sonny Jones; Branham, Michael (Mike); Mary Frances Jowers; Kristin Simons; Bell, Pollyana (Polly); Justman, Aimee  
**Subject:** RE: Mevers

Stephen,

Thanks for your e-mail. Judge Condon advised at the hearing that he would issue a written order setting forth his findings and rulings and directed your office to submit a proposed order to him for his consideration, which you subsequently provided to him and I requested that revisions be made to it. To my knowledge, Judge Condon has not entered a written order stating his findings or rulings. The Judge's law clerk advised us a few weeks ago that the Judge is reviewing the proposed orders. Until a written order is entered, a binding ruling has not been issued by the Court. Bayne v. Bass, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990); Bowman v. Richland Mem'l Hosp., 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999); Christy v. Christy, 341 S.C. 503, 510, 556 S.E.2d 701, 704 (Ct. App. 2001). My client intends to comply with the final ruling of the Court. Of course, if you wish to discuss this further, please do not hesitate to give me a call.

With best regards,

Frank Blanchard  
*Attorney at Law*

151 Meeting Street, Suite 400  
 Charleston, SC 29401  
 |office| 843-577-6726  
 |fax| 843-724-8036  
 |direct phone| (843) 266-8123  
 |direct fax| (843) 266-2232  
 dblanchard@rosenhagood.com  
 V-Card  
 www.rosenhagood.com

OUR WEBSITE AND EMAIL HAVE CHANGED.  
 PLEASE CHANGE YOUR RECORDS ACCORDINGLY.

**ROSEN | HAGOOD**

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PO Box 81137  
Charleston SC 29416-1137

ACCOUNT:  
DOCUMENTS:

PAGE: 8  
6501003773 11/30/2018

Nov. 2018 statement

SONNY MEYERS FOUNDATION  
PO BOX 21074  
CHARLESTON SC 29413

30  
8  
0

=====

TOTALLY FREE BUSINESS CHECKING ACCOUNT 6501003773 (FOUNDATION)

=====

|                 |              |                         |              |
|-----------------|--------------|-------------------------|--------------|
| MINIMUM BALANCE | 1,505.11     | LAST STATEMENT 10/31/17 | 1,505.11     |
| AVERAGE BALANCE | 1,198,798.77 | 9 CREDITS               | 3,101,310.00 |
|                 |              | 2 DEBITS                | 3,000,025.00 |
|                 |              | THIS STATEMENT 11/30/17 | 102,790.11   |

| - - - - - DEPOSITS - - - - - |        |        |        |
|------------------------------|--------|--------|--------|
| REF #                        | DATE   | AMOUNT | REF #  |
| 11/13                        | 50.00  | 11/15  | 10.00  |
| 11/13                        | 100.00 | 11/17  | 250.00 |
| 11/13                        | 500.00 | 11/20  | 100.00 |

| - - - - - OTHER CREDITS - - - - - |       |              |
|-----------------------------------|-------|--------------|
| DESCRIPTION                       | DATE  | AMOUNT       |
| TRANSFER                          | 11/02 | 3,100,000.00 |

| - - - - - OTHER DEBITS - - - - -                       |       |              |
|--------------------------------------------------------|-------|--------------|
| DESCRIPTION                                            | DATE  | AMOUNT       |
| Domestic Outgoing Wire Fee 8774                        | 11/13 | 25.00        |
| Outgoing Wire 8774 BERKELEY CHARTER EDUCATION ASSOCIAT | 11/13 | 3,000,000.00 |

| - - - - - DAILY BALANCE - - - - - |              |       |            |
|-----------------------------------|--------------|-------|------------|
| DATE                              | BALANCE      | DATE  | BALANCE    |
| 11/02                             | 3,101,505.11 | 11/17 | 102,390.11 |
| 11/13                             | 102,130.11   | 11/20 | 102,490.11 |
| 11/15                             | 102,140.11   | 11/21 | 102,590.11 |

- END OF STATEMENT -

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ELECTRONICALLY FILED - 2020 Sep 16 3:21 PM - CHARLESTON - COMMON PLEAS - CASE# 2020CP1004989





PO Box 81137  
Charleston SC 29416-1137

ACCOUNT:  
DOCUMENTS:

PAGE: 6501003773 12/29/2017  
2

Dec, 2017 statement

SONNY MEYERS FOUNDATION  
PO BOX 21074  
CHARLESTON SC 29413

30  
2  
0

=====

TOTALLY FREE BUSINESS CHECKING ACCOUNT 6501003773 (FOUNDATION)

=====

|                 |            |                         |            |
|-----------------|------------|-------------------------|------------|
| MINIMUM BALANCE | 102,790.11 | LAST STATEMENT 11/30/17 | 102,790.11 |
| AVERAGE BALANCE | 102,915.97 | 2 CREDITS               | 150.00     |
|                 |            | DEBITS                  | .00        |
|                 |            | THIS STATEMENT 12/29/17 | 102,940.11 |

- - - - - DEPOSITS - - - - -

|                           |                           |                           |
|---------------------------|---------------------------|---------------------------|
| REF #.....DATE.....AMOUNT | REF #.....DATE.....AMOUNT | REF #.....DATE.....AMOUNT |
| 12/05 50.00               | 12/06 100.00              |                           |

- - - - - DAILY BALANCE - - - - -

|                  |                  |                  |
|------------------|------------------|------------------|
| DATE.....BALANCE | DATE.....BALANCE | DATE.....BALANCE |
| 12/05 102,840.11 | 12/06 102,940.11 |                  |

- END OF STATEMENT -



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R\_0618

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ELECTRONICALLY FILED - 2020 Sep 16 3:21 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004089

|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 12/06/2017           |
| 053208079     | Start Time: 10:05:06 AM    |
| Branch: 1     | Amount: 100.00             |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

Electronic Item

DDA Credits - 12/6/2017

HAZEL M. BLACKWELL  
1279 TEAMATES HALL RD  
HANAHAN, SC 29410

DATE Dec 1, 2017

PAY TO THE ORDER OF The Roy Mervin Foundation \$ 100.00  
One Hundred and 00/100 DOLLARS

First Citizens Bank

FOR 100.00 Hazel M. Blackwell

⑈003267⑈ ⑆05390604⑆ ⑆079483860709⑈

DDA Credits - 12/6/2017

Branch Name: DOWNTOWN CHARLESTON Br: 1  
TrID: 103-Item Num: 000220504280  
TransID: 12/06/17

ALL-STATE BANK  
Branch Name: DOWNTOWN CHARLESTON TrID: 103  
TrID: 1206/17  
Item Num: 000220504280

FOR DEPOSIT ONLY  
TU M W TH FRI SAT SUN

Transit - 12/6/2017

Transit - 12/6/2017



|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/13/2017           |
| 053208079     | Start Time: 11:11:55 AM    |
| Branch: 1     | Amount: 50.00              |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

# Electronic Item

DDA Credits - 11/13/2017

|                                                                                 |                           |                                |
|---------------------------------------------------------------------------------|---------------------------|--------------------------------|
| JERRY J NUSS 10-60<br>JUDY N WERRELL<br>59 ANSON ST<br>CHARLESTON SC 29401-1811 | 11/7/17<br>DATE           | 1056<br>67448/A321 DC<br>00008 |
| PAY TO THE ORDER OF <u>SONNY MEYERS FND</u>                                     |                           | \$ <u>50.00</u>                |
| <u>FIFTY</u>                                                                    |                           | DOLLARS                        |
| Bank of America                                                                 | Wealth Management Banking |                                |
| ACH INT 053208079 IN MEMORY OF                                                  |                           |                                |
| <u>SONNY BY JERRY &amp; JUDY NUSS</u>                                           |                           |                                |
| ⑆053904483⑆ 000011277308⑆ 1056                                                  |                           |                                |

DDA Credits - 11/13/2017

|                                                                                                                         |  |
|-------------------------------------------------------------------------------------------------------------------------|--|
| CRESOM BANK-ROCKWELL CHARLESTON SC                                                                                      |  |
| TitleID=103-ItemNum=000220502383                                                                                        |  |
| -Inst=CRESOM BANK-ROCKWELL<br>-BranchName=DOWNTOWN CHARLESTON-TitleID=103<br>-TransID=11/13/17<br>-ItemNum=000220502383 |  |
| CLOSURE TIME IF ROUTE DEPOSIT<br>TO THE NAMED PAYEE                                                                     |  |

Transit - 11/13/2017

Transit - 11/13/2017

ELECTRONICALLY FILED - 2020 Sep 16 3:21 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004089

|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/13/2017           |
| 053208079     | Start Time: 11:11:14 AM    |
| Branch: 1     | Amount: 500.00             |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

## Electronic Item

DDA Credits - 11/13/2017

|                                                                                                              |                        |
|--------------------------------------------------------------------------------------------------------------|------------------------|
| DAVID A. WESTERLUND<br>SPECIAL ACCOUNT<br>4493 SPRING ISLAND<br>18 JOHN COCHRAN CIR<br>OKATIE, SC 29909-4757 | 5350<br>23-7/1020 1071 |
| PAY TO THE ORDER OF <u>Sonny Meyers Foundation</u>                                                           | DATE <u>11/9/17</u>    |
| <u>Five Hundred and 00/100</u>                                                                               | \$ <u>500.00</u>       |
| FOR <u>In Memory of RE Meyers</u>                                                                            | DOLLARS                |
| <u>DAVID A. WESTERLUND</u>                                                                                   |                        |
| ⑆ 0 200007 6 ⑆ 18 25330 14 ⑆ 05350                                                                           |                        |

DDA Credits - 11/13/2017

|                                                                                                                             |                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| CRESCENT BANK, R.N. 053208079<br>Branch Name: DOWNTOWN CHARLESTON-TEID=103<br>TransDate: 11/13/17<br>TransNum: 000220502379 | FOR DEPOSIT ONLY<br>TO THE NAMED PAYEE<br>HERE IF DOUBLE DEPOSIT |
|-----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|

Transit - 11/13/2017

Transit - 11/13/2017

|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/13/2017           |
| 053208079     | Start Time: 11:10:39 AM    |
| Branch: 1     | Amount: 100.00             |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

# Electronic Item

DDA Credits - 11/13/2017

|                                                                                                       |                         |          |
|-------------------------------------------------------------------------------------------------------|-------------------------|----------|
| J. HENRY STUHL, INC.<br>FUNERAL DIRECTORS<br>332 CALHOUN STREET<br>CHARLESTON, SC 29401               |                         | 69789    |
| 11/8/2017                                                                                             |                         |          |
| PAY TO THE ORDER OF                                                                                   | Sonny Meyers Foundation | \$100.00 |
| *ONE HUNDRED AND 00/100                                                                               |                         | DOLLARS  |
| Sonny Meyers Foundation<br>Crescom Bank (Holly Edwards)<br>288 Meeting Street<br>Charleston, SC 29401 |                         |          |
| J. HENRY STUHL, INC.<br><i>John L. Stuhl</i>                                                          |                         |          |
| *069799# *05390219747100245438*                                                                       |                         |          |

DDA Credits - 11/13/2017

|                                                                                                       |                         |          |
|-------------------------------------------------------------------------------------------------------|-------------------------|----------|
| J. HENRY STUHL, INC.<br>FUNERAL DIRECTORS<br>332 CALHOUN STREET<br>CHARLESTON, SC 29401               |                         | 69789    |
| 11/8/2017                                                                                             |                         |          |
| PAY TO THE ORDER OF                                                                                   | Sonny Meyers Foundation | \$100.00 |
| *ONE HUNDRED AND 00/100                                                                               |                         | DOLLARS  |
| Sonny Meyers Foundation<br>Crescom Bank (Holly Edwards)<br>288 Meeting Street<br>Charleston, SC 29401 |                         |          |
| J. HENRY STUHL, INC.<br><i>John L. Stuhl</i>                                                          |                         |          |
| *069799# *05390219747100245438*                                                                       |                         |          |

Transit - 11/13/2017

Transit - 11/13/2017

|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/15/2017           |
| 053208079     | Start Time: 10:59:15 AM    |
| Branch: 1     | Amount: 10.00              |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

# Electronic Item

DDA Credits - 11/15/2017

|                                                                       |  |                        |
|-----------------------------------------------------------------------|--|------------------------|
| R. D. ALLEN<br>L. S. ALLEN<br>1007 HIALEAH CT<br>CHARLESTON, SC 29414 |  | 105<br>61-7548/2332    |
| Pay to the Order of <u>Sonny Myers Foundation</u>                     |  | 11-16-17               |
| <u>Ten &amp; 10/100</u> \$ 10.00                                      |  | Dollars                |
| SOUTH CAROLINA<br>FEDERAL<br>CREDIT UNION                             |  | LIFESIMPLIFIED         |
| MEM: <u>Sonny Myers</u>                                               |  | <u>Russell S Allen</u> |
| For: <u>Russell S Allen</u>                                           |  |                        |
| ⑆253278401⑆ 139201171200105                                           |  |                        |

DDA Credits - 11/15/2017

|                                          |  |     |
|------------------------------------------|--|-----|
| Branch Name: DOWNTOWN CHARLESTON         |  | 105 |
| Trid=103-ItemNum=000220507612            |  |     |
| -Inst=CRESCOM BANK-RN=053208079-         |  |     |
| -BranchName=DOWNTOWN CHARLESTON-TRID=103 |  |     |
| -Trans=11/15/17                          |  |     |
| -ItemNum=000220502012                    |  |     |
| HERE IF INSTILL DEPOSIT                  |  |     |
| TO THE NAMED PAYEE                       |  |     |

Transit - 11/15/2017

Transit - 11/15/2017

|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/17/2017           |
| 053208079     | Start Time: 11:03:08 AM    |
| Branch: 1     | Amount: 250.00             |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

# Electronic Item

DDA Credits - 11/17/2017

| <b>THE CITY MARINA COMPANY</b><br>PO BOX 719<br>CHARLESTON, SC 29402<br>(843) 577-7702                                                                                       | PNC BANK, N.A.<br>18-3/540<br>59311                                                                                                                                                                                                                                                                               |            |            |            |        |          |       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|--------|----------|-------|
| Two Hundred Fifty Dollars and 00/100<br><br>PAY TO THE ORDER OF<br>Sonny Meyers Foundation<br>Crescos Bank Attn: Holly Edwards<br>208 Meeting Street<br>Charleston, SC 29401 | <table border="1"> <thead> <tr> <th>CHECK NO.</th> <th>CHECK DATE</th> <th>VENDOR NO.</th> </tr> </thead> <tbody> <tr> <td>059311</td> <td>11/15/17</td> <td>99999</td> </tr> </tbody> </table><br>CHECK AMOUNT<br>\$*****250.00<br><br><i>Mary C. Edwards</i><br>THE CITY MARINA COMPANY<br>AUTHORIZED SIGNATURE | CHECK NO.  | CHECK DATE | VENDOR NO. | 059311 | 11/15/17 | 99999 |
| CHECK NO.                                                                                                                                                                    | CHECK DATE                                                                                                                                                                                                                                                                                                        | VENDOR NO. |            |            |        |          |       |
| 059311                                                                                                                                                                       | 11/15/17                                                                                                                                                                                                                                                                                                          | 99999      |            |            |        |          |       |
| ⑈059311⑈ ⑆054000030⑆ 5324925459⑆                                                                                                                                             |                                                                                                                                                                                                                                                                                                                   |            |            |            |        |          |       |

DDA Credits - 11/17/2017

| THE CITY MARINA COMPANY<br>PO BOX 719<br>CHARLESTON, SC 29402<br>(843) 577-7702                                                                                              | PNC BANK, N.A.<br>18-3/540<br>59311                                                                                                                                                                                                                                                                               |            |            |            |        |          |       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|--------|----------|-------|
| Two Hundred Fifty Dollars and 00/100<br><br>PAY TO THE ORDER OF<br>Sonny Meyers Foundation<br>Crescos Bank Attn: Holly Edwards<br>208 Meeting Street<br>Charleston, SC 29401 | <table border="1"> <thead> <tr> <th>CHECK NO.</th> <th>CHECK DATE</th> <th>VENDOR NO.</th> </tr> </thead> <tbody> <tr> <td>059311</td> <td>11/15/17</td> <td>99999</td> </tr> </tbody> </table><br>CHECK AMOUNT<br>\$*****250.00<br><br><i>Mary C. Edwards</i><br>THE CITY MARINA COMPANY<br>AUTHORIZED SIGNATURE | CHECK NO.  | CHECK DATE | VENDOR NO. | 059311 | 11/15/17 | 99999 |
| CHECK NO.                                                                                                                                                                    | CHECK DATE                                                                                                                                                                                                                                                                                                        | VENDOR NO. |            |            |        |          |       |
| 059311                                                                                                                                                                       | 11/15/17                                                                                                                                                                                                                                                                                                          | 99999      |            |            |        |          |       |
| ⑈059311⑈ ⑆054000030⑆ 5324925459⑆                                                                                                                                             |                                                                                                                                                                                                                                                                                                                   |            |            |            |        |          |       |

Transit - 11/17/2017

Transit - 11/17/2017

ELECTRONICALLY FILED - 2020 Sep 16 3:21 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004089

**Electronic Item**

DDA Credits - 11/20/2017

☐ CHECK WITH APT. HOME ON RECORD DEPOSIT

Date \_\_\_\_\_

DO NOT WRITE IN THESE SPACES  
APARTMENT NO. \_\_\_\_\_  
STREET ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

SEARCHED INDEXED SERIALIZED FILED

MAY 1968 FBI - NEW YORK

NEW YORK OFFICE OF THE ATTORNEY GENERAL  
RECEIVED MAY 10 1968

NEW YORK OFFICE OF THE ATTORNEY GENERAL  
RECEIVED MAY 10 1968

Transit - 11/20/2017



|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/21/2017           |
| 053208079     | Start Time: 10:16:08 AM    |
| Branch: 1     | Amount: 100.00             |
| Teller: 103   | Account Number: 8501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

# Electronic Item

DDA Credits - 11/21/2017

|                                                                                                                  |  |                    |     |
|------------------------------------------------------------------------------------------------------------------|--|--------------------|-----|
| THE HOLY NAME SOCIETY OF<br>SAINT MARY'S CHURCH<br>C/O WILLIAM J BOOTH<br>855 DUNHAM ST.<br>CHARLESTON, SC 29402 |  | 67-68/832          | 610 |
| DATE <u>Nov. 19, 2017</u>                                                                                        |  |                    |     |
| PAY TO THE ORDER OF <u>Sonny Meyers Foundation</u>                                                               |  | \$ 100.00          |     |
| <u>ONE Hundred &amp; 00/100</u>                                                                                  |  | DOLLARS            |     |
| NBSC<br>A MEMBER OF SUNCOAST BANK                                                                                |  |                    |     |
| FOR <u>Duration</u>                                                                                              |  | <u>[Signature]</u> |     |
| ⑆053200666⑆170685217501⑆ 0610                                                                                    |  |                    |     |

DDA Credits - 11/21/2017

|                                                                                                                      |  |                                                                                                |
|----------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------|
| ⑆053200666⑆170685217501⑆ 0610<br>Trid=103-RemNum=000220503344<br>Trans=11/21/17                                      |  | DO NOT STAMP OR SIGN BELOW THIS LINE<br>ENDORSE HERE<br>FOR DEPOSIT ONLY<br>TO THE NAMED PAYEE |
| Item=CRESCON BANK-Rem=053208079<br>BranchName=DOWNTOWN CHARLESTON-TrID=103<br>Trans=11/21/17<br>ItemNum=000220503344 |  |                                                                                                |

Transit - 11/21/2017

Transit - 11/21/2017

ELECTRONICALLY FILED - 2020 Sep 16 3:21 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004089

**Electronic Item**

☐ END OF USE HERE

DATE \_\_\_\_\_  
CHECK NO. \_\_\_\_\_  
CITY \_\_\_\_\_  
STATE \_\_\_\_\_  
ZIP \_\_\_\_\_

CHECK MADE AFTER DEPOSIT ON STATE CREDIT

DOWNTOWN CHARLESTON BR-1  
000220817249

Inst=CRES COM BANK-RtNum=053208079+  
BranchName=DOWNTOWN CHARLESTON-TID=101  
TransRef=12217  
ItemNum=000220817249

|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 12/05/2017           |
| 053208079     | Start Time: 9:28:23 AM     |
| Branch: 1     | Amount: 50.00              |
| Teller: 104   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

# Electronic Item

DDA Credits - 12/5/2017

|                                   |                        |                  |       |
|-----------------------------------|------------------------|------------------|-------|
| JOHN P. MUHLHAUSEN                |                        | 61-10/610        | 6561  |
| MRS. KITZA MUHLHAUSEN             |                        | Date: 11/29/17   |       |
| 3453 WINTER HILL DR. 770-971-2559 |                        |                  |       |
| MARIETTA, GA 30062                |                        |                  |       |
| Pay to the                        | Sonny Myers Foundation | \$               | 50.00 |
| order of                          |                        |                  |       |
|                                   | Fifty and 00/100       | Dollars          |       |
| SUNTRUST                          |                        | ACH RT 081000104 |       |
| Memo                              | Donation               |                  |       |
| 100510001041 8813063552           |                        | 6561             |       |

DDA Credits - 12/5/2017

|                                        |  |                  |
|----------------------------------------|--|------------------|
| Branch Name: DOWNTOWN CHARLESTON Br=1  |  | FOR DEPOSIT ONLY |
| Inst=CRESOM BANK-RptNum=063208079*     |  |                  |
| BranchName=DOWNTOWN CHARLESTON-TID=104 |  |                  |
| TransDt=12/05/17                       |  |                  |
| ItemNum=000234311002                   |  |                  |

Transit - 12/5/2017

Transit - 12/5/2017



PO Box 81137  
Charleston SC 29416-1137

ACCOUNT:  
DOCUMENTS:

PAGE: 6501003773 01/16/2018  
0

Jan. 2018 statement

SONNY MEYERS FOUNDATION  
PO BOX 21074  
CHARLESTON SC 29413

<C> 30  
0  
0

\* \* \* F I N A L S T A T E M E N T \* \* \*

=====

TOTALLY FREE BUSINESS CHECKING ACCOUNT 6501003773 (FOUNDATION)

=====

LAST STATEMENT 12/29/17 102,940.11  
CREDITS .00  
1 DEBITS 102,940.11  
THIS STATEMENT 01/16/18 .00

- - - - - OTHER DEBITS - - - - -

| DESCRIPTION        | DATE  | AMOUNT     |
|--------------------|-------|------------|
| CLOSING WITHDRAWAL | 01/12 | 102,940.11 |

- - - - - DAILY BALANCE - - - - -

| DATE..... | BALANCE | DATE..... | BALANCE | DATE..... | BALANCE |
|-----------|---------|-----------|---------|-----------|---------|
| 01/12     | .00     |           |         |           |         |

- END OF STATEMENT -



www.haveanicebank.com



R\_0629

ELECTRONICALLY FILED - 2020 Sep 16 3:21 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004089

CresCom Bank  
Have a nice bank

DATE 1.12.18

CHECKING DEPOSIT

DEPOSIT TO  
ACCOUNT NUMBER  
4300199192

NAME Estate of Roy Meyers

CASH  
CHECKS OR TOTAL FROM OTHER SIDE  
SUB TOTAL  
LESS CASH  
NET DEPOSIT \$ 102940.11

SIGN HERE ONLY IF CASH RECEIVED FROM DEPOSIT  
ALL FEES ARE ACCEPTED SUBJECT TO THIS BANK'S RULES AND REGULATIONS PERTAINING TO CHECKING ACCOUNTS  
DEPOSITS MAY NOT BE AVAILABLE FOR CASH WITHDRAWAL

⑈5110⑈0000⑈

009

BranchName=DOWNTOWN-CHARLESTON  
TrID=101-ItemNum=000220622248  
TranDt=01/12/18

|   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|

Branch=CresCom Bank  
BranchName=DOWNTOWN-CHARLESTON  
TranDt=01/12/18  
ItemNum=000220622248

DDA Credits - 1/12/2018

DDA — DEBIT TRANSACTION FORM

ACCOUNT NAME Sonny Meyers Foundation DATE 1.12.18

PREPARED BY Mary E. Seak

REGULAR DEMAND DEPOSIT TRANSACTIONS  
038 - WITH TRANSFER  
044 - LOAN PAYMENT  
048 - SAFE DEPOSIT RENTAL FEE

049 - TRANSFER  
061 - CLOSE ACCOUNT WITHDRAWAL

AMOUNT \$ 102940.11

TRAN CODE 061

ACCOUNT NUMBER 6501003773

SIGNATURE [Signature]

⑈5110⑈0000⑈

099

DDA Credits - 1/12/2018

BranchName=DOWNTOWN-CHARLESTON  
TrID=101-ItemNum=000220622249  
TranDt=01/12/18

Cost died to  
Advise to  
Close & put  
to CRA  
Estate Acct

Branch=CresCom Bank  
BranchName=DOWNTOWN-CHARLESTON  
TranDt=01/12/18  
ItemNum=000220622249

DDA Debits - 1/12/2018

DDA Debits - 1/12/2018





CERTIFIED TO BE A TRUE AND CORRECT COPY  
AS TAKEN FROM AND COMPARED WITH THE  
ORIGINAL ON FILE IN THIS OFFICE

JUL 23 2004

Mark H. Hammond  
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE  
NONPROFIT CORPORATION  
ARTICLES OF INCORPORATION

COPY  
FILED

JUL 23 2004

Mark H. Hammond  
SECRETARY OF STATE

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is THE "SONNY MEVERS" FOUNDATION
2. The initial registered office of the nonprofit corporation is 17 East Battery  

|                   |                   |                       |              |
|-------------------|-------------------|-----------------------|--------------|
| <u>Charleston</u> | <u>Charleston</u> | <u>South Carolina</u> | <u>29401</u> |
| City              | County            | State                 | Zip Code     |

The name of the registered agent of the nonprofit corporation at that office is

ROY E. MEVERS, JR.

Print Name

I hereby consent to the appointment as registered agent of the corporation.

Roy E. Mevers Jr.  
Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box:
  - a. ☒ The nonprofit corporation is a public benefit corporation.
  - b. ☐ The nonprofit corporation is a religious corporation.
  - c. ☐ The nonprofit corporation is a mutual benefit corporation.
4. Check "a" or "b", whichever is applicable:
  - a. ☐ This corporation will have members.
  - b. ☒ This corporation will not have members.
5. The address of the principal office of the nonprofit corporation is  

|                        |                   |                   |           |              |
|------------------------|-------------------|-------------------|-----------|--------------|
| <u>17 East Battery</u> | <u>Charleston</u> | <u>Charleston</u> | <u>SC</u> | <u>29401</u> |
| Street Address         | City              | County            | State     | Zip Code     |
6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.
  - a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated



R\_0631

## THE "SONNY MEVERS" FOUNDATION

Name of Corporation

exclusively for such purposes.

- b. ☒ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to

SEE ATTACHED - Exhibit A

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

- a. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.
- b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)

SEE ATTACHED - Exhibit B and Exhibit C

9. The name and address of each incorporator is as follows (only one is required)

| Name               | Address                         | Zip Code |
|--------------------|---------------------------------|----------|
| Roy E. Mevers, Jr. | 17 East Battery, Charleston, SC | 29401    |
| Name               | Address                         | Zip Code |
| Name               | Address                         | Zip Code |

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

ROY E. MEVERS, JR.

Name (Only if named in articles)

Signature of director

BRANDON HOFFMAN

Name (Only if named in articles)

Signature of director

DAVID B. HOOD

Name (Only if named in articles)

Signature of director

11. Each incorporator must sign the articles.

Signature of incorporator

Signature of incorporator

Signature of incorporator

**THE "SONNY MEYERS" FOUNDATION**

Name of Corporation

**FILING INSTRUCTIONS**

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
2. If space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk, which will allow for expansion of space on the form.
3. This form must be accompanied by the filing fee of \$25.00 payable to the "Secretary of State."  
  
Return to: Secretary of State  
P.O. Box 11350  
Columbia, SC 29211
4. If this organization is a Political Association it must also be accompanied by the First Annual Report of Corporations and an additional \$25.00 fee is required.

**NOTE**

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME ON OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1728.



EXHIBIT A-Articles of Incorporation  
(The "Sonny Mevers" Foundation)

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction for the county in which the principal office of the Corporation is then located, exclusively for such purposes, or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

(END OF EXHIBIT A)

**EXHIBIT B-Articles of Incorporation  
(The "Sonny Mevers" Foundation)**

The Corporation's Board of Directors shall be appointed by Roy E. Mevers, Jr., or by his nominee; and any such nominee shall in turn have the right to nominate his successor. Otherwise, in the event of the death or incapacity of Roy E. Mevers, Jr., the Corporation's Board of Directors shall be appointed alternatively by the Board of Directors of R.E. Mevers, Inc., a South Carolina business corporation, or by its nominee; and any such nominee shall in turn have the right to nominate his successor. Any appointed director may be removed without cause by giving written notice pursuant to the procedures set forth in Section 33-31-809 (b) of the South Carolina Nonprofit Corporation Act.

**(END OF EXHIBIT B)**

EXHIBIT C-Articles of Incorporation  
(The "Sonny Mevers" Foundation)

(a) To receive and maintain a fund or funds of real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

(b) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in (a) hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

(c) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

(d) The Corporation shall not engage in any act of self-dealing as defined in Section 4941 (d) of the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

(e) The Corporation shall not retain any excess business holdings as defined in Section 4943 (c) of the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

(f) The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

(g) The Corporation shall not make any taxable expenditures as defined in Section 4945 (d) of the Internal Revenue Code or corresponding provisions of any subsequent federal tax laws.

(h) Notwithstanding any other provision of these articles, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under Section 170(c)(2) of such Code and Regulations as they now exist or as they may hereafter be amended.

(END OF EXHIBIT C)

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0002 through R\_0010 (Ex Parte Temporary Restraining Order filed March 13, 2020). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.

**NOTE:** These documents are the same documents already set forth in the Record on Appeal at R\_0131 through R\_0175 (Memorandum of Law in Opposition to Motion for Temporary Restraining Order filed March 20, 2020, Affidavit of H. Christopher Moss filed March 20, 2020, and Affidavit of Jessica M. Wentworth filed March 20, 2020). In lieu of reproducing these documents again here, this note has been substituted in their place to avoid unnecessary duplication.

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0258 through R\_0355 (Transcript of March 23, 2020 Hearing before The Honorable Irvin G. Condon). In lieu of reproducing the document again here, this note has been substituted in its place to avoid unnecessary duplication.



PO Box 81137  
Charleston SC 29416-1137

ACCOUNT:  
DOCUMENTS:

6501003773  
8

PAGE: 1  
11/30/2017

**EXHIBIT**

G

SONNY MEYERS FOUNDATION  
PO BOX 21074  
CHARLESTON SC 29413

30

=====

TOTALLY FREE BUSINESS CHECKING ACCOUNT 6501003773 (FOUNDATION)

=====

|                 |              |                         |              |
|-----------------|--------------|-------------------------|--------------|
| MINIMUM BALANCE | 1,505.11     | LAST STATEMENT 10/31/17 | 1,505.11     |
| AVERAGE BALANCE | 1,198,798.77 | 9 CREDITS               | 3,101,310.00 |
|                 |              | 2 DEBITS                | 3,000,025.00 |
|                 |              | THIS STATEMENT 11/30/17 | 102,790.11   |

| - - - - - DEPOSITS - - - - - |        |        |        |
|------------------------------|--------|--------|--------|
| REF #                        | DATE   | AMOUNT | REF #  |
| 11/13                        | 50.00  | 11/15  | 10.00  |
| 11/13                        | 100.00 | 11/17  | 250.00 |
| 11/13                        | 500.00 | 11/20  | 100.00 |

| - - - - - OTHER CREDITS - - - - - |       |              |  |
|-----------------------------------|-------|--------------|--|
| DESCRIPTION                       | DATE  | AMOUNT       |  |
| TRANSFER                          | 11/02 | 3,100,000.00 |  |

| - - - - - OTHER DEBITS - - - - -                       |       |              |  |
|--------------------------------------------------------|-------|--------------|--|
| DESCRIPTION                                            | DATE  | AMOUNT       |  |
| Domestic Outgoing Wire Fee 8774                        | 11/13 | 250.00       |  |
| Outgoing Wire 8774 BERKELEY CHARTER EDUCATION ASSOCIAT | 11/13 | 3,000,000.00 |  |

| - - - - - DAILY BALANCE - - - - - |              |       |            |       |            |
|-----------------------------------|--------------|-------|------------|-------|------------|
| DATE                              | BALANCE      | DATE  | BALANCE    | DATE  | BALANCE    |
| 11/02                             | 3,101,505.11 | 11/17 | 102,390.11 | 11/22 | 102,790.11 |
| 11/13                             | 102,130.11   | 11/20 | 102,490.11 |       |            |
| 11/15                             | 102,140.11   | 11/21 | 102,590.11 |       |            |

- END OF STATEMENT -





PO Box 81137  
Charleston SC 29416-1137

ACCOUNT:  
DOCUMENTS:

6501003773  
2

PAGE: 1  
12/29/2017

**EXHIBIT**

H

SONNY MEYERS FOUNDATION  
PO BOX 21074  
CHARLESTON SC 29413

30

=====

TOTALLY FREE BUSINESS CHECKING ACCOUNT 6501003773 (FOUNDATION)

=====

|                 |            |                         |            |
|-----------------|------------|-------------------------|------------|
| MINIMUM BALANCE | 102,790.11 | LAST STATEMENT 11/30/17 | 102,790.11 |
| AVERAGE BALANCE | 102,915.97 | 2 CREDITS               | 150.00     |
|                 |            | DEBITS                  | 10.00      |
|                 |            | THIS STATEMENT 12/29/17 | 102,940.11 |

| - - - - - DEPOSITS - - - - - |       |        |        |
|------------------------------|-------|--------|--------|
| REF #                        | DATE  | AMOUNT | REF #  |
|                              | 12/05 | 50.00  | 12/06  |
|                              |       |        | 100.00 |

| - - - - - DAILY BALANCE - - - - - |            |       |            |
|-----------------------------------|------------|-------|------------|
| DATE                              | BALANCE    | DATE  | BALANCE    |
| 12/05                             | 102,840.11 | 12/06 | 102,940.11 |

- END OF STATEMENT -

|               |                            |
|---------------|----------------------------|
| ISN           | Date: 12/06/2017           |
| 053208079     | Start Time: 10:05:06 AM    |
| Branch: 1     | Amount: 100.00             |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments      |                            |
| RT: 053208079 | TC: 9                      |

Electronic Item

DDA Credits - 12/6/2017

|                                               |  |          |
|-----------------------------------------------|--|----------|
| HAZEL M. BLACKWELL                            |  | 3287     |
| 1277 YEAMANS HALL RD                          |  |          |
| HAWAII, HI 96719                              |  |          |
| DATE: Dec 7 2017                              |  |          |
| PAY TO THE ORDER OF: The Roy Moore Foundation |  | 15/00.00 |
| One Hundred and No/100                        |  | DOLLARS  |
| First Citizens Bank                           |  |          |
| FOR: \$100.00                                 |  |          |
| Hazel M. Blackwell                            |  |          |
| ⑆003267⑆ ⑆05390604⑆ ⑆079483860709⑆            |  |          |

DDA Credits - 12/6/2017

|                                        |  |  |
|----------------------------------------|--|--|
| BANK OF AMERICA, N.A. CHARLESTON, SC   |  |  |
| BRID: 103 Item Num: 060220564286       |  |  |
| Transit: 12/06/17                      |  |  |
| BANK OF AMERICA, N.A. CHARLESTON, SC   |  |  |
| Branch Name: CHARLESTON CHARLESTON, SC |  |  |
| Transit: 12/06/17                      |  |  |
| Item Num: 060220564286                 |  |  |

Transit - 12/6/2017

Transit - 12/6/2017



|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/13/2017           |
| 053208079     | Start Time: 11:11:55 AM    |
| Branch: 1     | Amount: 50.00              |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

### Electronic Item

**DDA Credits - 11/13/2017**

JERRY J NUSS 1000  
JUDY N WERRELL  
50 ANSON ST  
CHARLESTON SC 29401-1011

1056  
87444743 DE  
NYS

11/7/97 DATE

PAY TO THE ORDER OF SONNIE MEYERS FND \$ 50.00  
FIFTY DOLLARS

Bank of America  
ACQUITTANCES IN MEMORY OF  
SONNIE BY JERRY J NUSS

Wealth Management Banking  
Jerry J. Nuss

@053904483@ 000011277308@ 1056

**DDA Credits - 11/13/2017**

[illegible]

Transit - 11/13/2017

Transit - 11/13/2017

|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/13/2017           |
| 053208079     | Start Time: 11:11:14 AM    |
| Branch: 1     | Amount: 500.00             |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

### Electronic Item

**DDA Credits - 11/13/2017**

DAVID A. WESTERLUND  
SPECIAL ACCOUNT  
4653 SPRING ISLAND  
18 JONNY COUNTRY CTR  
OKAZITE, DC 23900-4787

5350  
23-371000 1071

11/1/71 DATE

PAID TO THE ORDER OF Sonny Meyers Foundation \$ 5000  
Nine Thousand and 00/100 DOLLARS

WESTERN UNION  
NATIONAL  
TELEGRAPH & TELEPHONE CO.  
COMMUNICATIONS DEPARTMENT

FOR RE MEMBERSHIP M. Westerlund

⑆102000078⑆ 18253301410⑆ 05350

**DDA Credits - 11/13/2017**[illegible]

Transit - 11/13/2017

Transit - 11/13/2017





|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/17/2017           |
| 053208079     | Start Time: 11:03:08 AM    |
| Branch: 1     | Amount: 250.00             |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

Electronic Item

DDA Credits - 11/17/2017

| THE CITY MARINA COMPANY<br>PO BOX 719<br>CHARLESTON, SC 29401<br>C43 873-7702                                                    | PRC BANK, N.A.<br>11-3/540<br>59311                                                                                                    |              |               |           |        |          |       |
|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------|-----------|--------|----------|-------|
| Two Hundred Fifty Dollars and 00/100                                                                                             | <table><tr><th>CHECK NO.</th><th>CHECK DATE</th><th>VOID CODE</th></tr><tr><td>059311</td><td>11/15/17</td><td>99999</td></tr></table> | CHECK NO.    | CHECK DATE    | VOID CODE | 059311 | 11/15/17 | 99999 |
| CHECK NO.                                                                                                                        | CHECK DATE                                                                                                                             | VOID CODE    |               |           |        |          |       |
| 059311                                                                                                                           | 11/15/17                                                                                                                               | 99999        |               |           |        |          |       |
| Pay to the order of<br>Sonny Meyers Foundation<br>Crescom Bank Attn: Holly Edwards<br>288 Meeting Street<br>Charleston, SC 29401 | <table><tr><td>CHECK AMOUNT</td></tr><tr><td>\$*****250.00</td></tr></table><br><i>Holly Edwards</i><br>APPROVED SIGNATURE             | CHECK AMOUNT | \$*****250.00 |           |        |          |       |
| CHECK AMOUNT                                                                                                                     |                                                                                                                                        |              |               |           |        |          |       |
| \$*****250.00                                                                                                                    |                                                                                                                                        |              |               |           |        |          |       |
| #059311# 4054000030# 5324925459#                                                                                                 |                                                                                                                                        |              |               |           |        |          |       |

DDA Credits - 11/17/2017

| THE CITY MARINA COMPANY<br>PO BOX 719<br>CHARLESTON, SC 29401<br>C43 873-7702                                                    | PRC BANK, N.A.<br>11-3/540<br>59311                                                                                                    |              |               |           |        |          |       |
|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------|-----------|--------|----------|-------|
| Two Hundred Fifty Dollars and 00/100                                                                                             | <table><tr><th>CHECK NO.</th><th>CHECK DATE</th><th>VOID CODE</th></tr><tr><td>059311</td><td>11/15/17</td><td>99999</td></tr></table> | CHECK NO.    | CHECK DATE    | VOID CODE | 059311 | 11/15/17 | 99999 |
| CHECK NO.                                                                                                                        | CHECK DATE                                                                                                                             | VOID CODE    |               |           |        |          |       |
| 059311                                                                                                                           | 11/15/17                                                                                                                               | 99999        |               |           |        |          |       |
| Pay to the order of<br>Sonny Meyers Foundation<br>Crescom Bank Attn: Holly Edwards<br>288 Meeting Street<br>Charleston, SC 29401 | <table><tr><td>CHECK AMOUNT</td></tr><tr><td>\$*****250.00</td></tr></table><br><i>Holly Edwards</i><br>APPROVED SIGNATURE             | CHECK AMOUNT | \$*****250.00 |           |        |          |       |
| CHECK AMOUNT                                                                                                                     |                                                                                                                                        |              |               |           |        |          |       |
| \$*****250.00                                                                                                                    |                                                                                                                                        |              |               |           |        |          |       |
| #059311# 4054000030# 5324925459#                                                                                                 |                                                                                                                                        |              |               |           |        |          |       |

Transit - 11/17/2017

Transit - 11/17/2017





|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/21/2017           |
| 053208079     | Start Time: 10:18:08 AM    |
| Branch: 1     | Amount: 100.00             |
| Teller: 103   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

Electronic Item

DDA Credits - 11/21/2017

|                                                                                                                  |          |     |
|------------------------------------------------------------------------------------------------------------------|----------|-----|
| THE HOLY NAME SOCIETY OF<br>SAINT MARY'S CHURCH<br>C/O WILLIAM J BOOTH<br>655 DUNHAM ST.<br>CHARLESTON, SC 29402 | 01-68/23 | 610 |
| DATE <u>Nov. 19, 2017</u>                                                                                        |          |     |
| PAID TO THE ORDER OF <u>Sonny Meyers Foundation</u> \$ <u>100.00</u>                                             |          |     |
| <u>ONE Hundred &amp; 00/100</u> DOLLARS                                                                          |          |     |
| NBSC                                                                                                             |          |     |
| FOR <u>Donation</u>                                                                                              |          |     |
| ⑆053208079⑆⑆170685217501⑆ 0610                                                                                   |          |     |

DDA Credits - 11/21/2017

|                                                                      |     |
|----------------------------------------------------------------------|-----|
| 01-68/23                                                             | 610 |
| DATE <u>Nov. 19, 2017</u>                                            |     |
| PAID TO THE ORDER OF <u>Sonny Meyers Foundation</u> \$ <u>100.00</u> |     |
| <u>ONE Hundred &amp; 00/100</u> DOLLARS                              |     |
| NBSC                                                                 |     |
| FOR <u>Donation</u>                                                  |     |
| ⑆053208079⑆⑆170685217501⑆ 0610                                       |     |

Transit - 11/21/2017

Transit - 11/21/2017

|               |                            |
|---------------|----------------------------|
| ISN:          | Date: 11/22/2017           |
| 053208079     | Start Time: 3:35:02 PM     |
| Branch: 1     | Amount: 200.00             |
| Teller: 101   | Account Number: 6501003773 |
|               | DDA Credit                 |
|               | Deposit                    |
| Comments:     |                            |
| RT: 053208079 | TC: 9                      |

Electronic Item

DDA Credits - 11/22/2017

|                                                                    |                                     |
|--------------------------------------------------------------------|-------------------------------------|
| ANN ADAM MEYERS<br>6614 130TH WAY<br>SEMIWOLE, FL 33776-2523       | 6654<br>9-32/720<br>DATE 11/22/2017 |
| PAY TO THE ORDER OF <u>Sunny Menus Foundation</u> \$ <u>200.00</u> |                                     |
| <u>Seven hundred and 00/100</u>                                    |                                     |
| CHASE<br>Wilmington Chase Bank, N.A.<br>www.chase.com              | <u>Ann A. Meyers</u>                |
| 1010 <u>Donation</u>                                               |                                     |
| ⑆07 20003 26⑆                                                      | ⑆70090160⑆6654                      |

DDA Credits - 11/22/2017

|                                                                    |                                     |
|--------------------------------------------------------------------|-------------------------------------|
| ANN ADAM MEYERS<br>6614 130TH WAY<br>SEMIWOLE, FL 33776-2523       | 6654<br>9-32/720<br>DATE 11/22/2017 |
| PAY TO THE ORDER OF <u>Sunny Menus Foundation</u> \$ <u>200.00</u> |                                     |
| <u>Seven hundred and 00/100</u>                                    |                                     |
| CHASE<br>Wilmington Chase Bank, N.A.<br>www.chase.com              | <u>Ann A. Meyers</u>                |
| 1010 <u>Donation</u>                                               |                                     |
| ⑆07 20003 26⑆                                                      | ⑆70090160⑆6654                      |

Transit - 11/22/2017

Transit - 11/22/2017

R\_0652

|                |                  |
|----------------|------------------|
| ISN            | Date: 12/05/2017 |
| Start Time     | 9:28:23 AM       |
| Amount         | 50.00            |
| Account Number | 6501003773       |
| Branch         | 1                |
| Teller         | 104              |
| Comments       | DCA Credit       |
| RT             | 053208079        |
| TC             | 9                |

|                 |
|-----------------|
| Electronic Item |
|-----------------|

DCA Credits - 12/5/2017

JOHN P. MUHLHAUSEN  
MRS. KITZA MUHLHAUSEN  
3453 WINTER HILL CIRCLE, 770-971-2559  
MANASSA, VA 20108

Pay to the order of John P. Muhlhausen

\$ 50.00

Date: 11/29/17

ACH DEPOSIT

SUNTRUST

6561

1005100010148130535524 6561

DCA Credits - 12/5/2017

ACH CREDIT ADVANCE

12/05/2017

11/29/17

50.00

6561

1005100010148130535524 6561

FOR DEPOSIT ONLY

CHECK/DEPOSIT SLIP OR RECEIPT REQUIRED

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

PLEASE PRINT CLEARLY

ENDORSE HERE

Transit - 12/5/2017

Transit - 12/5/2017



PO Box 81137  
Charleston SC 29416-1137

ACCOUNT:  
DOCUMENTS:

6501003773  
0

PAGE: 1  
01/16/2018

**EXHIBIT**

J

SONNY MEYERS FOUNDATION  
PO BOX 21074  
CHARLESTON SC 29413

<C> 30

\* \* \* F I N A L S T A T E M E N T \* \* \*

=====

TOTALLY FREE BUSINESS CHECKING ACCOUNT 6501003773 (FOUNDATION)

=====

|                         |            |
|-------------------------|------------|
| LAST STATEMENT 12/29/17 | 102,940.11 |
| CREDITS                 | .00        |
| 1 DEBITS                | 102,940.11 |
| THIS STATEMENT 01/16/18 | .00        |

| DESCRIPTION        | DATE  | AMOUNT     |
|--------------------|-------|------------|
| CLOSING WITHDRAWAL | 01/12 | 102,940.11 |

| DAILY BALANCE |         |
|---------------|---------|
| DATE.....     | BALANCE |
| 01/12         | .00     |

- END OF STATEMENT -

[www.haveanicebank.com](http://www.haveanicebank.com)



R\_0653

ELECTRONICALLY FILED - 2020 Sep 16 3:21 PM - CHARLESTON - COMMON PLEAS - CASE# 2020CP1004089

CresCom Bank  
Have a nice day

DATE 12-18

CHECKING DEPOSIT

DEPOSIT TO ACCOUNT NUMBER 4300199192

NAME Estate of Roy Meyers

CASH ☐

DEPOSIT OR TOTAL FROM OTHER SIDE ☐

LESS CASH ☐

NET DEPOSIT \$ 102940.11

009

⑆5111⑉0000⑆

BranchName=BOWTOWN-CHARLESTON  
Trid=101 ItemNum=00022062248

⑆5111⑉0000⑆

DDA Credits - 1/12/2018

DDA - DEBIT TRANSACTION FORM

ACCOUNT NAME Sonny Meyers Foundation DATE 1,12,18

PREPARED BY MARY E. SEAR

REGULAR DEMAND DEPOSIT TRANSACTIONS

AMOUNT \$ 102940.11

TRAN CODE 061

ACCOUNT NUMBER 6501003773

⑆5111⑉0000⑆

899

DDA Credits - 1/12/2018

BranchName=BOWTOWN-CHARLESTON  
Trid=101 ItemNum=00022062248

⑆5111⑉0000⑆

Cust died to  
Advise & put  
in Estate acct  
by CPA

DDA Debits - 1/12/2018

DDA Debits - 1/12/2018



CRESOOM BANK  
 PO BOX 81137  
 CHARLESTON, SC 29416-1137

**OWNERSHIP OF A ACCOUNT - CONSUMER (Select One and Initial):**

- ☐ Single-Party Account ☐ Trust-Separate Agreement  
☐ Multiple-Party Account  
☐ Other

**RIGHTS AT DEATH (Select One and Initial):**

- ☐ Single-Party Account  
☐ Multiple-Party Account With Right of Survivorship  
☐ Multiple-Party Account Without Right of Survivorship  
☐ Single-Party Account With Pay On Death  
☐ Multiple-Party Account With Right of Survivorship and Pay On Death

PAY-ON-DEATH BENEFICIARIES: To Add Pay-On-Death Beneficiaries Name One or More:

**OWNERSHIP OF A ACCOUNT - BUSINESS PURPOSE**

- ☐ SOLE PROPRIETORSHIP ☐ PARTNERSHIP  
☒ CORPORATION: ☐ FOR PROFIT ☒ NOT FOR PROFIT  
☐

BUSINESS: Corporation Not For Profit

COUNTY & STATE OF ORGANIZATION:

AUTHORIZATION DATED:

DATE OPENED 07/15/2015 BY AMY L DECK 729

INITIAL DEPOSIT \$ 7,336.36

☒ CASH ☒ CHECK ☐

HOME TELEPHONE # (843) 209-6677

BUSINESS PHONE # (843) 722-1200

DRIVER'S LICENSE # 000562081

E-MAIL

EMPLOYER R E MEVERS INC/OWNER

MOTHER'S MAIDEN NAME

Name and address of someone who will always know your location:

**BACKUP WITHHOLDING CERTIFICATIONS**

TIN: 14-1912699

☒ **TAXPAYER I.D. NUMBER** - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

☒ **BACKUP WITHHOLDING** - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

☐ **EXEMPT RECIPIENTS** - I am an exempt recipient under the Internal Revenue Service Regulations.

**SIGNATURE:** I certify under penalties of perjury the statements checked in this section and that I am a U.S. citizen or other U.S. person.

X  07/15/2015

SONNY MEVERS FOUNDATION (Date)

ACCOUNT NUMBER 6501003773 PORTFOLIO NUMBER 6110199

**ACCOUNT OWNER(S) NAME & ADDRESS**

SONNY MEVERS FOUNDATION

PO BOX 2 1074  
 CHARLESTON SC 29413

☒ NEW ☐ EXISTING  
**TYPE OF ACCOUNT** ☒ CHECKING ☐ SAVINGS  
☐ MONEY MARKET ☐ CERTIFICATE OF DEPOSIT  
☐ NOW ☐

This is your (check one): **TOTALLY FREE BUSINESS CHECKING**  
☒ Permanent ☐ Temporary account agreement.

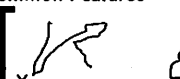
Number of signatures required for withdrawal 1

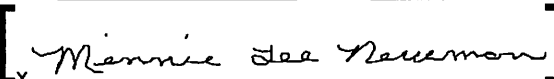
FACSIMILE SIGNATURE(S) ALLOWED? ☐ YES ☒ NO

[X]

**SIGNATURE(S)** - The undersigned certifies the accuracy of the information he/she has provided and acknowledges receipt of a completed copy of this form. The undersigned authorizes the financial institution to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, as individuals. The undersigned also acknowledges the receipt of a copy and agree to the terms of the following agreement(s) and/or disclosure(s):

- ☒ Terms & Conditions ☐ Truth in Savings ☒ Funds Availability  
☒ Electronic Fund Transfers ☒ Privacy ☒ Substitute Checks  
☐ Common Features ☒ Schedule of Fees

(1): [X]  R E MEVERS JR  
 I.D. # 251-44-4348 D.O.B. 09/18/1931

(2): [X]  MINNIE LEE NEWMAN  
 I.D. # 246-92-6895 D.O.B. 11/09/1952

(3): [X]

I.D. # D.O.B.

(4): [X]

I.D. # D.O.B.

**DESIGNATION OF AGENT FOR ACCOUNT (Optional):** To Add Agency Designation To Account, Name One or More Agents:

(Select One and Initial):

- ☐ Agency Designation Survives Disability or Incapacity of Parties  
☐ Agency Designation Terminates on Disability or Incapacity of Parties



## Wire Transfer Agreement (Fax or Phone)

This Wire Transfer Agreement (the "Agreement") is between SONNY MEYERS FOUNDATION (the "Customer," "you," or "your") and CresCom Bank, 884 Orleans Road, Charleston, South Carolina 29407 (the "Bank," "we," "our," or "us"). The Bank agrees to provide to the Customer the Wire Transfer Fund Service ("Service") described herein for fax or phone wire transfers subject to the terms of this Agreement. The terms and conditions of the deposit agreement and disclosures (the "Terms and Conditions") for each of your accounts continue to apply notwithstanding anything to the contrary in this Agreement. In the event of an inconsistency between this Agreement and the Term and Conditions governing the Account, this Agreement controls as to in fax or phone wire transfers. The Terms and Conditions will control any in person wire transfers, notwithstanding anything to the contrary in this Agreement. To the extent you are also a party to the Bank's eBusiness Manager Service Agreement and have enrolled in the eBusiness Wire Transfer Service, the eBusiness Manager Service Agreement and Wire Transfer Service Description shall control wire transfers made using eBusiness, notwithstanding anything to the contrary in this Agreement.

### 1. Definitions.

- a. A "funds transfer" or "wire transfer" is a transaction or series of transactions that begins with the originator's payment order for the purpose of making payment to the beneficiary of the order by means other than a check or similar paper instrument. As used in this Agreement, the terms "funds transfer" and "wire transfer" shall be deemed to include a transfer of funds by means of the Federal Reserve FEDWIRE, the Society of Worldwide Interbank Financial Telecommunications ("SWIFT"), or corresponding bank. The terms "funds transfer" and "wire transfer" shall be deemed not to include transfers made through the Automated Clearing House ("ACH") system within the United States, as defined by the National Automated Clearing House Association ("NACHA") operating rules as those rules may be amended from time to time. A "funds transfer" or "wire transfer" also does not include any consumer electronic funds transfers that are governed by the Electronic Funds Transfer Act of 1978 and Regulation E, 12 C.F.R. § 1005.1 *et seq.*, as amended from time to time.
- b. "You" and "your" shall refer to and mean the Customer and anyone authorized by the Customer to exercise control over its accounts or authorized to use the Service described in this Agreement.
- c. The term "Banking Day" shall mean Monday through Friday, excluding any holiday observed by the Federal Reserve Bank.
- d. Unless otherwise defined herein, the terms used in this Agreement have the meaning given to them in Article 4A of the Uniform Commercial Code-Funds Transfers (UCC 4A).

**2. Authorization; Representations and Warranties.** The Bank is hereby authorized and directed to transfer the amount of any wire transfer, plus any applicable fees and charges, from the Customer accounts listed in Exhibit A of this Agreement to the account designated in the instruction. Each wire transfer request shall be binding on you and the Customer shall be obligated to pay all wire transfers initiated by Customer or its authorized signers which are accepted by the Bank. Bank shall have no liability or other obligation for any unauthorized or erroneous transfer by Customer or its authorized signers. The Customer represents and warrants to the Bank that: (a) it has full and complete authority to enter into this Agreement; (b) the signers named on the deposit accounts may give oral or written instructions (including written instructions sent via facsimile) to the Bank for transfers of funds and matters related to transfers of funds with respect to the accounts listed in Exhibit A of this Agreement and the Bank may (but is not obligated to) require further written confirmation of any instructions given orally or by facsimile; and (c) each payment order is accurate, has been duly authorized, and complies with all applicable laws and regulations.





### 3. Processing of Wire Transfers.

a. **Timing.** The Customer may only issue wire transfers on the Bank's Banking Days. Payment orders must also be issued and received by the Bank prior to any wire transfer cut-off times established by the Bank. The Bank may change its wire transfer cut-off times at any time at its sole discretion without providing notice to the customer. Any payment order received by Bank after its daily cutoff time may be processed on the next Banking Day.

b. **Acceptance of Payment Orders.** The Bank may accept payment orders from the Customer and authorized signers to accounts of beneficiaries at the Bank and at other financial institutions. The Bank shall not be obligated to process any wire transfer initiated by the Customer, and the Bank may reject a wire transfer request for any reason in its sole discretion. Additionally, the Bank shall have no obligation to execute a wire transfer request if there are not sufficient collected and available funds in the Customer's account to cover the transfer.

c. **Accuracy.** In submitting any payment order, Customer shall be responsible for providing all necessary information required by Bank. Bank's wire transfer service is only designed to respond to information provided by you. Accordingly, any inaccuracy in any information provided by Customer may result in an unintended transfer of funds. Bank bears no responsibility and shall not be liable to Customer for any information provided by Customer in a payment order which is inaccurate, incomplete or otherwise incorrect.

d. **Content of Payment Orders.** The Bank, the beneficiary's bank, and any intermediary bank may rely on an identifying or bank account number in the payment order and pay the person identified by such number. Payment made to the person identified by the number shall be deemed properly made even if the number and the name in the payment order or assigned to the Bank account are different and even if the account number or identifying number refers to a nonexistent, unidentifiable, or fictitious person or financial institution. Bank and any other receiving financial institution have no obligation to determine whether a name and number identify the same person or institution. The Customer may request routing through a designated wire transfer network or intermediary bank and the Bank may comply, at its sole discretion. In such event, the Bank shall not be liable to the Customer for the failure of such network or such intermediary bank(s).

e. **Method of Execution.** The Bank in its sole discretion may execute wire transfers in any order convenient to us and may select such means and routes for the transfer of funds as Bank considers appropriate under the circumstances. If more than one payment order is made at or about the same time and the available funds in the applicable account do not cover all of such payment orders, Bank may at its option execute as many of such payment orders as possible within the dollar limits of such available funds in any order convenient to Bank.

f. **Cancellation and Amendment.** You shall have no right to amend or cancel any wire transfer. Bank may, however, on its own initiative and without obligation, act upon your request to amend or cancel, but shall have no liability if such cancellation or amendment is not effected. Bank must receive any request or other notice to cancel or amend on or before the Banking Day on which the wire transfer is to be executed with sufficient opportunity to act on your notice.

g. **Compliance.** Any payment order submitted by Customer shall also be subject to the rules, regulations and bylaws governing the particular funds transfer network utilized by Bank. Customer shall comply with all laws, rules and regulations in connection with the Wire Transfer Service. Customer agrees to be bound by such rules, and agrees not to initiate or receive a wire transfer





payment order in violation of international, federal, state and local laws and regulations including, without limitation, the regulations promulgated by the Office of Foreign Assets Control ("OFAC"). It shall be the responsibility of Customer to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC or from OFAC's homepage website at [www.ustrcas.gov/ofac](http://www.ustrcas.gov/ofac).) In addition, Customer agrees to comply with the requirements of the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG. Transactions restricted thereunder, such as transactions in which a person accepts credit, funds, instruments or other proceeds for another person in connection with unlawful Internet gambling, are prohibited from being processed through Customer's accounts.

**4. Security Procedures.** The Customer authorizes Bank to accept payment orders and requests to cancel or amend payment orders from the authorized signers on the accounts identified in Exhibit A. You agree that we will authenticate the request by calling any one of your authorized signers at the telephone number on file for the designated account and verifying the identity of the authorized signer by asking three security questions based on information in the Bank's records regarding your account. You agree that a faxed or telephone wire transfer request will not be processed until there is a successful call back verification by us, and you agree to hold us harmless for any wire transfer not made as the result of our inability to successfully verify the transfer by a call back prior to our internal wire processing cut-off of 4:00 p.m. At any time that you choose to terminate the authority of any authorized signer or the employee is terminated or ceases being employed by you, you are to notify the Bank immediately.

The verification and call back procedures as set forth herein and all other security questions and procedures, as applicable, are "Security Procedures" established to authenticate the identity of the person attempting to gain access to the Service. You agree to comply with these Security Procedures and any other Security Procedures we direct you to use, and you acknowledge and agree that the Security Procedures constitute commercially reasonable security procedures under applicable law for the initiation of wire transfers. You agree that, if we comply with the Security Procedures, we will not be liable for the amount of any unauthorized transactions arising from any wire transfer to which the Security Procedures relate. You acknowledge and agree that you shall be bound by any and all transactions initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated by you, to the fullest extent allowed by law. You further acknowledge and agree that the Security Procedures are not designed to detect errors in the transmission or content of communications or transaction initiated by you and that you bear the sole responsibility for detecting and preventing such errors. You are responsible for the security and confidentiality of the Security Procedures and related account information.

We reserve the right to modify, amend, supplement, or cancel any or all Security Procedures at any time and from time to time in our discretion. We will endeavor to give you reasonable notice of any change in Security Procedures; provided that we may make any change in Security Procedures without advance notice to you if we, in our judgment and discretion, believe such change to be necessary or desirable to protect the security of our systems and assets. Your use of any changed Security Procedures after any change in Security Procedures shall constitute your agreement to the change and your agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

**5. Recording Telephone Conversations.** The Customer agrees the Bank may at its sole discretion choose to record any oral or telephone payment order or communication of amendment or cancellation.

**6. International Wire Transfers.** The Bank does not accept International Wire Transfers for consumer customers via telephone or fax due to Reg E Remittance Transfer Rules. For commercial customers, if a request to transfer of funds in a currency other than United States dollars, the Customer agrees the Bank or its corresponding bank will convert the currency at the Bank's current exchange rate for the specified foreign currency. If any funds are returned to a Customer in a currency other than United States dollars, the Bank or corresponding bank will convert the returned foreign currency into United States dollars at its current exchange rate for such currency at the time of the return. If the Bank or corresponding bank does not have current exchange rates for the particular foreign



currency involved, the Bank will use its best efforts to convert the currency promptly through reasonable commercial and/or banking channels, and the Customer shall pay the Bank a reasonable fee for such services. In no event shall the Bank be liable to the Customer for any losses arising from currency conversions effected by the Bank.

**7. Indemnification.** The Customer shall defend, indemnify, and hold the Bank harmless from and against all claims, losses, costs, damages, liabilities, and expenses (including reasonable attorneys' fees) which relate to or arise out of (i) the Bank's performance under this Agreement; (ii) any wire transfer by Customer or any request by Customer to amend or cancel a wire transfer request; (iii) the negligence or fraudulent conduct of the Customer, its agents, employees, and independent contractors; (iv) the Bank's rejection of payment orders; or (v) the failure of the Customer, its agents, employees, or independent contractors to comply with this Agreement or any applicable laws, rules or regulations.

**8. Reporting Errors; Record Retention.** Customer must exercise ordinary care to determine that all payment orders or amendments to payment orders the Bank accepts are authorized, enforceable, in the correct amount, to the correct beneficiary and not otherwise erroneous. Wire transfer and related fees will result in a debit to the Account(s), and will be reflected on your monthly Account statement(s). If the Customer discovers (or with reasonable care should have discovered) an unauthorized, unenforceable or erroneously executed payment order or amendment, ordinary care must be exercised by notifying the Bank of the error and all relevant information. Failure by you to promptly report any such errors or issues within a reasonable time, which in no event shall exceed 60 days after we sent the FIRST account statement upon which the problem or error appeared, shall preclude you from asserting against us any claims arising from the error or any loss caused by the error or issue. You also agree to retain a record of all wire transfer requests for any required retention period under applicable state or federal law.

**9. Termination.** This Agreement may be terminated by the Bank without prior written notice upon the occurrence of any of the following: (i) default by the Customer under this Agreement; (ii) default by the Customer or any other obligated party under any other agreement with, obligation of, or indebtedness of the Customer to the Bank; (iii) dissolution, insolvency, business failure, appointment of a receiver for, or bankruptcy of the Customer or any other obligated party; (iv) falsity of any statement made by the Customer or any other obligated party to the Bank; (v) the Customer fails to comply with any of the terms and conditions of Agreement; or (vi) the Bank deems itself insecure. Either party may terminate this Agreement without cause by five (5) days prior written notice. Any termination shall not affect any obligations occurring prior to termination and you will remain responsible for all requests, outstanding fees, and charges incurred prior to the date of termination. The applicable portions of this Agreement shall remain in effect with respect to any payment order(s) initiated by the Customer prior to the effective date of such termination. The provisions of this Agreement which by their nature survive expiration or termination of this Agreement shall survive, including without limitation Sections 4, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, and 20.

**10. Severability.** In the event that any part or provision of the Agreement shall be determined to be unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall be deemed to be controlling, valid, and have full force and effect.

**11. Entire Agreement.** This Agreement, together with all exhibits and schedules hereunder, is the complete and exclusive statement of the agreement of the parties hereto and supersedes all prior oral or written agreements and other communications or understandings between the parties relating to the subject matter of this Agreement.

**12. Force Majeure.** The Bank shall not be responsible for any delay or failure to provide the services which result from acts beyond its reasonable control, including, but not limited to, acts of God, strikes, riots, acts of war, acts of terror, epidemics, fire, communication line failure, power failures, tropical storms, hurricanes, earthquakes or other disasters.

**13. Successors and Assigns; No Third Party Beneficiaries.** The provisions of this agreement shall be binding upon and inure to the benefit of any legal successor to the Bank or to the customer, whether by merger,



consolidation or otherwise. This Agreement may not be assigned or transferred by the Customer without the prior written consent of the Bank. This Agreement is not for the benefit of any other person, and no other person shall have any right against the Bank or the Customer hereunder.

14. **Headings; No Waiver.** The headings in this Agreement are for convenience of reference only and will not govern the interpretation of the provisions. Any waiver (express or implied) by either party of any default or breach of this Agreement must be in writing and shall not constitute a waiver of any other or subsequent default or breach.

15. **Amendment.** Except as otherwise provided herein, this Agreement may not be amended or modified except by a written instrument signed by both you and us.

16. **Notice.** Any written notice pursuant to, or with respect to any matter dealt with in this Agreement shall be sent to the following address:

If to the Bank:

CresCom Bank  
P.O. Box 1137  
Charleston, South Carolina 29416-1137

If to the Customer:

Unless otherwise designated in writing, the address on file for the designated account

17. **Applicable Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflicts of laws provisions, except to the extent this Agreement can and does vary such laws. All disputes arising under or related to this Agreement shall be brought only in state or federal courts located in the State of South Carolina. Company hereby consents to the personal jurisdiction of the South Carolina courts and hereby waives any objection based on lack of personal jurisdiction, improper venue, or forum non conveniens.

18. **Attorneys' Fees.** You agree to pay all attorneys' fees, costs and expenses that we may incur in collecting any sums you owe us for overdrafts, service charges, or otherwise or in enforcing any rights we may have under this Agreement or applicable law.

**19. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.**

THE BANK MAKES NO WARRANTIES WITH RESPECT TO THE WIRE TRANSFER SERVICE NOR DOES THE BANK WARRANT THAT THE SERVICE WILL MEET SPECIFIC REQUIREMENTS OF THE CUSTOMER. THE BANK DOES NOT MAKE ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE USE OF THE SERVICE. THE BANK DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY PROVISION IN THIS AGREEMENT AND ANY OTHER AGREEMENT TO THE CONTRARY NOTWITHSTANDING, BANK SHALL ONLY BE LIABLE FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND BANK'S LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF (i) YOUR ACTUAL DAMAGES OR (ii) THE TOTAL FEES PAID BY YOU TO BANK FOR THE SERVICES UNDER THIS AGREEMENT FOR THE PERIOD OF TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED, WHICH SHALL BE DETERMINED BY THE EARLIER OF THE DATE WHEN YOU FIRST BECAME AWARE OF THE CLAIM OR THE DATE WHEN, THROUGH THE EXERCISE OF REASONABLE CARE, YOU REASONABLY SHOULD HAVE BECOME AWARE OF THE CLAIM. IN NO EVENT SHALL BANK, OR ITS OFFICERS, AGENTS, OR CONTRACTORS BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, LOSSES OR INJURIES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR COST OF COVER) ARISING OUT OF, OR RELATED TO, THE USE BY CUSTOMER OF THE WIRE TRANSFER SERVICE OR ANY WIRE TRANSFER, OR THE FAILURE OF BANK TO PROPERLY PROCESS AND COMPLETE TRANSACTIONS HEREUNDER, EVEN IF BANK HAS BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR INJURIES. YOU ACKNOWLEDGE THAT THIS PROVISION IS AN INTEGRAL PART OF THIS AGREEMENT AND



**THE WIRE TRANSFER SERVICE IS BEING PROVIDED AT SUBSTANTIALLY LOWER COST TO YOU THAN WOULD OTHERWISE BE ASSESSED WITHOUT THIS LIMITATION.**

**20. JURY TRIAL WAIVER. YOU AND BANK EACH HEREBY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTES, LITIGATION, PROCEEDING OR COUNTERCLAIM ARISING WITH RESPECT TO RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT, ANY WIRE TRANSFERS AND SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY DISCUSSIONS, NEGOTIATIONS OR COMMUNICATIONS INVOLVING OR RELATED TO THIS AGREEMENT.**



**Exhibit A**  
**Customer Information and Acceptance Form**

Name SONNY MEVERS FOUNDATION

Tax ID 14-1912699

Port Number 6110199

The Agreement is applicable to the accounts listed below:

|            |  |
|------------|--|
| 6501003773 |  |
|            |  |
|            |  |

The undersigned Customer has agreed to receive fax or phone wire transfer services ("Services") offered by CresCom Bank. The undersigned hereby agrees that such Services to be provided by CresCom Bank shall be governed by the Wire Transfer Agreement ("Agreement"), as it may be amended from time to time. By signing this Customer Acceptance Form, the undersigned agrees that they have read and accepted the terms of the Agreement and agree to be bound by all the terms and conditions of the Agreement, **including without limitation the Limitation of Liability and Waiver of Jury Trial provisions**. In addition, the undersigned acknowledges receipt of the terms and conditions of the deposit agreement and disclosures (the "Terms and Conditions") with the respect to the undersigned's deposit accounts at CresCom Bank.

IN WITNESS WHEREOF, the undersigned has executed this Customer Acceptance Form and is thereby subject to all the terms and conditions of the Agreement.

Company Name (if applicable): SONNY MEVERS FOUNDATION

Signature: Minnie Mevers

Date: 11/13/17

Name: MINNIE MEVERS

Title (if applicable): \_\_\_\_\_

Customer's Signature and Date

CRESCOM BANK

Signature: Holly Hall

Date: 11/13/17

Name: HOLLY HALL

Title: BRANCH MANAGER

Accepted By and Date

Save to Doc Drop – Wire Transfer Agreement Folder

|                                       |   |                                      |
|---------------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS         |
|                                       | ) |                                      |
| COUNTY OF CHARLESTON                  | ) |                                      |
|                                       | ) | Case No.: 2020-CP-10-04089           |
| IN THE MATTER OF:                     | ) |                                      |
| THE ESTATE OF ROY E. MEVERS, JR.      | ) |                                      |
|                                       | ) |                                      |
| SOUTH CAROLINA ATTORNEY               | ) | <b>MEMORANDUM OF LAW</b>             |
| GENERAL                               | ) | <b>IN OPPOSITION TO MOTION</b>       |
| Plaintiff/Counter-Claim               | ) | <b>FOR CONTINUANCE OF</b>            |
| Defendant,                            | ) | <b>TEMPORARY RESTRAINING</b>         |
|                                       | ) | <b>ORDER ISSUED BY PROBATE</b>       |
| v.                                    | ) | <b>COURT OR, IN THE ALTERNATIVE,</b> |
|                                       | ) | <b>ISSUANCE OF A TEMPORARY</b>       |
| MINNIE LEE NEWMAN MEVERS,             | ) | <b>INJUNCTION</b>                    |
| Defendant/Counter-Claim               | ) |                                      |
| Plaintiff/Cross-Claim                 | ) |                                      |
| Plaintiff/Third-Party Plaintiff       | ) |                                      |
|                                       | ) |                                      |
| v.                                    | ) |                                      |
|                                       | ) |                                      |
| J. JAMES DUGGAN, as Special           | ) |                                      |
| Administrator of the Estate of Roy E. | ) |                                      |
| Mevers, Jr.,                          | ) |                                      |
| Cross-Claim                           | ) |                                      |
| Defendant/Third-Party                 | ) |                                      |
| Defendant,                            | ) |                                      |
|                                       | ) |                                      |

Defendant Minnie Lee Newman Mevers (hereinafter “Minnie”) respectfully submits this memorandum of law in opposition to the Motion for Continuance of Temporary Restraining Order (“TRO”) issued by the Probate Court or, in the Alternative, Issuance of a Temporary Injunction filed on September 16, 2020 by Plaintiff South Carolina Attorney General (“SCAG”). For the reasons discussed below, Minnie respectfully requests that the motion be denied.

(a) Minnie was not provided timely and proper notice of the hearing on the SCAG’s motion as required by S.C. R. CIV. PRO. 6(d). She was given less than 24 hours advance notice (excluding the two intervening weekend days) to prepare a response. She has been prejudiced by the extremely short notice because she has not had sufficient time to secure and file affidavits in



opposition to the motion. The SCAG has not made any showing to justify an emergency hearing depriving Minnie of her due process rights and her right to notice in accordance with Rule 6(d);

(b) This Court lacks subject matter jurisdiction to grant the SCAG's motion because of the appeal that is pending in Case No. 2020-CP-10-04036, which divests this Court of jurisdiction over the subject matters affected by the appeal, including the subject matters of a preliminary injunction, appointment of a Special Administrator, and an accounting. Exclusive jurisdiction over those subject matters resides in Case No. 2020-CP-10-04036 pursuant to S.C. CODE ANN. § 62-1-308(h) and South Carolina Appellate Court Rule (SCACR) 205(a);

(c) The SCAG cannot satisfy the requirements for a temporary or preliminary injunction on the merits. Where an adequate remedy is available at law such as here, economic loss is not sufficient to satisfy the SCAG's requirement of showing an irreparable harm. Any alleged harm in this case can easily be remedied by monetary relief at the end of this case; and

(d) The SCAG cannot show he is likely to succeed on the merits. Instead, this lawsuit should be dismissed because (i) the SCAG is improperly seeking to pursue the rights of The "Sonny Mevers" Foundation (hereinafter "Foundation"), which was a private foundation that was dissolved over 2½ years ago, no longer exists, and no longer has the right, power, or ability to pursue any claims as a matter of law; (ii) the SCAG lacks standing or capacity to sue on behalf of the Foundation to enforce any alleged rights it may have to the late Roy E. Mevers, Jr.'s ("Sonny") residuary estate—any such claims belong to the Foundation as a matter of law, not to the SCAG; and (iii) the Foundation—even assuming *arguendo* the SCAG can sue to enforce its rights—did not have any right to receive any portion of Sonny's estate because it did not meet the express conditions or qualifications set forth in his Will and Codicils.

## **BACKGROUND**

This case arose in the Probate Court. Minnie is Sonny's widow. Sonny died on November 3, 2017 and Minnie was appointed as Personal Representative on November 13, 2017.

After being appointed, Minnie hired Jessica Wentworth, Esquire, to serve as counsel for the Estate.<sup>1</sup> Ms. Wentworth is a local attorney whose practice focuses primarily on estate planning, probate administration, and real estate transactions. See Wentworth Aff. ¶¶1-4. Minnie also hired H. Christopher Moss, who is both a Certified Public Accountant (CPA) and tax attorney with over 35 years of experience, to serve as advisor on all tax and Internal Revenue Service (IRS) related matters. See Wentworth Aff. ¶5; Moss Aff. ¶¶6, 17.<sup>2</sup>

In 2004, many years before marrying Minnie, Sonny had formed the Foundation as a South Carolina non-profit organization. Via an IRS determination letter issued on July 21, 2005, the Foundation initially was granted tax-exempt status as a private, nonoperating foundation under § 501(c)(3) of the IRC. ***However, effective on November 15, 2017, the IRS revoked the Foundation's federal tax-exempt status under IRC § 501(c)(3) for failure to file the required***

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<sup>1</sup> Ms. Wentworth replaced Irvin Slotchiver, Esquire, who initially served as counsel for the Estate. See Wentworth Aff. ¶5. Mr. Slotchiver filed the initial paperwork opening the Estate and obtained Minnie's appointment as Personal Representative.

<sup>2</sup> The SCAG suggests that the Probate Court found that Mr. Moss had engaged in the unauthorized practice of law when he rendered advice to Minnie on tax and IRS matters while she was administering Sonny's estate in the Probate Court because he is not licensed as a lawyer in South Carolina. Of course, the Probate Court's Orders made no such findings.

Importantly, Mr. Moss is licensed as a CPA in Virginia and South Carolina as well as the District of Columbia. He is also licensed as a lawyer in Virginia and the District of Columbia. Our state Supreme Court has specifically held that a CPA such as Mr. Moss does not engage in unauthorized practice of law in this state when he renders professional assistance, including compensated representation before agencies or before our state Probate Courts, that is within his professional expertise and qualifications. In re Unauthorized Practice of Law Rules Proposed by S.C. Bar, 309 S.C. 304, 422 S.E.2d 123 (1992). Absolutely no showing has been made that Mr. Moss's advice to Minnie exceeded his professional expertise or qualifications.



*annual returns for three consecutive years. The Foundation's tax-exempt status has never been reinstated.*

*On January 23, 2018, the Foundation was dissolved as an entity with the South Carolina Secretary of State with an effective date of January 24, 2018.* The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the Secretary of State on January 24, 2018, and thereby forfeited its charter. State statutory law (S.C. CODE ANN. § 33-31-1404(a)) provides that the Foundation could revoke its dissolution within 120 days of its effective date, which did not occur. The statutory period for the Foundation to revoke its dissolution expired on May 24, 2018. No such revocation of dissolution was applied for or occurred. The Foundation no longer exists as an entity, forfeited its charter, and cannot sue or be sued.

Sonny died testate after being married to Minnie for several years. His Last Will and Testament, as well as two Codicils amending his original Will, were prepared by Irvin Slotchiver, Esquire. See Wentworth Aff. ¶6. Article XII of Sonny's original Will, which was made before he married Minnie, specifically provided for the disposition of his residuary estate:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE "SONNY MEVERS" FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

After Sonny married Minnie on September 12, 2016, he later executed a Codicil to his Will amending Article XII so as to add the following sentence to the conclusion of that article:

Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, **MINNIE LEE NEWMAN MEVERS**, absolutely and in fee simple, forever, on the condition that she shall survive me.

Under the terms and provisions of Sonny's Will, the Foundation's status as the outright beneficiary of Sonny's residuary estate would vest at the time of Sonny's death **provided** the Foundation was in existence at that time **and** it satisfied the other "conditions" set forth in Article XII. See Wentworth Aff. ¶12; Moss Aff. ¶15. The Will sets forth specific conditions that the Foundation must satisfy to qualify for receipt of the gift or distribution of the residuary estate—that (a) it is an organization which is charitable within the meaning of Section 2055 of the Internal Revenue Code (IRC) and (b) that the gift is permitted as a charitable deduction from Sonny's Estate for federal estate tax purposes. If either of those conditions were not satisfied either at the time of Sonny's death or when the estate assets were to be distributed, then the devise or gift to the Foundation either did not vest or, if it vested, it lapsed or was cancelled and instead devolved to Minnie. See Wentworth Aff. ¶13; Moss Aff. ¶16.

Sonny had created the Foundation in 2004, before he had even met Minnie. Because Ms. Wentworth is not a CPA or tax attorney, Minnie contacted Mr. Moss, who is both a CPA and a tax attorney, to serve as advisor on all tax and IRS related matters, including the question of whether the Foundation satisfied the conditions in Article XII of the Will. See Wentworth Aff. ¶¶5, 14; Moss Aff. ¶17. Mr. Moss investigated the matter and concluded that the Foundation was a sham and it had no real substance. See Moss Aff. ¶¶18-19.

Among other things, Mr. Moss learned that the Foundation had not filed the legally required tax information returns (Form 990-PF) for the fiscal years 2014, 2015, and 2016 and he could find no other reporting or other documentation to the IRS or another regulatory body concerning its operations during these periods. See Moss Aff. ¶18; Wentworth Aff. ¶14. He determined that the Foundation had no real corporate records or documentation (outside its initial formation documents) that evidenced the Foundation had been, and was continuing, to be

organized and operated exclusively for charitable purposes. Id. He learned that almost the entirety of the Foundation's Board members had conflicts of interest as they primarily comprised persons with whom Sonny transacted business raising a number of self-dealing concerns under Section 4941 of the IRC. Id. There were no records of when and how long these individuals were serving as directors, whether they were in fact appointed, or had ever approved any transactions, the compensation arrangements, or any charitable activities, grants, or any other matters required of individuals acting as directors. Id. The Foundation had no bookkeeping or records, had not conducted periodic meetings or recorded minutes of meetings as required in the bylaws, had no records of appointments of directors or officers, had no staff or employees, and had no office. Id. In short, Mr. Moss concluded the Foundation had no substance. Id. It had no documentation that could demonstrate it had been actually operated by a board of directors to further charitable purposes. Id.

Based on his considerable experience in the field of taxation and his experience with tax audits by the IRS, Mr. Moss concluded that the Foundation could not withstand an IRS audit, it could not and would not qualify as a charitable organization within the meaning of Section 2055 of the IRC, and that a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes. See Moss Aff. ¶19; Wentworth Aff. ¶15. Mr. Moss communicated his conclusion to Ms. Wentworth and Minnie. See Moss Aff. ¶20; Wentworth Aff. ¶15. Ms. Wentworth and Minnie were concerned that it would be fraudulent or possibly even criminal to file papers taking the position that the Foundation was a tax-exempt organization. See Wentworth Aff. ¶15.

Mr. Moss's conclusion about the Foundation was confirmed by the IRS, which revoked the Foundation's federal tax-exempt status under IRC § 501(c)(3) effective on November 15,

2017. See Moss Aff. ¶21; Wentworth Aff. ¶16. As of November 15, 2017, the Foundation was a taxable c-corporation. Id. This was a mere two days after Minnie had been appointed as Personal Representative. Mr. Moss's conclusion has also been validated by Marc Owens, who is a practicing tax attorney and former Director of the IRS's Exempt Organizations Division with 25 years of overall experience working for the IRS. See Owens Aff. ¶2-4, 18.

On January 23, 2018, the Foundation's Board of Directors voted to dissolve the Foundation for the reasons pointed out by Mr. Moss—that the Foundation did not qualify as a tax-exempt entity and it had no real substance. See Moss Aff. ¶22. The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the South Carolina Secretary of State on January 24, 2018, and the Foundation ceased to exist. Id.

Minnie and Ms. Wentworth took the appropriate steps to probate Sonny's Will and administer his estate based on the reasoned and good faith determination that the Foundation had not satisfied the conditions in the Will, that the devise or gift to the Foundation had lapsed or was canceled, and that Minnie was the residuary beneficiary under the Will. See Wentworth Aff. ¶17; Moss Aff. ¶23. With the assistance of Ms. Wentworth, Minnie filed a Proposal for Distribution (Form #410ES) with this Court on November 21, 2018, along with a Final Accounting (Form #361ES), Application for Settlement (Form #412ES), and Notice of Right to Demand Hearing (Form #416ES), which disclosed that Minnie would receive the residuary estate as part of the proposed distribution of Sonny's estate. Id. Because the Foundation was not a proper residuary beneficiary, these actions were completely proper and were mandated by the terms and provisions of Sonny's Will. Id.

All of the 28 beneficiaries who received distributions from the Estate signed a Receipt and Release with Waiver (Form #403ES) and none responded to the notice of right to demand a

hearing, or filed any objection to the Proposal for Distribution or Application for Settlement. See Wentworth Aff. ¶18; Moss Aff. ¶24. None of the directors or officers of the Foundation contested the probate process, its revocation of exempt status on November 15, 2017, or the subsequent dissolution of the Foundation. See Wentworth Aff. ¶19; Moss Aff. ¶25.

The Probate Court issued an Order closing the Estate on December 31, 2018. The assets of the Estate were distributed in accordance with the terms of the Will as shown on the Proposal for Distribution. See Wentworth Aff. ¶20. Deeds of distribution involving the various real estate owned by Sonny were duly executed and recorded with the Registers of Deed for the appropriate counties. Id. The assets of the Estate have already been distributed in accordance with the terms and provisions of Sonny's Will. Id.

On March 13, 2020, notwithstanding the dissolution of the Foundation and the forfeiture of its charter, the SCAG filed the instant action in the Probate Court in his *parens patriae* capacity purportedly on behalf of the Foundation's beneficiaries, even though the Foundation no longer exists and lacks the right to sue. The SCAG's lawsuit alleges the Foundation was a qualifying devisee under the terms and provisions of Sonny's Will and the Foundation should have been distributed all or a portion of the Decedent's residuary estate. The SCAG's action seeks to reopen Sonny's Estate and formally probate his Will and Codicils, to have a special administrator appointed for the Estate, and to impose a constructive trust for the benefit of the Foundation over the assets that were previously distributed from the Estate to Minnie.

On the very same day the SCAG filed this action, and without prior notice to Minnie or opportunity to be heard and despite the fact the SCAG had been engaged in active dialogue with Minnie's counsel for several months, the SCAG also obtained an *ex parte* TRO from Associate

Probate Judge Tamara Curry based solely on his uncontested submissions to the Court.<sup>3</sup> In the same Order granting the *ex parte* TRO, Judge Curry appointed a Special Administrator for the Estate and set a hearing to take place on March 23, 2020, but did not specify the purpose of the hearing. The separate Notice of Hearing filed the same day merely states the hearing is “Per Temporary Restraining Order Dated March 13, 2020.” See Notice of Hearing.

Probate Judge Condon conducted a hearing on March 23, 2020. Minnie and her counsel appeared at the hearing and opposed the continuation of the TRO and the issuance of a Preliminary Injunction. Judge Condon verbally indicated at the hearing his preliminary ruling, but also stated that he would issue a written Order setting forth his final findings and rulings.<sup>4</sup> As discussed below, Judge Condon did not issue a written Order until June 29, 2020.

In the interim, on April 10, 2020, Minnie filed her Return to the SCAG’s Petition in the Probate Court along with Counterclaims, Cross-Claims, and/or Third-Party Claims against the

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<sup>3</sup> In violation of Rule of Civil Procedure 65(b), the SCAG chose to proceed on an *ex parte* basis and to deny Minnie the opportunity to be heard when this case involves an Estate that was closed on December 31, 2018 (nearly two years ago) and the Estate’s assets (which predominantly consisted of real estate holdings) were distributed before then. Prior to the SCAG’s *ex parte* proceedings, Minnie’s legal counsel had been actively communicating with the SCAG concerning the subject matters raised in his Petition for several months, her counsel had repeatedly responded to the SCAG’s numerous requests for information, and she had been cooperating with the SCAG’s inquiries. Minnie first learned of this lawsuit when she was served with the Court’s *ex parte* Order. Rule 65(b) mandates that “[n]o temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant ***before notice can be served and a hearing had thereon.***” S.C. R. CIV. PRO. 65(b); see JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 534 (3<sup>rd</sup> ed. 2010) (“Ex parte temporary restraining orders are disfavored in state practice. TROs are limited to those ‘rare occasions when no adverse interest exists or when exigent circumstances dictate that action be taken prematurely.’”). The SCAG’s motion made no such showing.

<sup>4</sup> Under well-settled South Carolina law, until a written order is entered, a binding ruling has not been issued by the Court. Bayne v. Bass, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990); Bowman v. Richland Mem’l Hosp., 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999); Christy v. Christy, 347 S.C. 503, 510, 556 S.E.2d 701, 704 (Ct. App. 2001). Judge Condon was free to change his mind or modify his rulings until he issued a written Order.

SCAG as well as the Special Administrator. Minnie raised numerous defenses (including, but not limited to, the SCAG's lack of standing, lack of capacity, the fact he is not a real party in interest, expiration of the nonclaim statute, and failure to state a claim as a matter of law) and also asserted claims involving the construction of Sonny's Will and Codicils. In the same pleading, Minnie also filed a petition for an elective share in which she claims the right to an elective share of Sonny's probate estate in accordance with S.C. CODE ANN. §§ 62-2-201 *et seq.* and a claim for attorneys' fees under S.C. CODE ANN. § 62-1-111.

By Reply dated May 4, 2020, Special Administrator Duggan answered the Counterclaims, Cross-Claims, and/or Third-Party Claims. By Reply dated May 8, 2020, the SCAG answered the Counterclaims, Cross-Claims, and/or Third-Party Claims.

On May 12, 2020, Minnie timely filed and served a Notice of Demand for Jury Trial. On that same day, in accordance with the provisions of S.C. CODE ANN. § 62-1-302(d), Minnie timely filed and served a Notice of Removal and Motion to Remove Action to Circuit Court. The notice removed this action to the Circuit Court pursuant to S.C. CODE ANN. § 62-1-302(d).

As of May 12, 2020, the Probate Court lacked jurisdiction to issue any further Orders because of the Notice of Removal that had been filed and served. Pursuant to the clear terms of § 62-1-302(d), the action "must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter *de novo*." S.C. CODE ANN. § 62-1-302(d); see also Thomas v. Gathings, 304 S.C. 308, 312, 403 S.E.2d 682, 684 (Ct. App. 1991) (statute require removal when it is raised by motion of any party or by motion of the probate judge on his own).

On June 29, 2020, notwithstanding the prior removal notice, Judge Condon nevertheless entered a written Order granting a temporary injunction and other relief. In addition to granting a temporary injunction, the Order purports to reopen Sonny's estate when an evidentiary hearing

on that matter was not previously noticed or conducted and further requires Minnie to provide a “complete accounting” to the Special Administrator.

On July 10, 2020, Minnie timely filed and served a Motion to Alter, Amend, and/or Vacate the Probate Court’s Order pursuant to Rule 59(e). On August 28, 2020, Minnie also timely filed and served a Motion to Vacate Order pursuant to Rule 60(b). Minnie requested a hearing on her motions. However, on September 10, 2020, without a hearing, the Probate Court entered an Order denying Minnie’s Motion to Alter, Amend and/or Vacate Order and denying her Motion to Vacate Order.

On September 11, 2020, Minnie filed a timely Notice of Intent to Appeal to this Court from the Probate Court’s Orders entered on March 13, 2020, June 29, 2020, and September 10, 2020. Minnie’s appeal is pending in this Court as Case No. 2020-CP-10-04036.

On September 15, 2020, the Probate Court then filed a removal of the remainder of the action not subject to the appeal to this Court, which action is pending in this Court as Case No. 2020-CP-10-04089. On September 16, 2020, in Case No. 2020-CP-10-04089, the SCAG filed the instant Motion for Continuance of TRO issued by the Probate Court or, in the Alternative, Issuance of a Temporary Injunction.

On September 17, 2020, in Case No. 2020-CP-10-04089, Minnie filed a Motion to Dismiss and/or for Judgment on the Pleadings pursuant to S.C. R. Civ. P. 12(b)(6), 12(c), and/or 17(a) and (b). The motion asserts that the SCAG does not possess standing to bring this action on behalf of the Foundation, lacks capacity, is not a real party in interest, and the suit must be dismissed because it fails to state a cause of action as a matter of law. The motion is pending.

On Friday, September 18, 2020, at 12:54pm, this Court notified the parties’ counsel via e-mail that it will grant the SCAG’s request for an emergency hearing on its Motion for



Continuance of TRO in Case No. 2020-CP-10-04089 to be held on Monday, September 22, 2020, at 12:15pm.<sup>5</sup> The Court advised that argument on the motion will be limited to one hour.

### **ANALYSIS AND ARGUMENT:**

#### **A. Minnie Was Not Granted Timely and Proper Notice of the Hearing on the SCAG's Motion.**

S.C. R. CIV. PRO. 6(d) states that a written motion and notice of the hearing thereof “shall be served not later than ten days before the time specified for the hearing.” Rule 7(b)(1) also provides that “an application to the court for an order shall be by motion which . . . shall be made in writing” and “shall state with particularity the grounds therefor . . . .” S.C. R. CIV. PRO. 7(b)(1). The purpose of these requirements is to give the opposing party at least ten days’ notice of the specific hearing date, the relief sought in the motion, and the particular grounds therefor. Dedes v. Strickland, 307 S.C. 152, 414 S.E.2d 132 (1992) (rules require that specific notice of the day certain fixed for the hearing must be furnished not later than ten days prior to such hearing); Skinner v. Skinner, 257 S.C. 554, 186 S.E.2d 523, 526 (1972) (“One of the basic purposes of a notice of motion is to apprise the opposing party of the relief sought and the grounds therefor.”). The rule is rooted in the notions of fairness and due process.

Minnie was not provided timely and proper notice of the hearing on the SCAG’s motion. She was given less than 24 hours advance notice (excluding the intervening weekend days) to prepare a response. She has been prejudiced by the extremely short notice because she has not had sufficient time to secure and file witness affidavits opposing the motion. The motion should be denied due to the SCAG’s failure to comply with the rules involving notice of a hearing.

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<sup>5</sup> Prior to receipt of this notification, Minnie’s counsel had advised the Court via e-mail and during an informal telephone status conference conducted by the Court on the morning of September 18, 2020, that Minnie requested that the hearing not be conducted without at least ten days’ advance notice so she would have adequate time to file a response to the motion and pointed out that there is no justification for an emergency hearing. This request was denied.

In narrow circumstances, Rule 6(d) allows the Court to shorten the notice of a hearing based on a proper showing, but the SCAG has made absolutely no showing whatsoever of any “emergency” or other reason that would justify an expedited hearing. The SCAG has filed no affidavit or other evidence demonstrating any “emergency” exists. ***Indeed, as the SCAG’s own “emergency” motion acknowledges, in Case No. 2020-CP-10-04036 discussed above, the Probate Court has already awarded the SCAG the very same relief that the SCAG now seeks in this case.*** The SCAG is asking this Court to “continue” a preliminary injunction that the Probate Court had already granted and which has not been dissolved. By virtue of the Probate Court’s Order issued in Case No. 2020-CP-10-04036, Minnie is already enjoined from transferring or conveying any assets or property that she received from Sonny’s estate.

The SCAG is now arguing in a nonsensical fashion that this Court must issue an “emergency” order granting it the same relief it already has. The SCAG has not shown there is any threat that Minnie will violate the preliminary injunction previously granted by the Probate Court. The SCAG does not even claim (much less offer any evidence showing) that Minnie is threatening to transfer or convey any property or assets that are subject to the preliminary injunction. The SCAG’s bare allegation that an “emergency” exists is insufficient to warrant this Court’s jettisoning of the rules of civil procedure and violating Minnie’s due process rights.

This current motion is nothing more than the SCAG’s improper attempt to have this Court issue “another” preliminary injunction so the SCAG can try to circumvent Minnie’s pending appeal in Case No. 2020-CP-10-04036. The SCAG wants this Court to issue a preliminary injunction because Minnie has appealed from the Probate Court’s order granting the same relief in Case No. 2020-CP-10-04036. The SCAG does not like the fact that Minnie has

appealed the Order and is trying to deprive her of her right to pursue an appeal. That is not a proper or sufficient basis for disregarding the rules or Minnie's due process rights.

**B. This Court Lacks Subject Matter Jurisdiction to Grant the SCAG's Motion Given the Pending Appeal in Case No. 2020-CP-10-04036, Which Divests this Court of Jurisdiction Over the Subject Matters Affected by the Appeal.**

The SCAG does not dispute that Minnie has timely filed an appeal from the Probate Court's Orders dated March 13, 2020, June 29, 2020, and September 10, 2020. Those Orders specifically granted a preliminary injunction, appointed a Special Administrator, and ordered Minnie to provide an "accounting." Those subject matters are now pending in Case No. 2020-CP-10-04036 where this Court sits solely in its capacity as an appellate court. Those subject matters cannot also be pending before this Court in Case No. 2020-CP-10-04089 because the appeal has divested jurisdiction over them.

Section 62-1-308(h) of the South Carolina Probate Code (SCPC) mandates that "[w]hen an appeal according to law is taken from any sentence or decree of the probate court, *all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had.*" S.C. CODE ANN. § 62-1-308(h) (emphasis added). The statute evinces a clear legislative intent that "all proceedings" in pursuance of the matters appealed from "shall cease" until the appellate court (the Circuit Court in Case No. 2020-CP-10-04036) issues its judgment resolving the appeal.

"[A] circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal." In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005); see also Matter of Howard, 315 S.C. 356, 434 S.E.2d 254, 257 (1993) (The circuit court "must apply the same standard that [the South Carolina Supreme Court] or the Court of Appeals would apply were the appeal taken directly to either of them."). These

“rules of law” include the South Carolina Appellate Court Rules unless otherwise provided in the probate code. See Estate of Patterson v. Palmetto Bank, 374 S.C. 116, 121 n.2, 646 S.E.2d 885, 888 n.2 (Ct. App. 2007) (applying Rule 220(c), SCACR, to appeal from probate court order); Byrd v. McDonald, 417 S.C. 474, 478–79, 790 S.E.2d 200, 202 (Ct. App. 2016) (applying Rule 210(h), SCACR, to appeal from probate court order).

The statute makes clear that the service of a notice of appeal divests the trial court of jurisdiction over the matters affected by the appeal and that any proceedings involving those matters “shall cease” until the appeal is heard. The appellate rules also expressly state:

Upon the service of the notice of appeal, ***the appellate court shall have exclusive jurisdiction over the appeal***; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding ***with matters not affected by the appeal***.

SCACR 205(a) (emphasis added); see also Wilson v. Walker, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000) (“[S]erving [a] notice of appeal divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal.”); Morris v. Morris, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) (“This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal. A lower court has jurisdiction to proceed only ‘with matters not affected by the appeal.’”).

“[T]he [trial] court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).” Tillman v. Oakes, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012). Although those rules allow—but do not mandate—the trial court to proceed with matters “not affected by the appeal,” the applicable case law demonstrates this is a very narrow exception to the normal rule that an appeal prevents the trial court from proceeding further in the case. The trial court

can only address matters that are not affected or influenced in some way by the issues being appealed. See Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009); Arnal v. Fraser, 371 S.C. 512, 641 S.E.2d 419 (2007); Andrick Develop. Corp. v. Maccaro, 280 S.C. 103, 311 S.E.2d 95 (Ct. App. 1984).

In Stokes–Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016), for example, a former client brought a legal malpractice case against its attorney following an adverse jury verdict in another lawsuit. The Supreme Court held that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘matters affected by the appeal,’ which necessarily would include a legal malpractice cause of action that is based on the outcome of the appealed verdict, judgment, or ruling.” Id. at 534, 787 S.E.2d at 494. Because the outcome of the appeal from the adverse jury verdict would “affect” the claims in the separate legal malpractice lawsuit, the Court held the legal malpractice claim was “stayed” by Rule 241(a) while the appeal is pending.” Id.

In the present case, Minnie has appealed the Probate Court’s Orders granting a preliminary injunction, appointing a Special Administrator, and requiring her to provide an “accounting.” That appeal is pending in Case No. 2020-CP-10-04036, where this Court sits only as an appellate court. When Minnie filed her appeal, the Probate Court was immediately divested of jurisdiction over those subject matters. The Probate Court could only address those matters that were “not affected” or influenced in some way by the issues being appealed.

The Probate Court’s jurisdiction over those very limited matters “not affected” by the appeal was later removed to this Court in the present case (Case No. 2020-CP-10-04089). The SCAG’s current motion was filed in that removed case. Following removal, this Court’s jurisdiction in Case No. 2020-CP-10-04089 is limited to the exact same subject matters over

which the Probate Court still had jurisdiction immediately prior to the removal. Those limited matters do **not** include the subject matters of a preliminary injunction, appointment of a Special Administrator, or an accounting. Instead, “***exclusive jurisdiction***” over those subject matters was divested by virtue of Minnie’s appeal. Exclusive jurisdiction over those subject matters is now pending in Case No. 2020-CP-10-04036.

Despite this Court’s lack of jurisdiction over these subject matters in this case (Case No. 2020-CP-10-04089), the SCAG’s current motion nevertheless asks this Court to re-litigate those exact same issues and subject matters. Under § 62-1-308(h) and SCACR 205(a), this Court lacks jurisdiction to move forward with those subject matters in this case until the appeal in Case No. 2020-CP-10-04036 has been resolved. See Ex parte McFarlin, 2007 WL 8326605, at \*4 (S.C. Ct. App. Feb. 12, 2007) (vacating various probate court orders that were entered after a notice of appeal was served in the case because the probate court lost jurisdiction over matters that were affected by the appeal under § 62-1-308(c), which was later renumbered § 62-1-308(h)).

**C. Requirements for Issuance of Temporary Injunction Are Not Satisfied.**

Even if the Court disregards the fact that the SCAG failed to give Minnie timely and proper notice of the hearing on its motion and even if ignores the fact that this Court lacks jurisdiction over the subject matters raised in the SCAG’s motion, the motion also should be denied on the merits.

Under South Carolina law, a party seeking such relief “must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The sole purpose of a temporary injunction is to preserve the status quo during litigation in order to

prevent irreparable injury to the requesting party and to preserve the ability of the court to render complete relief. County Council of Charleston v. Felkel, 244 S.C. 480, 484, 137 S.E.2d 577, 578 (1964); Zabinski v. Bright Acres Associates, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001).

“A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” Hook Point, LLC v. Branch Banking and Trust Co., 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012) (citing Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010)).

A temporary or preliminary injunction is an “extraordinary remedy . . . which is to be applied only in the limited circumstances which clearly demand it.” Dao Travels, LLC v. Charleston Black Cab Co., 2015 WL 631137, \*4 (D.S.C. Feb. 13, 2015) (quoting Centro Tepeyac v. Montgomery Cnty., 722 F.3d 184, 188 (4th Cir. 2013)); see also Munaf v. Geren, 553 U.S. 674, 689–90 (2008) ( “A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” (internal citation and quotation marks omitted)). Because of the potential for irreparable harm that may result from the issuance of a temporary injunction, an immediate appeal lies from an interlocutory order granting a temporary injunction. Lamar v. Croft, 73 S.C. 407, 53 S.E. 540 (1905); Williams v. Jones, 62 S.C. 472, 40 S.E. 881 (1901); see also Babb v. Scott, 2005 WL 7084291, \*1 (S.C. Ct. App. 2005); Gibbs v. Kimbrell, 311 S.C. 261, 271, 428 S.E.2d 725, 731 (Ct. App. 1993); S.C. CODE ANN. § 14–3–330(4) (“The Supreme Court ... shall review upon appeal ... an interlocutory order or decree ... granting ... an injunction ....”).

In this case, the SCAG has failed to satisfy the necessary requirements for the issuance of a temporary or preliminary injunction. He is unable to show irreparable harm if the injunction is not granted, he is not likely to succeed on the merits of the litigation, and there is an adequate remedy at law.

***(1) Irreparable Harm Requirement:***

A delay in seeking injunctive relief “indicate[s] an absence of the kind of irreparable harm required to support a preliminary injunction.” Quince Orchard Valley Citizens Ass’n v. Hodel, 872 F.2d 75, 79-80 (4th Cir. 1989). The SCAG initially contacted Minnie on November 14, 2019. He waited for four months before filing his Motion for a TRO in the Probate Court and for ten months before filing his motion in this Court, which strongly militates against granting a preliminary injunction.

The SCAG will suffer no irreparable harm if a preliminary injunction is refused. As the Probate Court file shows, the assets that were transferred to Minnie pursuant to Sonny’s Will were almost exclusively real estate holdings.<sup>6</sup> The SCAG has made absolutely no showing whatsoever that Minnie intends to dispose of any real estate that she received as residual beneficiary of Sonny’s Estate during the pendency of this lawsuit. Indeed, one of the properties that Minnie received from Sonny’s Estate is 17 East Battery, which is located in the historic

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<sup>6</sup> The SCAG also ignores the fact that Minnie not only took under Sonny’s Will pursuant to the *residuary clause*, but she also was a *specific devisee* under other provisions of the Will. See Art. IX.1 of Will dated November 16, 2015 (“I give and bequeath the sum of Three Hundred Fifty Thousand (\$350,000) Dollars to my friend, **MINNIE LEE NEWMAN MEVERS**, if living . . . .”); Codicil dated August 4, 2017 (I give all my personal and household effects, such as jewelry, clothing, automobiles, equipment, furniture, furnishings, silver, books and pictures, and any other articles of personal use or diversion, including policies of insurance thereon, to **MINNIE LEE NEWMAN MEVERS**, “my wife,” absolutely.). Accordingly, even if the SCAG were to be successful on its claim that the Foundation was the residuary beneficiary, it would not divest Minnie of her rights as a specific devisee under the Will. The SCAG has no right to seek to restrain Minnie from using or disposing of any such property or assets.



district of downtown Charleston and overlooks the Cooper River. This house was the couple's home before and after their marriage and is where Minnie still resides. The house has been in Sonny's family for nearly 125 years. Selling or disposing of that house would be the last thing Minnie would ever do and she has absolutely no plans or intention of selling the property.

The most that the SCAG can muster is the weak assertion that Minnie has declined the SCAG's request for an assurance that she will refrain from dissipating Foundation assets pending resolution of this matter. Of course, this assertion assumes without proving that the Foundation even had any assets when this lawsuit was filed. Even if it is assumed for argument's sake that the SCAG can assert the Foundation's rights in this case and that the Foundation was entitled to Sonny's residuary estate, the SCAG still has offered no evidence showing that Minnie is on the verge of disposing of any assets that she received from Sonny's Estate as residual beneficiary and which she still held when this lawsuit was filed. Rather, the SCAG seeks the extraordinary remedy of a preliminary injunction based on the barest of claims—that Minnie would not affirmatively “assure” the SCAG that she will refrain from selling any of the properties she received as residual beneficiary and which she still may hold. If such a meager showing were sufficient to prove “irreparable harm,” then the “extraordinary remedy” of a preliminary injunction during the pendency of the litigation becomes the norm, not the exception.

Even assuming for argument's sake that the SCAG had shown that Minnie was on the verge of disposing of an asset she received from Sonny's Estate as residual beneficiary, which would potentially cause a financial or economic harm to the Foundation if the asset cannot later be retrieved or returned should the Foundation (via the SCAG's lawsuit) obtain a judgment in its favor, “pure economic loss is not sufficient to satisfy the requirement of showing an irreparable harm where an adequate remedy is available at law.” Professional Wiring Installers, Inc. v. Sims,

2008 WL 9840409, \*3 (S.C. Ct. App. 2008). “Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of [an injunction] are not enough.” Sampson v. Murray, 415 U.S. 61, 90 (1974). “The possibility that adequate compensatory or other corrective relief will be available at a later date . . . weighs heavily against a claim of irreparable harm.” Id.

A preliminary injunction is unwarranted when the purported harm to the SCAG can be remedied by monetary relief. See, e.g., MailSource, LLC v. M.A. Bailey & Associates, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003); Hughes Network Sys., Inc. v. InterDigital Communications Corp., 17 F.3d 691, 694 (4th Cir. 1994); Allied World Specialty Insurance Company v. MRL Plumbing, LLC, 2017 WL 3328188, \*3 (D.S.C. 2017). The United States Supreme Court has instructed that:

The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974) (emphasis in original).

This principle was illustrated in Schwartz v. Wellin, No. 2:13-CV-3595-DCN, 2014 WL 51212, at \*1 (D.S.C. Jan. 7, 2014), which reversed a TRO granted by Judge Condon. In that case, which originated in the Probate Court but was removed to the federal district court, three co-trustees (the “Wellin children”) of a trust created by their father had liquidated and distributed over \$95.6 million of the trust’s estimated \$154 million in assets to themselves personally. Id. at \*1; McDevitt v. Wellin, No. 2:13-CV-3595-DCN, 2016 WL 199626 (D.S.C. Jan. 15, 2016). The Wellin children had also used millions of dollars they took from the trust to pay their own attorneys, experts, and consultants. McDevitt, 2016 WL 199626 at \*2. The trust protector and

another co-trustee sued the three co-trustees, *inter alia*, to compel them to restore the trust's assets to the trusts and for temporary and permanent injunctive relief.

While the case was pending in the Probate Court, Judge Condon issued an *ex parte* TRO enjoining the Wellin children from disposing of or using the trust assets. Schwartz, 2014 WL 51212 at \*2. After the case had been removed to the federal district court, a motion was then made to extend the TRO and for a preliminary injunction. Id. In denying the motion, Judge Norton pointed out that the lawsuit primarily sought to force the Wellin children to return the \$95.6 million in trust assets which they had distributed to themselves and, as such, it sought monetary relief. Id. at \*4. Because “the harm at issue can be remedied by money damages,” Judge Norton held the “irreparable harm” element could not be satisfied. Id. (citing Bethesda Softworks, LLC v. Interplay Entm't Corp., 452 F. App'x 351, 353 (4th Cir. 2011)).

The same principles apply in the instant case. Even assuming *arguendo* the SCAG could show it will suffer some economic or financial harm resulting from Minnie's disposition of any property she received from Sonny's estate as residual beneficiary during the pendency of this action, any such harm could be remedied by an award of damages at end of this case after a trial on the merits. The SCAG has failed to satisfy the irreparable harm element.

***(2) Likelihood of Success Requirement:***

The SCAG has also failed to show it is “likely” he will succeed on the merits of the litigation. His claims fail on the merits because (i) he is improperly seeking to pursue the rights of the Foundation, which was a private foundation that was dissolved over 2½ years ago, no longer exists, and no longer has the right, power, or ability to pursue any claims as a matter of law; (ii) he lacks standing or capacity to sue on the Foundation's behalf to enforce any alleged rights it may have to receive Sonny's residuary estate—any such claims belong to the

Foundation as a matter of law, not to the SCAG; and (iii) the Foundation—even assuming *arguendo* the SCAG can sue to enforce its rights—did not have any right to receive any portion of Sonny’s estate because the Foundation did not meet the express conditions or qualifications set forth in his Will and Codicils. Each of these issues is addressed below.

***a. The Foundation Was Dissolved, Has Not Been Reinstated, and Cannot Pursue Any Claims Against Minnie as a Matter of Law:***

On January 23, 2018, the Foundation was dissolved as an entity with the South Carolina Secretary of State with an effective date of January 24, 2018. The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the Secretary of State on January 24, 2018, and thereby forfeited its charter. S.C. CODE ANN. § 33-31-1404(b) provides that “[a] corporation is dissolved upon the effective date of its articles of dissolution.” The Foundation has been dissolved for over 2½ years.

Section 33-31-1405(a) does provide that the Foundation could have revoked its dissolution within 120 days of its effective date, which did not occur. The statutory period for the Foundation to revoke its dissolution expired on May 24, 2018. See S.C. CODE ANN. § 33-31-1405(a) (“A corporation may revoke its dissolution within one hundred twenty days of its effective date.”). No such revocation of dissolution was applied for or occurred.

The Georgia Supreme Court addressed this very scenario in Gas Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc., 436 S.E.2d 207, 208 (Ga. 1993). In that case, a corporation was dissolved in May of 1988 due to its failure to comply with state filing and fee requirements. In 1991, the corporation later filed a lawsuit against several defendants alleging violations of the federal antitrust laws. The trial court dismissed the lawsuit on the grounds that the plaintiff corporation lacked standing to pursue the case as a matter of law because it had been dissolved and never reinstated.

On certification to the Georgia Supreme Court, the Court pointed out that Georgia's statutes give a dissolved corporation two years in which it may seek reinstatement. Because the corporation had not filed for reinstatement within this two-year period, the Court held it no longer existed and, as such, it lacked capacity to sue the defendants. *Id.* at 207 (holding the corporation lacked capacity to bring the antitrust action because of "the expiration of the time in which an administratively-dissolved corporation continues its existence"). The Court explained:

The expiration of the time for reinstatement puts a stamp of finality on the demise of the corporation—it can no longer be resuscitated. The unavoidable conclusion is that the corporation cannot, after the time its demise is deemed complete, initiate any activity. To permit a suit to be initiated in the name of the dissolved corporation after that time would be to sanction a form of legal necromancy, reanimation of the empty husk of a dead corporate entity.

*Id.* at 208.

Numerous other state courts have reached the same holding or conclusion as the Georgia Supreme Court in the Gas Pump case. *See, e.g., Pacesetter Real Estate, Inc. v. Fasules*, 767 P.2d 961, 964-65 (Wash. 1989) (holding that corporation that had been dissolved and which had not timely sought reinstatement following such dissolution within two-year reinstatement period set forth in statute "results in irrevocable dissolution" and, following expiration of reinstatement period, corporation cannot maintain an action; court observed "[t]his view is consistent with case law across the country"); *Abrams v. Porter*, 920 P.2d 386, 388-89 (Idaho 1996) (action taken by a dissolved corporation beyond the two-year limitation period for the corporation to seek reinstatement is ineffective because the dissolution becomes irrevocable at that time and the corporation ceased to have any existence); *Bio-Thrust, Inc. v. Div. of Corps.*, 80 P.3d 164, 166 (Utah 2003) (dismissing corporation's lawsuit for lack of standing when the corporation had been dissolved and had not been reinstated within the statutory one-year limitation period for the corporation to seek reinstatement); *Metered Appliances, Inc. v. 75 Owners Corp.*, 225 A.D.2d

338, 338 (N.Y. App. Div. 1996) (dismissal of the complaint was warranted when corporation had been dissolved and had not sought reinstatement, thus it had no legal capacity to commence the action); see also Deere & Co. v. JPS Dev., Inc., 592 S.E.2d 175 (Ga. Ct. App. 2003) (corporation that had been dissolved could not file action to revive breach of warranty and negligent misrepresentation action against seller of tractors since two-year statutory period for bringing a renewal action had run and corporation had no legal existence).

Likewise, at the time when the SCAG filed this lawsuit, and even to this day, the Foundation had been dissolved. The 120-day statutory period for the Foundation to revoke its dissolution expired on May 24, 2018, which was over 1½ years before the SCAG filed this lawsuit. At that time, the Foundation no longer existed as an entity, had forfeited its charter, and could not sue or be sued. Because the SCAG is attempting to bring a lawsuit on the Foundation's behalf and seeks to enforce the Foundation's rights and claims against Minnie (albeit improperly as discussed below), the SCAG likewise lacks standing, capacity, or right to bring this lawsuit. The SCAG cannot sue to enforce rights on the Foundation's behalf when the Foundation itself cannot bring such an action.

***b. As a Matter of Law, the SCAG Lacks Standing or Capacity to Pursue any Rights the Foundation May Have to Sonny's Estate:***

Even if it were assumed that the Foundation had not been dissolved years ago and was still an existing corporation with the right and power to sue, the SCAG still could not bring this lawsuit against Minnie because any claims belong to the Foundation, not to the SCAG. The SCAG's Petition alleges that it has a "statutory and common law duty to represent the interests of the unspecified charitable beneficiaries [of the Foundation] and the interests of the public at large." See Petition ¶ 1. The SCAG is trying to enforce the distribution of the residuary estate to the Foundation as a charitable gift, notwithstanding the Foundation's ineligibility to receive it.

In so doing, the SCAG is attempting to re-open the case and then represent the Foundation's putative interests. However, the SCAG erroneously relies on case law and statutory provisions which authorize the SCAG to *prosecute* corporations, rather than represent them.

As a threshold point, in Davis v. Hamm, 300 S.C. 284, 387 S.E.2d 676 (Ct. App. 1989), our Court of Appeals held it is well-established that the assets of a corporation belong to the corporation (and not the individual stockholders) and that a loss caused to a corporation because of mismanagement is an asset of the corporation, thus any recovery on such a cause of action belongs solely to the corporation. Id. at 287–88, 387 S.E.2d at 678; see also Babb v. Rothrock, 303 S.C. 462, 401 S.E.2d 418 (1991) (shareholders lacked standing to assert claim based on alleged misappropriation of corporate property); In re Greenwood Supply Co., 295 B.R. 787, 795 (Bankr. D.S.C. 2002) (holding that a cause of action for an accounting based upon a diversion of corporate assets is a claim that must be brought by the corporation, not its shareholders individually). Thus, South Carolina law is clear that any recovery on behalf of a corporation must be pursued by the corporation itself, not by its shareholders or owners individually.

In this case, the SCAG has not cited any law holding that it has the right, power, or authority to step in place of the Foundation or to bring an action on the Foundation's behalf to enforce any rights the Foundation may have against Minnie. As the purported basis for his authority to bring this action, the SCAG merely relies on case law providing that under certain circumstances the SCAG can file an action in its *parens patriae* capacity *on behalf of the beneficiaries of a charitable foundation or charitable trust* and on a statute which authorizes the SCAG to hold *nonprofit corporations* accountable concerning their use of their charitable assets.

Even assuming for argument's sake that the SCAG's allegation is correct that Minnie misappropriated assets rightfully belonging to the Foundation, which is vigorously disputed, the

Foundation's *beneficiaries* have no cause of action against Minnie. Instead, it is the Foundation itself—not its shareholders or ultimate beneficiaries—that would have a potential cause of action against Minnie for any such alleged misappropriation. The Foundation itself has not commenced or alleged any such a claim against Minnie.

The SCAG cites to a statute authorizing him to sue *nonprofit corporations* to hold them accountable concerning their use of their charitable assets. See S.C. CODE ANN. § 1-7-130. Obviously, the SCAG's suit in this case is not an action against the Foundation. The SCAG has not filed any action against the Foundation seeking to hold it accountable.

The SCAG also claims he “can intervene in an action and participate to protect charitable devises even where a Trust has not yet been established or there is a question as to the existence of the trust.” See Petition, ¶ 2. As support for this position, the SCAG primarily relies on the cases of Watson v. Wall, 229 S.C. 500, 93 S.E.2d 918 (1956) and Furman Univ. v. McLeod, 238 S.C. 475, 120 S.E.2d 865 (1961). Both of those cases involved the SCAG's intervention into active lawsuits when an estate's personal representative had filed an action to interpret a will. Neither of those cases involved a scenario, like the present case, in which the SCAG is attempting to sue in place of a private foundation and to leap frog or skip the foundation's own board, officers, and managers so as to prosecute the foundation's putative rights or claims even though the foundation itself has not initiated any such action.

More recently, in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013), the SCAG was granted leave without objection from the parties to intervene in an active case involving a contested will. Like the present case, the SCAG attempted to reinterpret the terms of the will, ostensibly to protect the public interest of a charitable trust or unspecified charitable beneficiaries. Our Supreme Court expressly rebuked the SCAG's actions in the case and made



pointed remarks that the SCAG is not a “super administrator of charities.” Id. at 446, 743 S.E.2d at 765. The Court explained that:

the [SCAG] has no authority to become completely entrenched in an action that began here as one to set aside a will and for statutory shares, direct the settlement negotiations, and then fashion a settlement that discards [the decedent’s] will and his 2000 Irrevocable Trust and replaces them with new trusts, only to give himself sole authority to select the managing trustee. By so doing, the [SCAG] has effectively obtained control over the bulk of [the decedent’s] assets and has given his office unprecedented authority to oversee the affairs of the parties that has not heretofor been recognized in our jurisprudence.

Id. at 445-46, 743 S.E.2d at 765.

The SCAG is engaging in a similar overreach in this case. He wants to usurp the Foundation’s own board, officers, and managers. The Foundation itself has not initiated any lawsuit against Minnie. Despite this fact, the SCAG has taken it upon himself to effectively intervene and file an action for the Foundation trying to radically reinterpret the terms of Sonny’s Will and Codicils supposedly in his role as protector of the Foundation’s potential beneficiaries. The SCAG is attempting to initiate a case on behalf of the Foundation by intervening in a probate process that had already been closed, in order to facilitate a forced distribution of assets to the Foundation, when the Foundation itself has not sought any such relief, by improperly relying on a statute authorizing the SCAG to prosecute the Foundation for misuse of charitable assets and on case law simply allowing the SCAG to intervene on behalf of the beneficiaries of a yet-to-be-funded charity into active lawsuits involving an estate’s personal representative’s action to interpret a will. Neither of those situations apply to the present case.

***c. The Foundation Did Not Satisfy the Conditions and Qualifications in Sonny’s Will and Codicils:***

The SCAG’s lawsuit is based entirely on its faulty premise that the Foundation was a residuary beneficiary under Sonny’s Will, but the SCAG ignores the fact that the Foundation was

disqualified from receiving under the Will because at the time of Sonny's death and when the Estate was distributed (a) it could not qualify as a charitable organization within the meaning of Section 2055 of the IRC and (b) a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes, both of which were necessary conditions to the Foundation's receipt of any benefits under the terms of the Will.

The SCPC mandates in its introductory sections that "[t]his Code shall be liberally construed and applied to promote its underlying purposes and policies" including "to discover and *make effective the intent of a decedent* in the distribution of his property." S.C. CODE ANN. § 62-1-102(b)(2) (emphasis added). As expressly codified in the SCPC, a primary or paramount goal of this Court should be to ascertain and make effective the decedent's intent regarding the disposition of his estate. See Holcombe-Burdette v. Bank of Am., 371 S.C. 648, 655, 640 S.E.2d 480, 483 (Ct. App. 2006).

"[O]ne of the basic rights known to our civilization is the privilege of disposing of property by Will as one elects." In re Last Will & Testament of Smoak, 286 S.C. 419, 427, 334 S.E.2d 806, 811 (1985). South Carolina law has long recognized that "[t]he power to dispose of property by will includes the right to attach to testamentary gifts such terms, conditions, or restrictions as the testator pleases, provided they are not contrary to public policy or forbidden by law." Brown v. Drake, 275 S.C. 299, 302, 270 S.E.2d 130, 131 (1980). In the present case, Sonny's Will sets forth specific conditions that the Foundation must satisfy to qualify for receipt of the gift or distribution of the residuary estate. The SCAG does not claim that these conditions in Sonny's Will violate public policy or are forbidden by law.

Sonny's Will specifically provided for the disposition of his residuary estate. Article XII of his original Will, which was made before his marriage to Minnie, states:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE “SONNY MEVERS” FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

After Sonny married Minnie on September 12, 2016, he later executed a Codicil to his Will amending Article XII so as to add the following sentence to the conclusion of that article:

Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, **MINNIE LEE NEWMAN MEVERS**, absolutely and in fee simple, forever, on the condition that she shall survive me.

Under the terms and provisions of the Will, the Foundation’s status as the beneficiary of Sonny’s residuary estate would only vest at the time of Sonny’s death **provided** the Foundation was in existence at that time **and** it satisfied the other “conditions” set forth in Article XII—that (a) it is an organization which is charitable within the meaning of Section 2055 of the IRC and (b) that the gift is permitted as a charitable deduction from Sonny’s Estate for federal estate tax purposes. See Wentworth Aff. ¶12; Moss Aff. ¶15.

If either of those conditions were not satisfied either at the time of Sonny’s death or when the estate assets were to be distributed, then the devise or gift to the Foundation either did not vest or, if it vested, it lapsed or was cancelled and instead devolved to Minnie. See Wentworth Aff. ¶13; Moss Aff. ¶14; Shuman v. Heldman, 63 S.C. 474, 41 S.E. 510, 515-16 (1902) (“No precise form of words is necessary in order to create conditions in wills. Any expressions disclosing the intention will have that effect. These conditions may be either conditions precedent or conditions subsequent. . . . If the language of the particular clause or of the whole will shows that the act on which the estate depends must be performed before the estate can vest, the condition is, of course, precedent; and, unless it is performed, the devisee can take nothing.

If, on the contrary, the act does not necessarily precede the vesting of the estate, but may accompany or follow it,—if this is to be collected from the whole will,—the condition is subsequent.”); Joanne R. Sternliefb, Uses of Charitable Giving in Estate Planning, C118 ALI-ABA 69, 74 (ALI-ABA March 1, 1995) (“In order for an estate to receive an estate tax charitable deduction for a bequest to charity, the charity must be a Qualified Charity on the date of distribution. If the client wants to make sure she receives a charitable deduction, the will should say that the bequest will only be made if the organization is a Qualified Charity. For example, a bequest might take the following form: ‘I give \$10,000 to the Legal Aid Society, New York, New York, if it is a Qualified Charity.’ Under this scenario, if the Legal Aid Society is not a Qualified Charity when the distribution is to be made, the bequest would lapse.”).

It is imperative for the Court to understand that Minnie specifically retained well-qualified attorneys and advisors to assist her in the administration of Sonny’s estate. She went *above and beyond* to hire multiple people who are specialists or experts in probate and tax matters to assist with the estate administration. As discussed above and as detailed in the affidavits filed with this memorandum, Minnie not only retained Ms. Wentworth, a probate and estate planning attorney, but also specifically hired Mr. Moss, who is both a CPA and a tax attorney. Mr. Moss served as advisor on the question of whether the Foundation satisfied the conditions in Article XII of the Will. See Wentworth Aff. ¶¶5-6; Moss Aff. ¶17. Mr. Moss investigated the matter and concluded that the Foundation was a sham and it had no real substance. See Moss Aff. ¶¶18-19.

Among other things, the Foundation had not filed the legally required tax information returns (Form 990-PF) for the fiscal years 2014, 2015, and 2016 and had no other reporting or other documentation to the IRS or another regulatory body concerning its operations or activities

during these periods. See Moss Aff. ¶18; Wentworth Aff. ¶14. The Foundation had no real corporate records or documentation (outside its initial formation documents) that evidenced the Foundation had been, and was continuing, to be organized and operated exclusively for charitable purposes. Id. Almost the entirety of the Foundation's Board members had conflicts of interest as they primarily comprised persons with whom Sonny transacted business raising a number of self-dealing concerns under Section 4941 of the IRC. Id. There were no records of when and how long these individuals were serving as directors, whether they were in fact appointed, or had ever approved any transactions, the compensation arrangements, or any charitable activities, grants, or any other matters required of individuals acting as directors. Id. The Foundation had no bookkeeping or records, had not conducted periodic meetings or recorded minutes of meetings as required in the bylaws, had no records of appointments of directors or officers, had no staff or employees, and had no office. Id. In short, the Foundation had no substance and/or documentation that could demonstrate it had been actually operated by a board of directors to further charitable purposes. Id.

Based on his considerable experience in the field of taxation and with tax audits by the IRS, Mr. Moss concluded that the Foundation could not withstand an IRS audit, it did not qualify as a charitable organization within the meaning of Section 2055 of the IRC, and that a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes. See Moss Aff. ¶19; Wentworth Aff. ¶15. Mr. Moss communicated his conclusions to Ms. Wentworth and Minnie. See Moss Aff. ¶20; Wentworth Aff. ¶15.

***Mr. Moss's conclusion about the Foundation was confirmed by the IRS, which revoked the Foundation's federal tax-exempt status under IRC § 501(c)(3) effective on November 15, 2017. See Moss Aff. ¶21; Wentworth Aff. ¶16. His conclusion has also been***

validated by Marc Owens, who is a practicing tax attorney and former Director of the IRS's Exempt Organizations Division with 25 years of overall experience working for the IRS. See Owens Aff. ¶¶2-4, 18. Mr. Owens has given an affidavit confirming that the gift to the Foundation did not satisfy the conditions under Sonny's Will of being "charitable within the meaning of Section 2055 of the Internal Revenue Code" and the gift would not have "been permitted as a charitable deduction from Sonny's Estate for federal estate tax purposes." Id. ¶22. Therefore, the gift of Sonny's residual estate devolved to Minnie.

On January 23, 2018, the Foundation's Board voted to dissolve the Foundation for the reasons pointed out by Mr. Moss—that the Foundation did not qualify as a tax-exempt entity and it had no real substance. See Moss Aff. ¶22. The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the South Carolina Secretary of State on January 24, 2018, and the Foundation ceased to exist. Id.

In straightforward terms, Minnie—not the Foundation—was the residuary beneficiary under Sonny's Will because the Foundation did not meet the express conditions set forth in the Will. Minnie and Ms. Wentworth took proper steps to probate Sonny's Will and administer his estate based on the reasoned and good faith determination that the Foundation had not satisfied the conditions in the Will, that the devise or gift to the Foundation had lapsed or was canceled, and that Minnie was the residuary beneficiary under the Will. See Wentworth Aff. ¶17; Moss Aff. ¶23; Owens Aff. ¶22. Because the Foundation was not a proper residuary beneficiary, these actions were completely proper and were mandated by the terms and provisions of Sonny's Will. Id.

The SCAG has selectively quoted an excerpt from S.C. CODE ANN. § 62-3-101 to argue that the bequest of Sonny's real estate immediately "devolved" to the Foundation upon Sonny's

death and thus the Foundation purportedly became a “vested” beneficiary at that time. See Petition ¶ 17. However, the SCAG inexplicably omits the rest of § 62-3-101, which clarifies that a bequest of real estate does not “devolve” to the beneficiary in cases involving the lapse of a gift or other circumstances affecting the devolution of testate estates. See S.C. CODE ANN. § 62-3-101 (“Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will ***or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates . . .***”).

Sonny’s real property would not devolve to the Foundation upon his death if the gift lapsed or was canceled under the terms and provisions of his Will, including the Foundation’s failure to satisfy the conditions for it to receive the residuary estate—i.e., that it be an organization that is charitable within the meaning of Section 2055 of the IRC and that the gift would be permitted as a charitable deduction from Sonny’s Estate for federal estate tax purposes. See Wentworth Aff. ¶21; Moss Aff. ¶26. Because the Foundation could not and did not satisfy the conditions in Article XII of Sonny’s Will to qualify for the gift of the residuary estate either at the time of Sonny’s death or when the distributions were made from the estate, the devise or gift to the Foundation either did not vest or, if it vested, lapsed or was cancelled and instead devolved to Minnie. See Wentworth Aff. ¶¶22-23; Moss Aff. ¶27.

To support its allegation that the Foundation was a tax-exempt organization on the date of Sonny’s death and when the Estate was distributed, the SCAG relies almost entirely on the IRS determination letter issued ***on July 21, 2005***, which granted the Foundation tax-exempt status as a private, nonoperating foundation under § 501(c)(3) of the IRC. See Petition ¶ 10. ***That letter was issued nearly 15 years ago and was revoked by the IRS effective on November 15, 2017.*** The SCAG has failed to submit any affidavit or other evidence of any kind demonstrating that

Mr. Moss was incorrect that the Foundation did not satisfy the conditions in Article XII of the Will on the date of Sonny's death or when the Estate was distributed. The SCAG also does not dispute that the Foundation's tax-exempt status was revoked by the IRS effective on November 15, 2017, which was only two days after Minnie had been appointed as Personal Representative.

To make up for these glaring deficiencies, the SCAG makes the rather incredible argument that Minnie had a "fiduciary duty" to commit perjury as well as fraud upon the federal government. According to the SCAG's Petition:

Upon information and belief, Ms. Newman was aware of the administrative revocation and knew or should have known that the Foundation could have its tax exempt status restored. She was obliged to do so as a fiduciary of the Foundation and Ms. Newman was also required to do so pursuant to her legal and fiduciary obligations as Personal Representative of the Estate.

See Petition ¶ 24. The SCAG further claims in conclusory fashion that "the Foundation's tax exempt status was and remains eligible to be restored retroactively at all times relevant to this Petition." Id. ¶ 23.<sup>7</sup>

The SCAG is wrong. Mr. Moss is a CPA and tax attorney with over 35 years of experience. He regularly prepares tax returns for clients and handles IRS matters, including tax audits and appeals within the IRS and U.S. Tax Court appeals. As discussed in his affidavit, the SCAG's contention that "the Foundation's tax exempt status could be 'restored retroactively' is a gross over-simplification of the situation and a distortion of the facts." See Moss Aff. ¶36. He explains that "it would not have been possible to retroactively restore the Foundation's tax exempt status" and that "[r]etroactively restoring a private foundation's tax exempt status is not an easy process and the IRS has no automatic or guaranteed procedure to have an organization's

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<sup>7</sup> The SCAG has not supported this statement in its Petition with the affidavit of any accountant, tax attorney, or any other qualified person with expertise in tax matters. The Petition nowhere describes any of the qualifications of C. Havird Jones, Jr., the person who verified the Petition and the Motion for Temporary Restraining Order.



revoked tax-exempt status retroactively reinstated.” Id. Mr. Moss’s conclusion was also confirmed and supported by Mr. Owens. See Owens Aff. ¶23.

To obtain retroactive reinstatement of tax-exempt status, the Foundation would be required to submit a Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code). See Moss Aff. ¶36; Owens Aff. ¶23. In Revenue Procedure 2014-11, the IRS set forth procedures for retroactively reinstating the tax-exempt status of an organization that had that status automatically revoked for failure to file the required annual returns for three consecutive years. See REV. PROC. 2014-11, 2014-3 I.R.B. 411 (2014). “Generally, to obtain retroactive reinstatement of the organization’s tax-exempt status, it must apply not later than 15 months after the later of (1) the date of the revocation letter or (2) the date on which the IRS posted the organization’s name on the Revocation List.” Martin J. McMahon, Jr. *et. al.*, Recent Developments in Federal Income Taxation: The Year 2014, 17 FLA. TAX REV. 97, 270 (2015). The decision to grant retroactive reinstatement is discretionary with the IRS. It is not automatic that any organization will obtain such reinstatement even if all of the qualifications for it are satisfied. See Owens Aff. ¶23.

Under the procedures in Revenue Procedure 2014-11, the organization must still show that it was “eligible” to file reports as a tax-exempt organization for each of the three years that it failed to file them, which means it must satisfy the organizational and operational tests for all periods it seeks to be exempt. See REV. PROC. 2014-11 §§4-6. This is based on the submission of financial, corporate, and programmatic documentation to evidence, to the satisfaction of the IRS, that it was, and continues to be, organized and operated exclusively for charitable purposes in accordance with Section 501(c)(3) and applicable Treasury Regulations for the time periods it failed to file. It must also demonstrate that it had “reasonable cause” for its failure to file the

annual information returns. Id. §§ 8.01-8.02. This “reasonable cause” showing involves a weighing of various “factors,” including whether the organization’s failure to file “was due to its reasonable, good faith reliance on erroneous written information from the IRS, stating that the organization was not required to file a return or notice” or “arose from events beyond the organization’s control . . . that made it impossible for the organization to file a return or notice for the year.” Id. § 8.05. In determining whether reasonable cause exists, the IRS will only consider a factor if the organization shows to the IRS’s satisfaction evidence to substantiate the factor.

Critically, these representations by the organization must be made under penalty of perjury. See Owens Aff. ¶23. The reasonable cause statement submitted by the organization must “include an original declaration, dated and signed ***under penalties of perjury*** by an officer, director, trustee, or other official who is authorized to sign for the organization.” Id. § 8.06 (emphasis added). This sworn declaration must state: “I, (Name), (Title) declare, under penalties of perjury, that I am authorized to sign this request for retroactive reinstatement on behalf of [Name of Organization], and I further declare that I have examined this request for retroactive reinstatement, including the written explanation of all the facts of the claim for reasonable cause, and to the best of my knowledge and belief, this request is true, correct, and complete.” Id.

Of course, based on the information that Mr. Moss learned during his work and of which Minnie and Ms. Wentworth were made aware, Minnie would know that none of these assertions would be “true, correct, and complete.” See Wentworth Aff. ¶15 (“Minnie and I were concerned that it would be fraudulent or possibly even criminal to file papers taking the position that the Foundation was a tax exempt organization.”); Moss Aff. ¶36 (“Based on the information I was

made aware of relating to the Foundation, it would have been fraudulent for the Foundation to seek retroactive restoration of its tax exempt status from the IRS and I, as well as any other competent CPA, would have refused to file such a fraudulent application.”).

Minnie would know that the Foundation was **not** “eligible” to file reports as a tax-exempt organization for each of the three years that it failed to file them. She would know that the Foundation did **not** satisfy the organizational and operational tests for all periods it would seek to qualify as tax-exempt. She also would know that the Foundation did **not** have “reasonable cause” for its failure to file the annual information returns. The Foundation had not failed to file the returns based on any reasonable, good faith reliance on erroneous written information from the IRS or because of events beyond the Foundation’s control that made it impossible for the Foundation to file the returns. Mr. Owens has confirmed that based on the known facts an effort to reinstate tax-exempt status would have been implausible. See Owens Aff. ¶23-25.

In sum, the SCAG is claiming that Minnie should have committed perjury and filed a false application with the IRS seeking retroactive restoration of the Foundation’s tax-exempt status. The absurdity of the SCAG’s position is obvious. The SCAG has not shown that it is “likely” to prevail in this action. To the contrary, based on the evidence presented in the record, it is certain the SCAG will lose.

***(3) Inadequacy of Remedy at Law Requirement:***

In MailSource, the South Carolina Court of Appeals held that “[a]n injunction is an equitable remedy; as such, it is available only where no remedy at law exists or where the legal remedy would fail to make the party whole.” 356 S.C. at 369-70, 588 S.E.2d at 639; see also Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (reversing preliminary injunction and finding that the plaintiff had adequate

remedy at law). In MailSource, which involved an employer's action to enforce a non-compete agreement executed by the defendants, the Court pointed out that in addition to seeking an injunction, the plaintiff also should be able to prove money damages from any breach of the agreement by the defendants. 356 S.C. at 369, 588 S.E.2d at 639. As a result, the Court of Appeals affirmed the trial court's denial of the plaintiff's motion for a preliminary injunction because of the availability of an adequate remedy at law—an award of monetary damages.

SCAG likewise has failed to show an inadequate remedy at law. The SCAG's Petition alleges that Minnie "breached her fiduciary and legal duties to the Estate and the Foundation and improperly took possession of assets which should have been transferred to the Foundation and used assets for her own personal benefit and enjoyment ...." See Petition ¶ 30. Minnie vehemently denies these claims. However, even assuming *arguendo* they were true, any harm to SCAJ can be remedied by an award of money damages. See MailSource, 356 S.C. at 369, 588 S.E.2d at 639. Because the SCAJ has an adequate remedy at law, its motion must be denied.

### **CONCLUSION:**

For the forgoing reasons, Defendant requests that the Court deny the Plaintiff's motion.

ROSEN HAGOOD, LLC

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ATTORNEYS FOR DEFENDANT

Charleston, South Carolina  
 September 21, 2020.

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0154 through R\_0165 (Affidavit of H. Christopher Moss filed March 20, 2020). In lieu of reproducing this document again here, this note has been substituted in its place to avoid unnecessary duplication.

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0166 through R\_0175 (Affidavit of Jessica M. Wentworth filed March 20, 2020). In lieu of reproducing this document again here, this note has been substituted in its place to avoid unnecessary duplication.

**EXHIBIT 3**

|                                       |   |                                 |
|---------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS    |
|                                       | ) |                                 |
| COUNTY OF CHARLESTON                  | ) |                                 |
|                                       | ) | Case No.: 2020-CP-10-04089      |
| IN THE MATTER OF:                     | ) |                                 |
| THE ESTATE OF ROY E. MEVERS, JR.      | ) |                                 |
|                                       | ) |                                 |
| SOUTH CAROLINA ATTORNEY               | ) | <b>AFFIDAVIT OF</b>             |
| GENERAL                               | ) | <b>MARCUS S. OWENS, ESQUIRE</b> |
| Plaintiff/Counter-Claim               | ) |                                 |
| Defendant,                            | ) |                                 |
|                                       | ) |                                 |
| v.                                    | ) |                                 |
|                                       | ) |                                 |
| MINNIE LEE NEWMAN MEVERS,             | ) |                                 |
| Defendant/Counter-Claim               | ) |                                 |
| Plaintiff/Cross-Claim                 | ) |                                 |
| Plaintiff/Third-Party Plaintiff       | ) |                                 |
|                                       | ) |                                 |
| v.                                    | ) |                                 |
|                                       | ) |                                 |
| J. JAMES DUGGAN, as Special           | ) |                                 |
| Administrator of the Estate of Roy E. | ) |                                 |
| Mevers, Jr.,                          | ) |                                 |
| Cross-Claim                           | ) |                                 |
| Defendant/Third-Party                 | ) |                                 |
| Defendant,                            | ) |                                 |
|                                       | ) |                                 |

PERSONALLY APPEARED before me MARCUS S. OWENS, who being duly sworn does state as follows:

1. I am an adult citizen and resident of Montgomery County, State of Maryland. I am a licensed attorney and partner in Loeb & Loeb, LLP, in its Washington, DC office. Loeb & Loeb, LLP also has offices in Los Angeles, New York, Chicago, Nashville, San Francisco, Beijing and Hong Kong.

2. I am admitted to practice law in the State of Florida and the District of Columbia. I am a member of the Florida Bar and the District of Columbia Bar. I am admitted to practice before the United States Tax Court, the District of Columbia Court of Appeals and the United



States Supreme Court.

3. I received my B.A. degree in government from Florida State University and my J.D. degree from Duke University.

4. For the first half of my career, beginning in 1975, I was employed by the Internal Revenue Service in the Exempt Organizations Division for 25 years, the last ten of which was as the Director of the Division. In that capacity, I was the agency's chief decision maker regarding the design and implementation of federal tax rulings and enforcement programs for tax-exempt organizations. Before becoming Director of the Division, I was involved in the analysis of applications for tax-exempt status and the resolution of Internal Revenue Service investigations involving tax-exempt organizations where issues of significant importance for federal tax administration had been identified. I also participated in the review of work involving the processing of applications for tax-exempt status and the handling of investigations of tax-exempt organizations by Internal Revenue Service field offices. I conservatively estimate that I reviewed over 5,000 applications, ruling requests and investigations of tax-exempt organizations during my tenure at the Internal Revenue Service. Since leaving the Internal Revenue Service in early 2000, I have practiced law with a focus on tax-exempt organizations, including advising on compliance with federal tax law and on matters involving federal, state and foreign regulatory authorities.

5. In May 2020, I was engaged by Daniel F. Blanchard, III of Rosen Hagood, LLC, as an expert witness regarding the administration of federal tax law applicable to tax-exempt organization in *In the Matter of the Estate of Roy E. Mevers, Jr. and South Carolina Attorney General v. Minnie Lee Newman Mevers*.

6. In reviewing documentation regarding the pending case, I learned that in 2004,

Sonny had worked with an accountant to incorporate a South Carolina nonprofit corporation known as The “Sonny Mevers” Foundation (hereinafter “Foundation”). I am aware that Articles of Incorporation were filed with the South Carolina Secretary of State on July 23, 2004, and that the IRS had issued a determination letter on July 21, 2005, which recognized the Foundation as a tax-exempt private foundation under Section 501(c)(3) of the Internal Revenue Code (“Code”) with an effective date of June 23, 2004. Pursuant to the IRS determination letter, the Foundation was also recognized as qualified to receive tax deductible bequests, devises, transfers, or gifts under Section 2055 of the Code.

7. I was further informed that prior to his death, Sonny had executed a Last Will and Testament dated November 16, 2015, as well as Codicils to his Will dated April 12, 2017, and August 4, 2017. I am informed that these testamentary instruments were prepared by Sonny’s estate planning attorney, Irvin Slotchiver, Esquire. Collectively, these testamentary documents will be referred to herein as Sonny’s “Will.”

8. Under the terms and provisions of his Last Will and Testament dated November 16, 2015, Sonny made specific devises of various amounts to several individuals. At the time the document was executed, Sonny and Minnie were not yet married. However, Sonny specifically included Minnie as a beneficiary under that document. Article IX.1 of the Will dated November 16, 2015, states: “I give and bequeath the sum of Three Hundred Fifty Thousand (\$350,000) Dollars to my friend, **MINNIE LEE NEWMAN MEVERS**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate.”

9. Among other provisions, Sonny’s Last Will and Testament dated November 16, 2015, also contains a residuary clause in Article XII, which states:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have an interest at the time of my death, not otherwise effectively disposed of, to **THE "SONNY MEVERS" FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

10. I am informed that Sonny married Minnie on or about September 12, 2016. Thereafter, Sonny executed the Codicil dated April 12, 2017, which amended Article XII of his Will so as to add the following sentence to the conclusion of that article:

Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, **MINNIE LEE NEWMAN MEVERS**, absolutely and in fee simple, forever, on the condition that she shall survive me.

Although the exact reason for this Codicil is presently unclear, it is possible that Sonny made this change to his Will in anticipation that the Foundation might not qualify as an organization that is charitable within the meaning of Section 2055 of the Code. As a result, a distribution to the Foundation by his estate would not qualify for a charitable deduction for federal estate tax purposes leaving his full estate subject to federal estate taxation, a result that could be mitigated by modifying his Will to take advantage of the marital or spousal exemption.

11. I was informed that Sonny later executed another Codicil dated August 4, 2017, which amended Article II of his Will to add the following sentence to Paragraph 3 thereof:

I give all my personal and household effects, such as jewelry, clothing, automobiles, equipment, furniture, furnishings, silver, books and pictures, and any other articles of personal use or diversion, including policies of insurance thereon, to **MINNIE LEE NEWMAN MEVERS**, "my wife," absolutely.

12. Under the terms and provisions of Sonny's Will, the Foundation's status as the outright beneficiary of Sonny's residuary estate would vest at the time of Sonny's death *provided* the Foundation was in existence at the time *and* it satisfied the other "conditions" set forth in

Article XII. The Will sets forth specific conditions that the Foundation must satisfy to qualify for receipt of the gift or distribution of the residuary estate—that (a) it is an organization which is charitable within the meaning of Section 2055 of the IRC and (b) that the gift is permitted as a charitable deduction from Sonny’s Estate for federal estate tax purposes.

13. If either of those conditions were not satisfied either at the time of Sonny’s death or when the estate assets were to be distributed, then the devise or gift to the Foundation either did not vest, or if it vested, it lapsed or was cancelled and instead devolved to Minnie. *See* Joanne R. Sternliefb, Uses of Charitable Giving in Estate Planning, C118 ALI-ABA 69, 74 (ALI-ABA March 1, 1995) (“In order for an estate to receive an estate tax deduction for a bequest to a charity, the charity must be a Qualified Charity on the date of distribution. If the client wants to make sure she receives a charitable deduction the will should say that the bequest will only be made if the organization is a Qualified Charity. For example, a bequest might take the following form: ‘I give \$10,000 to Legal Aid Society, New York, New York, if it is a Qualified Charity.’ Under this scenario, if the Legal Aid Society is not a Qualified Charity when the distribution is to be made, the bequest would lapse.”)

14. In view of the language in Sonny’s Will, Minnie contacted H. Christopher Moss, who is both a Certified Public Accountant and tax attorney, to provide counsel and advice as part of her effort to ascertain whether or not the Foundation satisfied the condition imposed in Sonny’s Will for it to receive the residuary estate.

15. I learned that Mr. Moss concluded that the Foundation could not withstand an IRS audit, the Foundation could not and would not qualify as a charitable organization within the meaning of Section 2055 of the IRC, and that a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes. My

understanding is that his conclusions were based, in part, on the fact that the Foundation had not filed the legally required tax information returns (Form 990-PF) for the fiscal years 2014, 2015, and 2016 and he could find no other reporting or other documentation to the IRS or another regulatory body concerning its operations or activities during these periods. I understand the Foundation had no real corporate records or documentation (outside its initial formation documents) that evidenced the Foundation had been, and was continuing, to be organized and operated exclusively for charitable purposes. I further understand that almost the entirety of the Foundation's Board members had conflicts of interest as they primarily comprised of persons with whom Sonny transacted business, potentially raising a number of self-dealing concerns under Section 4941 of the Code. I have been informed that there were no records of when and how long these individuals served as directors, whether they were in fact appointed, or had ever approved any transactions, compensation arrangements, or any charitable activities, grants, or any other matters required of individuals acting as directors. I further understand that the Foundation had no significant bookkeeping or similar records, had not conducted periodic meetings or maintained minutes of meetings as required by its bylaws, had no records of appointments of directors or officers, had no staff or employees, and had no office. In short, I learned that the Foundation had no substance and/or documentation that could demonstrate it had been actually operated by a board of directors to further charitable purposes. Based upon these factual representation and my experience with the Internal Revenue Service, I am unaware of any reason to believe Mr. Moss's conclusion about the Foundation is incorrect.

16. I learned that Mr. Moss conveyed to Minnie that the Foundation did not satisfy the conditions imposed in Sonny's Will for it to qualify to receive the residuary estate. I understand that, specifically, Mr. Moss concluded the Foundation was not an organization that is

charitable within the meaning of Section 2055 of the IRC and the gift would not be permitted as a charitable deduction from Sonny's Estate for federal estate tax purposes.

17. I also learned that Mr. Moss's conclusion was confirmed by the IRS, which revoked the Foundation's tax exempt status under Section 501(c)(3) of the Code, effective on November 15, 2017, for failing to file information returns for the prior three consecutive years. I was informed that as of November 15, 2017, the Foundation was a taxable corporation.

18. Based on my considerable experience working for the Exempt Organizations Division of the IRS, and the facts as they were represented to me, I agree with Mr. Moss's conclusions that prior to the official revocation in November of 2017, the Foundation would not withstand an IRS audit, not qualify as a charitable organization with the meaning of Section 2055 of the Code, and that a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes.

19. From my experience, once the IRS officially recognizes an organization's tax-exempt status, it notifies the organization of the status in a determination letter sent to the organization and by listing the organization's name on its public tax-exempt organization directory, known as IRS Publication 78. Rev. Proc. 2018-32, Rev. Proc. 2020-5.

20. Although donors or contributors may generally rely on Publication 78 to confirm that their contributions to a listed organization will qualify for a tax deduction, there are three exceptions to this rule. Rev. Proc. 2018-32. The IRS has stated that individuals may not rely on Publication 78 regarding an organization's tax-exempt status if the contributor: (1) had knowledge of the revocation of the determination letter or ruling; (2) had knowledge that the a revocation was imminent; or (3) was aware of activities or deficiencies which would give rise to revocation. Rev. Proc. 2018-32.

21. Given the Foundation's lack of books and records, as discovered through Mr. Moss's investigation, it appears there is virtually no evidence that the Foundation had, in fact, been operated exclusively for charitable purposes, including meeting its annual requirement to file a Form 990-PF for three consecutive tax years, a prerequisite for qualifying contributions to it as deductions under Section 2055. Minnie's knowledge, and the knowledge of the professionals advising the Estate, of those facts demonstrate that the Estate could not rely on the inclusion of the Foundation in Publication 78 and on the IRS's previously-issued determination as to the Foundation's tax-exempt status.

22. Given that the Foundation's tax-exempt status was previously in question, and is now officially revoked, the gift did not satisfy the conditions under Sonny's Will of being "charitable within the meaning of Section 2055 of the Internal Revenue Code" and the gift would not have "been permitted as a charitable deduction from Sonny's Estate for federal estate tax purposes." Thus, the gift of Sonny's residual estate would have lapsed.

23. Furthermore, I also agree with Mr. Moss's assertion that reinstatement of tax-exempt status is far from simple and is not automatic. Reinstatement of tax exempt status after automatic revocation of tax-exempt requires the filing of IRS Form 1023. Section 6033(j), Rev. Proc. 2014-11. Form 1023 is an application in which an organization seeking reinstatement of recognition of tax-exempt status must provide under penalties of perjury, among other things, a detailed statement of its charitable activities, as well as itemized financial information regarding its receipts and disbursements, for the past three years. Rev. Proc. 2014-11, Rev. Proc. 2020-5. Retroactive restoration of tax-exempt status requires that the applicant organization establish reasonable cause for its failure to file the required annual tax returns. Reasonable cause is defined in Rev. Proc. 2014-11 as the exercise of ordinary business care and prudence in

determining and attempting to comply with the annual reporting requirement, and the applicant must establish reasonable cause by submitting a detailed description of all the facts and circumstances that led to the failure, the discovery of the failure and the steps that have been or will be taken to avoid or mitigate future failures. In view of the lack of books and records regarding the operation of the Foundation and decision making by its board of directors, it is implausible that the Foundation would be able to establish reasonable cause, a necessary condition to being qualified to receive contributions that would be deductible under Section 2055 of the Code on the date when the Estate distributions were made.

24. Additionally, Section 6033 of the Code requires that tax-exempt entities, like the Foundation, maintain books and records of their activities and financial receipts and disbursements sufficient to demonstrate continuing qualification for tax-exempt status by engaging in exclusively charitable activities. Section 6033(a)(1), Rev. Proc. 2020-5. In fact, the failure to maintain records is an independent ground for revocation of tax exempt status. (“[T]he lack of adequate records or receipts ... makes it impossible to establish that it is not being operated for the private benefit of its members and provides independent grounds for rejecting its claim to tax-exempt status.” *Church of Gospel Ministry v. United States*, 640 F. Supp. 96 (D. DC. 1986); Rev. Rul 59-95; PLR 200946065.

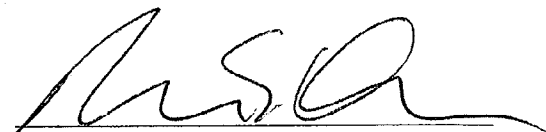
25. Without books or records from which to extract the necessary financial information to 1) establish entitlement to continued tax-exempt status in an IRS investigation or, 2) complete the Form 1023 to restore tax-exempt status after the automatic revocation for failure to file annual returns, contributions to the Foundation would not be eligible to be deducted under Section 2055 of the Code at the time that the Estate distributions were made.

26. I reserve the right to modify or supplement my affidavit as additional information

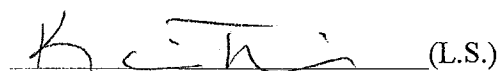


is gathered during discovery in this matter.

FURTHER AFFIANT SAYETH NOT.

  
Marcus S. Owens

SWORN to and subscribed before me  
This 21<sup>st</sup> day of September, 2020.

 (L.S.)

KARIN TOMPKINS  
Notary Public, State of New York  
Qualified in Seneca Co. No. 01TQ6210080  
My Commission Expires August 10, 2021

Notary Public for N.Y., SENECA COUNTY

My Commission Expires: 8/10/2021

**NOTE:** This document is the same document already set forth in the Record on Appeal at R\_0131 through R\_0153 (Memorandum of Law in Opposition to Motion for Temporary Restraining Order filed March 20, 2020). In lieu of reproducing this document again here, this note has been substituted in its place to avoid unnecessary duplication.

**EXHIBIT 5**

# Last Will and Testament of

ROY E. MEVERS, JR.

I, **ROY E. MEVERS, JR.**, of Charleston County, South Carolina, declare this to be my Last Will, and I hereby revoke all other Wills and Codicils that I may have heretofore made. I am not a married person, and I have no common law spouse.

## ARTICLE I

1. My Personal Representative in the Personal Representative's sole discretion may pay my legal debts, and I hereby authorize and empower my Personal Representative, in case of any claim made against my estate, to settle and discharge the same in the absolute discretion of my Personal Representative.

2. I may leave a written statement or list disposing of certain items of my tangible personal property, and any such statement or list in existence at the time of my death shall be determinative with respect to all gifts made therein. If no written statement or list is found and properly identified by my Personal Representative within three (3) months after my Personal Representative's qualification, it shall be finally presumed that there is no such statement or list and any subsequently discovered statement or list shall be ignored.

3. Any disclaimer made under the provisions of this Will shall be in writing and delivered to my Personal Representative and such disclaimer shall be a "qualified disclaimer" within the meaning of §2518 of the Internal Revenue Code. A disclaimer by the Personal Representative of a deceased beneficiary, the properly authorized attorney-in-fact of a beneficiary, or the guardian of a minor or incompetent beneficiary shall have the same effect as a disclaimer by the beneficiary.

4. My Personal Representative is authorized to disclaim any interest in property, or to transfer any interest in property, without Court approval, provided only that each disclaimer or transfer is a "qualified disclaimer" within the meaning of §2518 of the Internal Revenue Code. My Personal Representative shall have no liability to any beneficiary of my estate for any consequence of any qualified disclaimer made in good faith or for any failure to make any qualified disclaimer for any reason.

*Roy E. Mevers Jr.*

## ARTICLE II

1. I give and bequeath the sum of Three Hundred Twenty-Five Thousand (\$325,000) Dollars, apiece, to each of my following named children:

✓(a) to my son, **ROY E. MEVERS, III**, if living, but if he shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased child shall lapse and drop out and shall go and pass instead as part of the residue of my Estate; and

✓(b) to my son, **WILLIAM E. MEVERS**, if living, but if he shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased child shall lapse and drop out and shall go and pass instead as part of the residue of my Estate.

2. I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to my son, **JOSEPH LAUGHLIN**, if living, but if he shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased child shall lapse and drop out and shall go and pass instead as part of the residue of my Estate.

## ARTICLE III

1. I give and bequeath the sum of Twenty-Five Thousand (\$25,000) Dollars, apiece, to each of my following named grandchildren:

✓(a) to my grandson, **ROY MEVERS, IV**, if living, but if he shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate;

✓(b) to my grandson, **BEN MEVERS**, if living, but if he shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such

Roy E. Mevers



deceased grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate;

✓(c) to my granddaughter, **MARGARET MEVERS**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate; and

2. I give and bequeath the sum of Ten Thousand (\$10,000) Dollars, apiece, to each of my following named grandchildren:

✓(a) to my granddaughter, **MARGARET HOOD MEVERS**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate; and

✓(b) to my granddaughter, **DEANN MEVERS**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate.

#### ARTICLE IV

1. I give and bequeath the sum of Ten Thousand (\$10,000) Dollars, apiece, to each of my following named great-grandchildren:

✓(a) to my great-granddaughter, **SCARLETT MEVERS**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased great-grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate;

✓(b) to my great-granddaughter, **EMMA GRACE MEVERS**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the

Ray M 3 Rev

gift to such deceased great-grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate; and

(c) to my great-grandson, **ROY MEVERS, V**, if living, but if he shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased great-grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate.

2. I give and bequeath the sum of Five Thousand (\$5,000) Dollars, apiece, to each of my following named great-grandchildren:

✓(a) to my great-grandson, **MASON FOSTER**, if living, but if he shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased great-grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate; and

✓(b) to my great-granddaughter, **MORGAN FOSTER**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased great-grandchild shall lapse and drop out and shall go and pass instead as part of the residue of my Estate.

#### ARTICLE V

1. I give and bequeath the sum of Ten Thousand (\$10,000) Dollars, apiece, to each of my friend **MINNIE LEE NEWMAN**'s following named children:

✓(a) to her daughter, **FELICIA BLACKWELL BROWN**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased child shall lapse and drop out and shall go and pass instead as part of the residue of my Estate;

✓(b) to her daughter, **JESSICA BLACKWELL**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such

Ray E Mevers Jr



deceased child shall lapse and drop out and shall go and pass instead as part of the residue of my Estate; and

✓(c) to her daughter, **MADISON BLACKWELL**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased child shall lapse and drop out and shall go and pass instead as part of the residue of my Estate.

#### ARTICLE VI

1. I give and bequeath the sum of Five Thousand (\$5,000) Dollars, apiece, to each of my friend **MINNIE LEE NEWMAN**'s following named grandchildren:

✓(a) to her grandson, **WALKER BROWN**, if living, but if he shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased child shall lapse and drop out and shall go and pass instead as part of the residue of my Estate; and

✓(b) to her granddaughter, **ISABEL BROWN**, if living, but if she shall fail to survive me and shall leave descendants living at the time of my death, such descendants shall represent their ancestor and take such ancestor's share, per stirpes, otherwise the gift to such deceased child shall lapse and drop out and shall go and pass instead as part of the residue of my Estate.

#### ARTICLE VII

✓1. I give and bequeath the sum of Thirty Five Thousand (\$35,000) Dollars to **ST. MARY OF THE ANNUNCIATION RESTORATION FUND**, Charleston, South Carolina, absolutely and in fee simple.

✓2. I give and bequeath the sum of Ten Thousand (\$10,000) Dollars to **ST. MARY OF THE ANNUNCIATION HOLY NAME SOCIETY**, Charleston, South Carolina, absolutely and in fee simple.

Rev. E. M. Newman Jr.



3. I give and bequeath the sum of Five Thousand (\$5,000) Dollars to **ST. MARY OF THE ANNUNCIATION LADIES ALTER SOCIETY**, Charleston, South Carolina, absolutely and in fee simple.

#### ARTICLE VIII

I give and bequeath the sum of Fifty Thousand (\$50,000) Dollars, apiece, to each of my following named persons:

✓(a) to **SUE KLUMP MEVERS**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate; and

✓(d) to **BETH DRIGGERS MEVERS**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate.

#### ARTICLE IX

1. I give and bequeath the sum of Three Hundred Fifty Thousand (\$350,000) Dollars to my friend, **MINNIE LEE NEWMAN**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate; and

✓2. I give and bequeath the sum of Twenty Five Thousand (\$25,000) Dollars to **MARY WILLIS BENNETT**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate.

#### ARTICLE X

I give and bequeath the sum of Five Thousand (\$5,000) Dollars, apiece, to each of my following named persons:

R. E. Newman, Jr.

✓(a) to **JODY M. MANN**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate;

✓(b) to **MAGGIE M. GILLIAN**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate; and

✓(c) to **SALLY M. YOUNG**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate;

(d) to **KYM MEVERS**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate; and

✓(e) to **SUSY O'HARA**, if living, otherwise, if she shall fail to survive me, the within gift to such deceased person shall lapse and drop out and shall go and pass instead as a part of the residue of my Estate.

#### ARTICLE XI

The provisions contained in Exhibit B of the Articles of Incorporation of **THE "SONNY MEVERS" FOUNDATION** expressly provides that the Corporation's Board of Directors shall be appointed by me or by my nominee; and any such nominee shall in turn have the right to nominate his or her successor. It is my specific intention to, and I hereby do, now nominate my friend, **MINNIE LEE NEWMAN**, to be my successor, and as such she shall in turn likewise have the right to nominate her successor. It is my fervent desire that she abhor nepotism in exercising the rights and powers I have hereby entrusted to her.

#### ARTICLE XII

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE "SONNY MEVERS" FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this

Ray E. Mevers Jr.



gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

### ARTICLE XIII

1. My Personal Representative shall have the following powers, and any others that may be granted by law, to be exercised as the Personal Representative, in his discretion determines to be in the best interests of the beneficiaries:

(a) To retain any property or undivided interests in property received from my estate or from any other source, including residential property, regardless of any lack of diversification, risk, or non-productivity;

(b) To invest and reinvest the estate in bonds, notes, stocks of corporations regardless of class, real estate or any interest in real estate, or in any other property or undivided interests in property, wherever located, without being limited by any statute or rule of law concerning investments;

(c) To sell any property, for cash or on credit, at public or private sales; to exchange any property for other property; to grant options to purchase or acquire any property; and to determine the prices and terms of sales, exchanges and options;

(d) To operate, maintain, repair, rehabilitate, alter, improve or remove any improvements on real estate; to make leases and subleases for terms of any length; to subdivide real estate; to grant easements, give consents and make contracts relating to real estate or its use; to release or dedicate any interest in real estate;

(e) To borrow money for any purpose, and to mortgage or pledge any property;

(f) To employ attorneys, auditors, depositaries, proxies, and agents, with or without discretionary powers;

(g) To keep any property in the name of a nominee, with or without disclosure of any fiduciary relationship, or in bearer form;

Ray E. Mendenhall Jr.

(h) To take any action with respect to conserving or realizing upon the value of any property; to collect, pay, contest, compromise or abandon demands of or against the estate, wherever situated;

(i) To execute contracts, notes, conveyances and other instruments, including instruments containing covenants and warranties binding upon and creating a charge against the estate, and containing provisions excluding personal liability;

(j) To enter into any transaction authorized by this ARTICLE with Personal Representatives or Administrators of other estates in which any beneficiary hereunder has any interest, even though any such representative is also Personal Representative hereunder; and in any such transaction to purchase property, or make loans on notes secured by property, even though similar or identical property constitutes all or a large proportion of the balance of the estate, and to retain any such property or note with the same freedom as if it had been an original part of the estate;

(k) To make any distribution or division of the property in cash or in kind or both;

(l) To allocate different kinds or disproportionate shares of property or undivided interests in property among the beneficiaries and to determine the value of any such property;

(m) To retain any business interest, as shareholder, security holder, creditor, partner, proprietor or otherwise, even though it may constitute all or a large portion of the estate and to participate in the conduct of any business with respect to its management and affairs which an individual could do as owner of the business, including but not limited to (1) the voting of stock and the determination of all questions of policy; (2) the execution of partnership agreements and amendments thereto; (3) the participation in any incorporation, reorganization, merger, consolidation, recapitalization, liquidation or dissolution of any business or any change in its nature; (4) the investment of additional capital in, subscription to or purchase of additional stock or securities of, or the making of secured, unsecured or subordinated loans to, any business, with estate Funds; (5) the election or employment of directors, officers, employees or agents of any business. If any such business is continued by my Personal Representative it may be done without liability to my Personal Representative for any losses to the estate arising therefrom and without application to any court for authority to do so; and

Ray E. Mewen Jr.



(n) To extend from time to time, and for such period of time as my Personal Representative shall determine, the time for payment of any obligations due my estate, with or without penalty, as my Personal Representative shall determine.

2. Whenever necessary in this Will and where the context admits, the singular term and the related pronoun shall include the plural, and the masculine the feminine and the neuter.

#### ARTICLE XIV

1. I appoint my friend, MINNIE LEE NEWMAN, or her nominee, as sole Personal Representative of this my Will (herein called my "Personal Representative"). If bond for any reason shall be required by any Court, the entire cost of such bond shall be paid out of my Estate, so that the expense thereof shall not fall upon the person bonded.

2. My Personal Representative may make such elections under the tax laws applicable to my estate as may be deemed expedient and desirable. No compensating adjustments between principal and income, nor with respect to any bequest or devise hereunder, shall be made by my Personal Representative even though the elections so made may substantially affect (beneficially or adversely) the interests of the various beneficiaries in the principal or income of my estate. The action of my Personal Representative with respect to elections made shall be conclusive and binding upon all beneficiaries.

3. In the event that any cash bequest herein is not fully paid within one (1) year from the date of my death, then I direct my Personal Representative to pay each affected legatee hereunder, interest on such unpaid legacy at the rate of six percent (6%) per annum, from the expiration of one (1) year after the date of my death to the time such legacy is paid in full.

#### ARTICLE XV

If any person named herein shall, directly or indirectly, assert, exercise or claim any statutory or other spousal right to elect to take against this Will, or otherwise contest or attack this Will or any fiduciary thereof, or conspire with or voluntarily assist anyone attempting to do any of these things, then all gifts to and interests of that person (hereafter "Contestant") under this Will shall be forfeited and shall be allocated to my residuary estate, as described in Article XII hereof, as if the Contestant had predeceased me with no descendants or spouse surviving, and all and any such Contestants shall also be debarred from serving as Personal Representative hereunder and receiving any compensation therefor. My Personal Representative is hereby authorized to defend, at the

Ray E. Mendenhall Jr.

expense of my estate, any matter described in this provision, and all of the costs of such defense shall be charged against the gifts to and interests of the Contestant on a dollar-for-dollar basis. These provisions shall not operate to penalize any interested person if probable cause exists for instituting proceedings. Any provision of this Article found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this Article.

### ARTICLE XVI

I am making and executing this Will in duplicate and I direct that either of said instruments be admitted to probate as my Last Will and Testament without the other. So that there may be no presumption of revocation of this Will, in the event the ribbon original cannot be found after my death, I hereby declare that I will not at any time revoke this Will except by a later Will revoking the same, or by destruction of both copies thereof. The production after my death of either copy of this Will shall be prima facie evidence that said Will was in full force and effect at the time of my death unless there is produced a Will executed by me at a date subsequent hereto.

I have signed and sealed this Will on this 16 day of November, 2015.

Roy E. Mevers Jr. (SEAL)  
ROY E. MEVERS, JR., Testator

SIGNED, SEALED, PUBLISHED and DECLARED by the above named Testator, ROY E. MEVERS, JR., as and for his Last Will and Testament, in the sight and presence of us, who at his request, and in his sight and presence, and in the sight and presence of each other, have hereunto signed our names as attesting witnesses.

Louis J. Slotchiver residing at Charleston, SC

Paul H. Slotchiver residing at Charleston, SC



STATE OF SOUTH CAROLINA     )  
                                                   )  
 COUNTY OF CHARLESTON     )     ACKNOWLEDGEMENT

I, **ROY E. MEVERS, JR.**, the Testator, sign my name to this instrument this 16<sup>th</sup> day of November, 2015, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Roy E. Mevers Jr. (SEAL)  
**ROY E. MEVERS, JR.**, Testator

We, Irvin J. Slotchiver and Jeremy A. Slotchiver, the witnesses sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator, **ROY E. MEVERS, JR.**, signs and executes this instrument as his Last Will and that he signs it willingly, and that each of us, in the presence and hearing of the Testator, hereby signs this Will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

Irvin J. Slotchiver  
 Witness  
Jeremy A. Slotchiver  
 Witness

Subscribed, sworn to and acknowledged before me by **ROY E. MEVERS, JR.**, the Testator and subscribed and sworn to before me by Irvin J. Slotchiver, witness, this 16<sup>th</sup> day of November, 2015.

Jeremy A. Slotchiver (SEAL)  
 Jeremy A. Slotchiver  
 Notary Public for South Carolina  
 My Commission Expires: February 14, 2022

CODICIL TO  
**Last Will and Testament**  
 of

**ROY E. MEVERS, JR.**

I, **ROY E. MEVERS, JR.**, a resident of South Carolina, declare this to be a Codicil to my Will dated November 16, 2015, and I revoke all other codicils that I may have made.

FIRST. In any provisions of this Will wherein I refer to **MINNIE LEE NEWMAN** as my friend, I hereby substitute "**MINNIE LEE NEWMAN MEVERS**" as my "spouse."

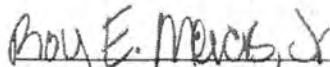
SECOND. Any provision herein for my spouse, **MINNIE LEE NEWMAN MEVERS**, is intended to be in lieu of her right to take her elective share of my Estate in accordance with the statutory laws of South Carolina, and not in addition thereto.

THIRD. I amend Article XII of my Will to add the following sentence at its conclusion:

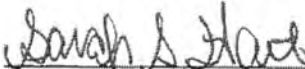
"Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, **MINNIE LEE NEWMAN MEVERS**, absolutely and in fee simple, forever, on the condition that she shall survive me."

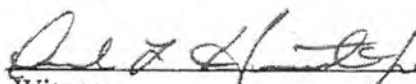
FOURTH. In all other respects I confirm and republish my Will.

I have signed this Codicil on this 12<sup>th</sup> day of April, 2017

 (SEAL)  
**ROY E. MEVERS, JR.**, Testator

We saw **ROY E. MEVERS, JR.**, in our presence, sign this instrument at its end; he then declared it to be a Codicil to his Will dated November 16, 2015, and requested us to act as witnesses to it; and then we, in his presence and in the presence of each other, signed our names as attesting witnesses; all of which was done on the date of this instrument.

 residing at Charleston, SC  
 Witness

 residing at HANAHAN SC  
 Witness



SLOTCHIVER & SLOTCHIVER, L.L.P.  
ATTORNEYS AT LAW  
44 STATE STREET  
CHARLESTON, SC 29401-2810

SECOND CODICIL TO  
**Last Will and Testament**  
of

ROY E. MEVERS, JR.

I, **ROY E. MEVERS, JR.**, a resident of South Carolina, declare this to be a Second Codicil to my Will dated November 16, 2015.

I amend Article II of my Will by adding the following as Paragraph 3 thereof:

"3. I give all my personal and household effects, such as jewelry, clothing, automobiles, equipment, furniture, furnishings, silver, books and pictures, and any other articles of personal use or diversion, including policies of insurance thereon, to **MINNIE LEE NEWMAN MEVERS**, "my wife," absolutely.

In all other respects I confirm and republish my Will, as modified by my Codicil dated April 12, 2017, and I confirm and republish my Codicil except as modified by this Second Codicil.

I have signed this Codicil on this 4<sup>th</sup> day of August, 2017

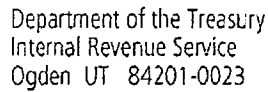
Roy E Mevers Jr. (SEAL)  
ROY E. MEVERS, JR., Testator

We saw **ROY E. MEVERS, JR.**, in our presence, sign this instrument at its end; he then declared it to be a Second Codicil to his Will dated April 12, 2017, and requested us to act as witnesses to it; and then we, in his presence and in the presence of each other, signed our names as attesting witnesses; all of which was done on the date of this instrument.

[Signature] residing at Charleston, SC  
Witness

[Signature] residing at Charleston SC  
Witness

**EXHIBIT 6**



1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

五

|                    |                                          |
|--------------------|------------------------------------------|
| Notice             | CP120A                                   |
| Notice date        | March 19, 2018                           |
| Employer ID number | 14-1912699                               |
| To contact us      | Phone 1-877-829-5500<br>FAX 801-620-5555 |

**EXHIBIT 7**

South Carolina Secretary of State

# Business Entities Online

File, Search, and Retrieve Documents Electronically

## THE 'SONNY MEVERS' FOUNDATION

### Corporate Information

**Entity Type:** Nonprofit

**Status:** Dissolved

**Domestic/Foreign:** Domestic

**Incorporated** South Carolina  
**State:**

### Registered Agent

**Agent:** ROY E MEVERS JR

**Address:** 17 E BATTERY  
CHARLESTON, South Carolina 29401

### Important Dates

**Effective Date** 07/23/2004

:

**Expiration** N/A

**Date:**

**Term End** N/A

**Date:**

**Dissolved** 01/24/2018

**Date:**

### Official Documents On File

| Filing Type             | Filing Date |
|-------------------------|-------------|
| Articles of Dissolution | 01/24/2018  |
| Incorporation           | 07/23/2004  |

For filing questions please contact us at 803-734-2158

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Filing Date: 01/24/2018

**STATE OF SOUTH CAROLINA  
SECRETARY OF STATE**

**ARTICLES OF DISSOLUTION  
FOR A NONPROFIT CORPORATION**

Pursuant to the provisions of Section 33-31-1404 of the 1976 S.C. Code of Laws, as amended, the undersigned nonprofit corporation submits the following Articles of Dissolution:

1. The name of the corporation is:

'SONNY MEVERS' FOUNDATION THE

Date incorporated: 07/23/2004

2. The dissolution was authorized on: 01/24/2018

3. Choose one of the following by marking the appropriate box.

- ☐ The resolution authorizing the dissolution was duly adopted by the members pursuant to Section 33-31-1402 of the 1976 S.C. Code of Laws, as amended.
- ☒ The resolution authorizing the dissolution was duly adopted by a majority of the Board of Directors, as approval by the members was not required [Section 33-31-1402(b) of the 1976 S.C. Code of Laws, as amended].
- ☐ The resolution authorizing the dissolution was duly adopted by a majority of incorporators pursuant to Section 33-31-1401 of the 1976 S.C. Code of Laws, as amended.

4. If approval by the members was required, please provide the following information pursuant to Section 33-31-1404(a)(5)(i) and (ii) of the 1976 S.C. Code of Laws, as amended.

Complete one of the following as appropriate:

| Designation<br>(classes of<br>membership) | Number of<br>Memberships<br>Outstanding | Number of<br>Votes Entitled<br>to be Cast by<br>each Class<br>Entitled to Vote<br>Separately on<br>Dissolution | Number of Votes<br>Entitled to be Cast<br>by Each Class<br>Indisputably Voting<br>on Dissolution | Total Number of<br>Votes Cast*<br>For -AND- Against<br>Dissolution by Each Class<br>Entitled to Vote Separately | Total Number<br>of undisputed<br>votes cast for<br>dissolution by<br>each class<br>which was<br>sufficient for<br>approval for<br>that class |
|-------------------------------------------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
|                                           |                                         |                                                                                                                |                                                                                                  |                                                                                                                 |                                                                                                                                              |
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|                                           |                                         |                                                                                                                |                                                                                                  |                                                                                                                 |                                                                                                                                              |

5. If approval by third person(s) other than the members, directors, or incorporators was required, such approval was obtained.
6. If a public benefit or religious corporation, notice to the Attorney General, required by Section 33-31-1403 of the 1976 S.C. Code of Laws, as amended, has been given.

'SONNY MEVERS' FOUNDATION THE

Name of Corporation

7. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is:

\_\_\_\_ (NOTE: A delayed effective date shall not be later than the 90<sup>th</sup> day after the date this document is filed  
(Date) by the Secretary of State.)

Name of Corporation:

'SONNY MEVERS' FOUNDATION THE

01/24/2018

(Date)

MINNIE L NEWMAN

(Signature)

MINNIE L NEWMAN

(Print Name)

PRESIDENT AND CHAIRWOMEN

(Position of Officer)

|                                       |   |                                       |
|---------------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS          |
|                                       | ) |                                       |
| COUNTY OF CHARLESTON                  | ) |                                       |
|                                       | ) | Case No.: 2020-CP-10-04089            |
| IN THE MATTER OF:                     | ) |                                       |
| THE ESTATE OF ROY E. MEVERS, JR.      | ) |                                       |
|                                       | ) |                                       |
| SOUTH CAROLINA ATTORNEY               | ) |                                       |
| GENERAL                               | ) |                                       |
| Plaintiff/Counter-Claim               | ) | <b>DEFENDANT’S REPLY</b>              |
| Defendant,                            | ) | <b>MEMORANDUM OF LAW</b>              |
| v.                                    | ) | <b>IN SUPPORT OF MOTION FOR</b>       |
|                                       | ) | <b>ORDER QUASHING SUBPOENA</b>        |
| MINNIE LEE NEWMAN MEVERS,             | ) | <b><i>DUCES TECUM</i> ISSUED TO</b>   |
| Defendant/Counter-Claim               | ) | <b>DEFENDANT’S ATTORNEY</b>           |
| Plaintiff/Cross-Claim                 | ) | <b>(H. CHRISTOPHER MOSS, ESQUIRE)</b> |
| Plaintiff/Third-Party Plaintiff       | ) |                                       |
| v.                                    | ) |                                       |
|                                       | ) |                                       |
| J. JAMES DUGGAN, as Special           | ) |                                       |
| Administrator of the Estate of Roy E. | ) |                                       |
| Mevers, Jr.,                          | ) |                                       |
| Cross-Claim                           | ) |                                       |
| Defendant/Third-Party                 | ) |                                       |
| Defendant,                            | ) |                                       |
|                                       | ) |                                       |

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Defendant Minnie Lee Newman Mevers (hereinafter “Minnie”) respectfully submits this reply memorandum of law in support of her motion for an order quashing the subpoenas *duces tecum* issued by the South Carolina Attorney General (“SCAG”) seeking production of her confidential attorney-client communications and other privileged or protected records in the possession of H. Christopher Moss, Esquire (“Moss”). Mr. Moss is Minnie’s tax attorney as well as her certified public accountant.

Minnie is the widow of the late Roy E. Mevers, Jr. (“Sonny”), who died on November 3, 2017. She was appointed as Personal Representative of Sonny’s Estate on November 13, 2017. On September 30, 2020, the SCAG issued a document subpoena directed to Mr. Moss, but never served it on him. On October 20, 2020, the SCAG re-issued the same subpoena to Mr. Moss and



apparently was able to serve that subpoena on him. Among other records, the subpoenas request “any and all documents or communications of any type concerning” Sonny’s Estate as well as a private foundation that Sonny had created during his lifetime. The subpoenas also seek Mr. Moss’s “documents or communications with” Minnie and Jessica Wentworth, Esquire, who served as Minnie’s legal counsel in her role as Personal Representative for the Estate.

Minnie timely moved to quash both of the SCAG’s subpoenas to Mr. Moss pursuant to SCRCP 45(c)(3)(A) on the following grounds:

1. The subpoenas in whole and/or in part seek information and documents which require disclosure of Minnie’s confidential, privileged, and private communications with her attorneys that are protected by the attorney-client privilege or which are otherwise privileged;
2. The subpoenas in whole and/or in part seek information and documents which require disclosure of documents and papers that are protected by the attorney work product doctrine;
3. The subpoenas in whole and/or in part seek information and documents which require disclosure of documents and papers that are protected by the common interest doctrine;
4. The subpoenas seek Minnie’s confidential, private, protected, and/or privileged tax returns and tax information;
5. The subpoenas seek information protected by the fiduciary-lawyer privilege, see S.C. CODE ANN. § 62-1-110;
6. The subpoenas in whole and/or in part are vague, ambiguous, unduly burdensome, expensive, overly broad in scope, and not limited to a reasonable time period;
7. The subpoenas seek irrelevant information or documents; and
8. The subpoenas in whole and/or in part seek production of records belonging to other persons and/or entities that are not properly before the Court, over which the Court lacks personal jurisdiction, and/or which are located outside the territorial boundaries of this Court as specified in SCRCP 45 and applicable law.

Minnie provides the following as a reply to the SCAG’s opposition memorandum dated December 11, 2020.

## **BACKGROUND**

This case originated in the Probate Court. Minnie hired Ms. Wentworth to serve as her legal counsel in her role as Personal Representative of Sonny's Estate.<sup>1</sup> Ms. Wentworth is a local attorney admitted to practice in South Carolina whose practice focuses primarily on estate planning, probate administration, and real estate transactions. She appeared for and represented Minnie in the Probate Court.

Minnie also hired Mr. Moss to serve as advisor on federal tax and Internal Revenue Service (IRS) related matters. Mr. Moss is both a tax attorney and a certified public accountant (CPA) with over 35 years of experience. He is licensed as a CPA in Virginia and South Carolina as well as the District of Columbia. He is also licensed as a lawyer in Virginia and the District of Columbia. Although Mr. Moss never appeared for or represented Minnie in the Probate Court, he had numerous communications with Minnie and Ms. Wentworth in his role as CPA and as tax lawyer while assisting Ms. Wentworth with her representation of Minnie.<sup>2</sup>

In 2004, many years before marrying Minnie, Sonny had formed the Foundation as a South Carolina non-profit organization. Via an IRS determination letter issued on July 21, 2005, the Foundation initially was granted tax-exempt status as a private, nonoperating foundation under § 501(c)(3) of the IRC. However, effective on November 15, 2017, the IRS revoked the

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<sup>1</sup> Ms. Wentworth replaced Irvin Slotchiver, Esquire, who initially served as counsel for Minnie in her role as Personal Representative. Mr. Slotchiver filed the initial application on November 13, 2017 opening the Estate and obtained Minnie's appointment as Personal Representative.

<sup>2</sup> The South Carolina Supreme Court has specifically held that a CPA such as Mr. Moss does not engage in unauthorized practice of law in this state when he renders professional assistance, including compensated representation before agencies or before our state Probate Courts, that is within his professional expertise and qualifications. In re Unauthorized Practice of Law Rules Proposed by S.C. Bar, 309 S.C. 304, 422 S.E.2d 123 (1992).

Foundation's federal tax-exempt status under IRC § 501(c)(3) for failure to file the required annual returns for three consecutive years. The Foundation's tax-exempt status has never been reinstated.

Sonny died testate after being married to Minnie for several years. His Last Will and Testament, as well as two Codicils amending his original Will, were prepared by Irvin Slotchiver, Esquire. Article XII of Sonny's original Will, which was made before he married Minnie, specifically provided for the disposition of his residuary estate:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE "SONNY MEVERS" FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

See Will dated 11.16.15.

After Sonny married Minnie on September 12, 2016, he later executed a Codicil to his Will amending Article XII so as to add the following sentence to the conclusion of that article:

Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, **MINNIE LEE NEWMAN MEVERS**, absolutely and in fee simple, forever, on the condition that she shall survive me.

See Codicil dated 4.12.17.

Under the terms and provisions of Sonny's Will, the Foundation's status as the outright beneficiary of Sonny's residuary estate would vest at the time of Sonny's death **provided** the Foundation was in existence at that time **and** it satisfied the other "conditions" set forth in Article XII. The Will sets forth specific conditions that the Foundation must satisfy to qualify for receipt of the gift or distribution of the residuary estate—that (a) it is an organization which is charitable within the meaning of Section 2055 of the Internal Revenue Code (IRC) and (b) that the gift is permitted as a charitable deduction from Sonny's Estate for federal estate tax purposes. If either

of those conditions were not satisfied either at the time of Sonny's death or when the estate assets were to be distributed, then the devise or gift to the Foundation either did not vest or, if it vested, it lapsed or was cancelled and instead devolved to Minnie.

Mr. Moss looked into whether the Foundation satisfied the conditions in Article XII of the Will and concluded that the Foundation was a sham and it had no real substance. Mr. Moss learned that the Foundation had not filed the legally required tax information returns (Form 990-PF) for the fiscal years 2014, 2015, and 2016 and he could find no other reporting or other documentation to the IRS or another regulatory body concerning its operations during these periods. He determined that the Foundation had no real corporate records or documentation (outside its initial formation documents) that evidenced the Foundation had been, and was continuing, to be organized and operated exclusively for charitable purposes. He learned that almost the entirety of the Foundation's Board members had conflicts of interest as they primarily comprised persons with whom Sonny transacted business raising a number of self-dealing concerns under Section 4941 of the IRC. There were no records of when and how long these individuals were serving as directors, whether they were in fact appointed, or had ever approved any transactions, the compensation arrangements, or any charitable activities, grants, or any other matters required of individuals acting as directors. The Foundation had no bookkeeping or records, had not conducted periodic meetings or recorded minutes of meetings as required in the bylaws, had no records of appointments of directors or officers, had no staff or employees, and had no office. In short, Mr. Moss concluded the Foundation had no substance. It had no documentation that could demonstrate it had been operated by a board of directors to further charitable purposes.

Based on his considerable experience in the field of taxation and his experience with tax audits by the IRS, Mr. Moss concluded that the Foundation could not withstand an IRS audit, it

could not and would not qualify as a charitable organization within the meaning of Section 2055 of the IRC, and that a gift or devise from the Estate to the Foundation would not be permitted as a charitable deduction for federal estate tax purposes. Mr. Moss communicated his conclusion to Ms. Wentworth and Minnie.

The IRS confirmed Mr. Moss's conclusion about the Foundation when it revoked the Foundation's federal tax-exempt status under IRC § 501(c)(3) effective on November 15, 2017. As of November 15, 2017, the Foundation was a taxable c-corporation. This occurred a mere two days after Minnie had been appointed as Personal Representative.

On January 23, 2018, the Foundation's Board of Directors voted to dissolve the Foundation for the reasons pointed out by Mr. Moss—that the Foundation did not qualify as a tax-exempt entity and it had no real substance. The Foundation filed Articles of Dissolution for a Nonprofit Corporation with the South Carolina Secretary of State on January 24, 2018, and the Foundation ceased to exist. The statutory period for the Foundation to revoke its dissolution expired on May 24, 2018. No such revocation of dissolution was applied for or occurred.

Minnie and Ms. Wentworth took the appropriate steps to probate Sonny's Will and administer his estate based on the reasoned and good faith determination that the Foundation had not satisfied the conditions in the Will, that the devise or gift to the Foundation had lapsed or was canceled, and that Minnie was the residuary beneficiary under the Will. With Ms. Wentworth's assistance, Minnie filed a Proposal for Distribution (Form #410ES) with the Probate Court on November 21, 2018, along with a Final Accounting (Form #361ES), Application for Settlement (Form #412ES), and Notice of Right to Demand Hearing (Form #416ES), which disclosed that Minnie would receive the residuary estate as part of the proposed distribution of Sonny's estate.

Because the Foundation was not a proper residuary beneficiary, these actions were completely proper and were mandated by the terms and provisions of Sonny's Will.

All of the 28 beneficiaries who received distributions from the Estate signed a Receipt and Release with Waiver (Form #403ES) and none responded to the notice of right to demand a hearing, or filed any objection to the Proposal for Distribution or Application for Settlement. None of the directors or officers of the Foundation contested the probate process, its revocation of exempt status on November 15, 2017, or the subsequent dissolution of the Foundation.

The Probate Court issued an Order closing the Estate on December 31, 2018. The assets of the Estate were distributed in accordance with the terms of the Will as shown on the Proposal for Distribution. Deeds of distribution involving the various real estate owned by Sonny were duly executed and recorded with the Registers of Deed for the appropriate counties. The assets of the Estate have already been distributed in accordance with the terms and provisions of Sonny's Will.

On March 13, 2020, notwithstanding the dissolution of the Foundation and the forfeiture of its charter, the SCAG filed the instant action in the Probate Court in his *parens patriae* capacity purportedly on behalf of the Foundation's beneficiaries, even though the Foundation no longer exists and lacks the right to sue. See Petition filed 3.13.20. The SCAG's lawsuit alleges the Foundation was a qualifying devisee under the terms and provisions of Sonny's Will and the Foundation should have been distributed all or a portion of the Decedent's residuary estate. The SCAG's action seeks to reopen Sonny's Estate and formally probate his Will and Codicils, to have a special administrator appointed, and to impose a constructive trust for the benefit of the Foundation over the assets that were previously distributed to Minnie.

On April 10, 2020, Minnie filed her Return to the SCAG's Petition in the Probate Court along with Counterclaims, Cross-Claims, and Third-Party Claims against the SCAG as well as the

Special Administrator. In the same pleading, Minnie also filed a petition in which she asserts the right to an elective share of Sonny's probate estate in accordance with S.C. CODE ANN. §§ 62-2-201 *et seq.* and a claim for attorneys' fees under S.C. CODE ANN. § 62-1-111. Id.

By Reply dated May 4, 2020, the Special Administrator answered the Counterclaims, Cross-Claims, and Third-Party Claims. By Reply dated May 8, 2020, the SCAG answered the Counterclaims, Cross-Claims, and Third-Party Claims.

On May 12, 2020, in accordance with the provisions of S.C. CODE ANN. § 62-1-302(d), Minnie timely filed and served a Notice of Removal and Motion to Remove Action to Circuit Court. The notice removed this action to the Circuit Court pursuant to S.C. CODE ANN. § 62-1-302(d). The Probate Court entered an Order of Removal on September 15, 2020.

On September 16, 2020, the SCAG moved for a Temporary Injunction. On September 22, 2020, Circuit Judge Bentley D. Price denied the SCAG's Motion for a Temporary Injunction.

### ANALYSIS AND ARGUMENTS

#### I. THE SUBPOENAS IMPLICATE MINNIE'S PRIVILEGED COMMUNICATIONS WITH HER ATTORNEYS AND THERE HAS BEEN NO DISTINCT AND UNEQUIVOCAL WAIVER OF ANY PRIVILEGES.

##### A. *The Subpoenas Implicate Protected Attorney-Client Communications.*

Under South Carolina law, "[i]n order to establish the attorney-client privilege, it must be shown that the relationship between the parties was that of attorney and client and that the communications were of a confidential nature." Marshall v. Marshall, 282 S.C. 534, 538, 320 S.E.2d 44, 47 (Ct. App. 1984). The South Carolina Probate Code (SCPC) further provides that "[w]hensoever an attorney-client relationship exists between a lawyer and a fiduciary, communications between the lawyer and the fiduciary shall be subject to the attorney-client

privilege unless waived by the fiduciary, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary.” S.C. CODE ANN. § 62-1-110.

The attorney-client privilege has long been recognized in our state and elsewhere. State v. Doster, 284 S.E.2d 218 (S.C. 1981); Drayton v. Industrial Life & Health Insurance Co., 31 S.E.2d 148, 152 (S.C. 1944). “[L]awyers are obliged to protect the attorney-client privilege to the maximum possible extent on behalf of their clients” In re Search Warrant Issued June 13, 2019, 942 F.3d 159, 173 (4th Cir. 2019). The purpose of the attorney-client privilege is to encourage full and frank communication between attorneys and their clients to ensure effective representation. Upjohn Co. v. United States, 449 U.S. 383, 389 (1981). It is based upon “wise public policy” that the best interests of society are served by promoting a relationship between the attorney and client whereby “the utmost confidence in the continuing secrecy of all confidential disclosures made by client within the relationship is maintained.” Doster, 284 S.E.2d at 218; Hartsock v. Goodyear Dunlop Tires N. Am. Ltd., 422 S.C. 643, 647 n.1, 813 S.E.2d 696, 699 n.1 (2018) (describing the privilege as “rooted in the imperative need for confidence and trust” (quoting Jaffee v. Redmond, 518 U.S. 1, 10 (1996))).

The privilege applies not only to communications between the client and her attorney, but also to communications with agents of the attorney retained to aid in the representation. See State v. Hitopoulus, 279 S.C. 549, 551, 309 S.E.2d 747, 749 (1983); Templeton v. The Bishop of Charleston, 2020 WL 7232088, at \*4 (D.S.C. Dec. 8, 2020) (“South Carolina courts have expressly held that ‘[t]he privilege may extend to agents of the attorney’ retained to aid in the preparation of a case, including independent contractors.”). As Judge Cooper held in In re Estate of Cooper, 2006 WL 4660424 (S.C. Com. Pl. Jan. 18, 2006):

Communications of a client with his lawyers through agents are protected by the attorney-client privilege. The attorney-client privilege protects a client and any



other person from disclosing confidential communications made to counsel relative to a legal matter. The privilege also applies to agents of the client if the client needs an agent to effectively communicate with a lawyer.

Id. (citations omitted). In Hitopoulus, the Supreme Court held that the attorney-client privilege extended to the client's communications with a psychiatrist that counsel had engaged to assist with the preparation of the client's defense.

In this case, the SCAG makes the spurious argument that Mr. Moss's communications with Minnie and Ms. Wentworth cannot be protected by the attorney-client privilege because he is not licensed as a lawyer in South Carolina. The SCAG further claims that Mr. Moss would be committing the unauthorized practice of law in South Carolina if he advised Minnie. However, the SCAG disregards the South Carolina Rules of Professional Responsibility, which specifically reject his claims.

Rule 5.5 of the Rules of Professional Responsibility states in pertinent part:

(c) A lawyer admitted in another United States jurisdiction, and not debarred, disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter [or]

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized[.]

S.C. R. PROF. RESP. 5.5(c); see also Goldstein v. Muskat, 338 N.W.2d 528 (Wis. Ct. App. 1983) (Illinois lawyer did not engage in unauthorized practice of law by consulting with Wisconsin resident, assisting resident in retaining Wisconsin counsel, consulting with Wisconsin counsel regarding the probate, tax filings, and anticipated will contest, and assisting Wisconsin counsel in the will contest in Wisconsin); Florida Bar v. Savitt, 363 So.2d 559, 560 (Fla. 1978) (even where

out-of-state lawyer's work in Florida would ordinarily constitute practice of law, that work is permissible as long as activities "merely constitute assistance" to Florida lawyers); Palmer v. Ernst & Young LLP, 2007 WL 1064047, at \*6 (Mass. Super. Apr. 11, 2007) (tax attorney "licensed to practice in one of our fifty states, albeit not in Massachusetts," was not prohibited from offering legal advice in Massachusetts to a Massachusetts resident regarding federal income tax issues without either being admitted to the Massachusetts Bar or obtaining admission *pro hac vice*).

As discussed above, Ms. Wentworth (who is licensed to practice law in South Carolina) appeared for Minnie as her legal counsel in the underlying Probate Court proceedings. Although Mr. Moss never appeared for or represented Minnie in the Probate Court proceedings, he had numerous communications with Minnie and Ms. Wentworth in his role as CPA and as tax lawyer while assisting Ms. Wentworth with her representation of Minnie. Nothing prevented Mr. Moss from providing legal services to Minnie in South Carolina in connection with the pending matter in the Probate Court when he was assisting Ms. Wentworth. It was not necessary for Mr. Moss to be licensed in this state for his communications with Minnie and Ms. Wentworth to be protected by the attorney-client privilege.

Even if it is assumed for argument's sake that Mr. Moss was not acting as Minnie's lawyer or legal advisor when the communications occurred, he certainly was acting as her agent in assisting Ms. Wentworth in providing legal advice to Minnie. Mr. Moss was hired to serve as advisor on tax and IRS related matters. Mr. Moss's communications with Minnie and Ms. Wentworth in his role as CPA and as tax lawyer while assisting Ms. Wentworth are clearly covered by the attorney-client privilege.<sup>3</sup>

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<sup>3</sup> As previously noted, Mr. Moss is both a tax attorney and a CPA. He is licensed as a CPA in Virginia and South Carolina as well as the District of Columbia. He is also licensed as a lawyer in Virginia and the District of Columbia. Our Supreme Court has specifically held that a CPA such as Mr. Moss does not engage in unauthorized practice of law in this state when he renders

**B. Minnie Did Not Make a Distinct and Unequivocal Waiver of Privileges.**

Based on the mere fact that Minnie has asserted in her pleadings that she “acted with legitimate and reasonable business justification” and that her actions at the time of the underlying matters “were made in good faith,” the SCAG argues that Minnie has now waived the attorney-client privilege with Mr. Moss and Ms. Wentworth by placing their legal advice “at issue” in these proceedings. The SCAG supports its argument by isolating two lines in the affidavits given by Mr. Moss and Ms. Wentworth in which they state that Minnie took the appropriate steps to probate Sonny’s Will and administer his estate and that she acted reasonably and in good faith. However, South Carolina law directly rejects the SCAG’s assertion that these statements constitute a “distinct” and “unequivocal” waiver of privileges.

The attorney-client privilege belongs solely to the client and not the attorney and can be waived only by the client, not the attorney. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980); State v. Thompson, 329 S.C. 72, 76-77, 495 S.E.2d 437, 439 (1998); South Carolina State Highway Department v. Booker, 195 S.E.2d 615, 619-20. “Although a client may waive his attorney-client privilege, ***the waiver must be distinct and unequivocal.***” Thompson, 329 S.C. at 76-77, 495 S.E.2d at 439 (citing Hitopoulus) (emphasis added); Doster, 284 S.E.2d at 219. As a result, when a party asserts an implied waiver of privilege, “caution must be exercised, for waiver will not be implied from doubtful acts.” Thompson, 329 S.C. at 77, 495 S.E.2d at 439.<sup>4</sup>

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professional assistance, including compensated representation before agencies or before our state Probate Courts, that is within his professional expertise and qualifications. In re Unauthorized Practice of Law Rules Proposed by S.C. Bar, 309 S.C. 304, 422 S.E.2d 123 (1992).

<sup>4</sup> The SCPC makes explicit that “[t]he existence of a fiduciary relationship between a fiduciary and a beneficiary does not constitute or give rise to any waiver of the privilege for communications between the lawyer and the fiduciary.” S.C. CODE ANN. § 62-1-111.

Minnie's pleadings nowhere assert or raise any defense based on her reliance on legal counsel or their legal advice. She does not assert anywhere in her pleadings that she will rely on the legal advice she received from Mr. Moss or Ms. Wentworth to defend her actions in this lawsuit. The SCAG's reliance upon Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005), overruled by S.C. CODE ANN. § 62-1-110, is patently misplaced. In Floyd, unlike the present case, the party had "repeatedly professed [at trial] that he relied on the advice of various attorneys in formulating his position regarding the" trust, he further made several attestations "that he was following the advice of counsel," including that "his position was based on 'what counsel had told us,'" and he had declared "[t]hat's the way we were so instructed by counsel." Floyd, 365 S.C. at 92, 615 S.E.2d at 484. In view of the party's testimony in Floyd, it is unsurprising the Court of Appeals held in that case that the party had "opened the door" to the admission of his attorney's letters written to him, which impeached his testimony and showed that he in fact had not followed his attorney's advice.

In stark contrast to Floyd, Minnie has given no such testimony or made no such statements. ***To be clear, Minnie is not invoking advice of counsel as a defense in this lawsuit.*** Minnie has not raised reliance on legal advice as an affirmative defense and she has not asserted in her pleadings or given any testimony that she relied on the advice of her lawyers, that she was following the advice of her legal counsel, or that she did what she did because she was instructed to do so by her lawyers. Floyd is easily distinguishable from the present case.

Our state Supreme Court recently adopted a burden-shifting analysis in deciding whether a client "impliedly" waived the attorney-client privilege by placing its lawyer's legal advice "at issue" in the proceedings. In re Mt. Hawley Ins. Co., 427 S.C. 159, 829 S.E.2d 707 (2019). Under this analysis, the party asserting the privilege "has the initial burden to make a *prima facie* showing

that the communications in question are privileged; if the initial burden is met, the party challenging the privilege must establish the communications are otherwise discoverable under an exception or waiver.” Id. at 168-69, 829 S.E.2d at 713.

In Mt. Hawley, the Supreme Court observed that there are three different approaches that jurisdictions have utilized to determine the presence or absence of waiver of the attorney-client privilege. The Court surveyed those approaches and ultimately adopted the middle-ground approach under which the “answer depends on a case-by-case analysis of the facts.” Mt. Hawley, 427 S.C. at 172, 829 S.E.2d at 715. The Mt. Hawley case involved an insured’s lawsuit against its insurance company for bad faith refusal to provide insurance coverage. The insurer had consulted with lawyers in making the coverage decision that formed the basis for the insured’s claims. In its formal answer to the lawsuit, the insurer denied bad faith and also affirmatively alleged that it acted in good faith in refusing to provide coverage. The insured moved to compel production of the insurer’s communications with its legal counsel involving the basis for the coverage decision and argued the insurer had put those communications “‘at issue’ in the case by denying liability for bad faith failure to defend or indemnify.” Mt. Hawley, 427 S.C. at 164, 829 S.E.2d at 710.

Despite the insurer’s formal denial of bad faith in its answer and its assertion that it had acted in good faith in denying coverage, the Court nevertheless rejected the claim that this constituted a waiver of attorney-client privilege applicable to the insurer’s communications with its legal counsel. The Court ruled:

We therefore [hold] that ***a denial of bad faith and/or the assertion of good faith in the answer does not, standing alone, place a privileged communication “at issue” in a case such that the attorney-client privilege is waived.***

Id. at 177-78, 829 S.E.2d at 718 (emphasis added). In reaching its holding, the Court “emphasize[d] the sanctity of the attorney-client privilege” and that “a client does not waive the

privilege simply by bringing or defending a lawsuit.” Id. at 177, 829 S.E.2d at 717.

The Mt. Hawley Court rejected the contention that the attorney-client privilege is impliedly waived because a party consulted with a lawyer and acted based on the lawyer’s advice. Id. at 176, 829 S.E.2d at 717 (citing State Farm Mut. Auto. Ins. Co. v. Lee, 13 P.3d 1169, 1183 (Ariz. 2000)); see also Harriman v. Associated Indus. Ins. Co., Inc., No. 2:18-CV-02750-DCN, 2020 WL 2793610, at \*4 (D.S.C. May 29, 2020) (“[Mt. Hawley] stated that privilege is not waived solely when a client consults counsel for advice and the client subsequently takes action based on counsel’s advice.”); Lee, 13 P.3d at 1183 (“We assume client and counsel will confer in every case, trading information for advice. This does not waive the privilege. We assume most if not all actions taken will be based on counsel’s advice. This does not waive the privilege. Based on counsel’s advice, the client will always have subjective evaluations of its claims and defenses. This does not waive the privilege.”).

“It is only when a defendant attempts to avoid liability by justifying its challenged actions because it relied on counsel’s advice and opinions that such a waiver occurs.” Smith v. Scottsdale Ins. Co., 40 F. Supp. 3d 704, 725 (N.D.W. Va. 2014), aff’d, 621 F. App’x 743 (4th Cir. 2015). Accordingly, numerous courts have held that for the “at issue” doctrine to apply the client must assert advice of counsel as an affirmative defense or must allege that she relied on advice of counsel as a justification for the challenged action. See, e.g., Shaheen v. WellPoint Companies, Inc., 490 F. App’x 552, 557 (4th Cir. 2012) (“WellPoint never asserted advice of counsel as an affirmative defense. Indeed, neither Ingle nor Lohmeyer indicated that they relied on advice of counsel in terminating Shaheen, or in making the alleged defamatory statements. Thus, the ‘at issue’ doctrine does not apply.”); Billings v. Stonewall Jackson Hosp., 635 F. Supp. 2d 442, 446 (W.D. Va. 2009) (“Nor has [the defendant] placed [its attorney’s] advice to [its employee] prior to

[the plaintiff's] termination at issue in this case. Advice of counsel is not asserted by [the defendant] as an affirmative defense; therefore the 'at issue' doctrine does not apply."); Elat v. Emandopngoubene, 2013 WL 1146205, at \*6 (D. Md. Mar. 18, 2013) ("These opinions make clear that the central inquiry in determining whether a party has impliedly waived the attorney-client privilege is whether that party affirmatively attempts to 'rely' on advice of counsel.").

No such advice of counsel defense has been presented in this case. Minnie's pleadings do nothing more than assert she acted legitimately, reasonably, and in good faith. Her pleadings do not even refer to her legal counsel or discuss the fact that she had consultations with legal counsel. She has given no testimony that she relied on the advice of her lawyers, that she was following the advice of her counsel, or that she believed her actions were correct because of the legal advice she received. She has not asserted in her pleadings that she acted in good faith because she received legal advice from Mr. Moss or Ms. Wentworth.

Mr. Moss's and Ms. Wentworth's affidavits simply show that Minnie consulted with them on the matters in question and that they believe Minnie made a "reasoned and good faith determination." However, the privilege is not waived simply because a party consulted with a lawyer and acted based on the lawyer's advice. See Wellin v. Wellin, 2015 WL 5785709, \*17 (D.S.C. July 31, 2015) (holding that trustees did not impliedly waive attorney-client privilege attached to their communications with their legal counsel who advised them in their decision to sell trust assets and to distribute the resulting proceeds to themselves personally despite fact that the trustee's interrogatory response disclosed that "in making the distributions [the trustees] considered documentation related to the litigation *and advice of current counsel*").

Minnie's pleadings nowhere ask the Court to deem her determination to be "reasoned" or in "good faith" because she consulted with these lawyers or because she relied upon their legal

advice. Neither Minnie's pleadings nor the affidavits of Mr. Moss and Ms. Wentworth seek to exonerate Minnie or excuse her from liability because she consulted with legal counsel or because she relied upon legal advice. Her defenses against the SCAG's action are not dependent on any showing that she relied upon or even received legal advice. In fact, Minnie will prove her actions were reasoned and in good faith based on the testimony of legal experts besides her own legal counsel. It will not be necessary for Minnie to offer any evidence that she consulted with lawyers or that they gave legal advice to her to prove any of her defenses to the SCAG's claims.

In sum, Minnie clearly has not expressly waived any privileges. Moreover, despite the SCAG's protestations to the contrary, Minnie has not impliedly waived any privileges.

**C. *The Crime-Fraud-Tort Exception is Inapplicable.***

The SCAG seeks to invoke the crime-fraud-tort exception to the attorney-client privilege based on the naked allegation that Minnie "sought advice [from Mr. Moss and Ms. Wentworth] to further or initiate an ongoing tortious or fraudulent scheme." See SCAG Memo. p.13.

"The crime-fraud exception to the attorney-client privilege provides that a client's communications with an attorney will not be privileged if made for the purpose of committing or furthering a crime or fraud." In re Grand Jury Subpoena, 884 F.2d 124 (4th Cir. 1989). The party invoking the crime-fraud exception "must make a *prima facie* showing that (1) the client was engaged in or planning a criminal or fraudulent scheme when [she] sought the advice of counsel to further the scheme, and (2) the documents containing the privileged materials bear a close relationship to the client's existing or future scheme to commit a crime or fraud." In re Grand Jury Proceedings #5 Empanelled Jan. 28, 2004, 401 F.3d 247, 251 (4th Cir. 2005).

"The crime-fraud exception strips the privilege from only those communications or work product 'that relate to client communications in furtherance of contemplated or ongoing criminal



or fraudulent conduct.’” Schaefer v. Family Med. Centers of S.C., LLC, 2019 WL 5893478, at \*2 (D.S.C. July 26, 2019) (citing In re John Doe, Inc., 13 F.3d 633, 636 (2<sup>nd</sup> Cir. 1994)). “There must be a ‘purposeful nexus’ between the communication or document and the fraudulent activity.” Id. “Communications that are merely relevant to the fraudulent scheme will not trigger the crime-fraud exception.” Id. “Rather, the communications must be made in furtherance of the alleged fraud.” (citing In re Grand Jury Proceedings, 102 F.3d 748, 750-51 (4th Cir. 1996)).

To satisfy the *prima facie* showing, the proof “must be such as to subject the opposing party to the risk of non-persuasion if the evidence as to the disputed fact is left unrebutted.” Duplan Corp. v. Deering Milliken, Inc., 540 F.2d 1215, 1220 (4th Cir. 1976); Billings, 635 F. Supp. 2d at 446. The first prong “is satisfied by a showing of evidence that, if believed by a trier of fact, would establish the elements of some violation that was ongoing or about to be committed.” In re Grand Jury Investigation, 842 F.2d 1223, 1226 (11th Cir. 1987). “That showing must have some foundation in fact, for mere allegations of criminality are insufficient to warrant application of the exception.” Id.

Mere “allegations” or “suspicions” of criminal, fraudulent, or tortious conduct do not make a *prima facie* showing. See Burlington Indus. v. Exxon Corp., 65 F.R.D. 26, 40 (D. Md. 1974) (“The mere allegation of fraud, however, is not sufficient to terminate the attorney-client privilege. *Prima facie* evidence of fraud, not mere suspicion of fraud, is required to abrogate the privilege.”); Neuder v. Battelle Pac. Nw. Nat. Lab., 194 F.R.D. 289, 298 (D.D.C. 2000) (“In order to invoke the exception, ‘more is necessary than mere allegations of wrongdoing or simply naming the attorney as a defendant in the litigation.’”); In re Infinity Bus. Grp., Inc., 530 B.R. 316, 325 (Bankr. D.S.C. 2015) (party failed to meet burden of demonstrating that the crime-fraud exception applied when it simply made “generic references” to the allegations in its Complaint). While a *prima facie*

showing “may justify a finding in favor of the offering party, it does not necessarily compel such a finding.” Duplan Corp., 540 F.2d at 1220.

The SCAG falls woefully short of making the necessary *prima facie* showing in this case. As purported evidence of an alleged fraudulent “scheme,” the SCAG offers nothing more than that Minnie’s initial legal counsel (Irving Slotchiver) sent a letter to the Foundation in November of 2017 at the very outset of the estate administration process notifying the Foundation that it was a “potential” beneficiary of Sonny’s estate, but then Minnie did not distribute any portion of the estate to the Foundation roughly a year later when the estate’s assets were distributed to the actual beneficiaries. The SCAG contends that Minnie (through Mr. Slotchiver) took one position in the beginning of the estate administration, but then she (through Mr. Moss and Ms. Wentworth) reversed course and took a different position at a later point in the process. The SCAG claims these facts mean that Minnie engaged Mr. Moss and Ms. Wentworth to commit a fraud or tort.

Of course, these allegations do not establish the elements of a crime, fraud, or tort. At most, they show that Minnie changed positions, which is not criminal, fraudulent, or tortious. Of course, the SCAG’s memorandum altogether ignores the fact that Mr. Slotchiver was unaware of many facts that were learned after Ms. Wentworth replaced him as Minnie’s counsel. At the time of his letter, Mr. Slotchiver did not know that the Foundation was unable to satisfy the conditions in Sonny’s Will and Codicils necessary for it to qualify as a beneficiary of the estate. At the time of his letter, Mr. Slotchiver did not know that the IRS had revoked the Foundation’s tax-exempt status effective on November 15, 2017, which fact was not posted by the IRS until March 19, 2018.

Unlike Mr. Slotchiver, Minnie was aware of these facts (which disqualified the Foundation as a beneficiary under Sonny’s Will and Codicils) by the time she distributed the estate in November of 2018. Contrary to the SCAG’s speculation and conjecture, there is a very good

explanation for why Minnie did not distribute any portion of the estate to the Foundation that has nothing to do with fraud—because the Foundation failed to satisfy the conditions in Sonny’s Will and Codicils necessary for it to receive such a distribution.

In short, the SCAG has not presented any evidence of any crime, fraud, or tort committed by Minnie or her legal counsel. The crime-fraud-tort exception is inapplicable.

## **II. THE SUBPOENAS IMPLICATE PROTECTED ATTORNEY WORK PRODUCT MATERIAL.**

The SCAG argues that the work product doctrine cannot apply to Mr. Moss’s documents because litigation allegedly was not anticipated “during the entirety of the alleged attorney-client relationship” between Minnie and Mr. Moss. See SCAG Memo. p.15-16. However, the SCAG misstates the facts.

The work product doctrine provides that a party ordinarily may not “obtain discovery of documents and tangible things ... prepared in anticipation of litigation or for trial by or for another party or by or for that other party’s representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) ....” S.C. R. CIV. PRO. 26(b)(3). The Rule further provides that the court “shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.” Id.

The work product protection applies not only in the proceedings for which it was prepared, but in all other litigation. Duplan Corp. v. Moulinage et Retorderie de Chavanoz, 487 F.2d 480, 483-84 (4th Cir. 1973) (holding that work product immunity applies to materials in a subsequent case as well as that in which they were prepared); Duplan Corp. v. Moulinage et Retorderie de Chavanoz, 509 F.2d 730, 736 (4th Cir. 1974) (adhering to and following prior ruling that the immunity extended to work product extends in time beyond the litigation at hand and does not expire once the litigation for which it was prepared has been concluded); Washington v. Follin,

2016 WL 1614166, at \*12 (D.S.C. Apr. 22, 2016) (citing Duplan and noting that work product materials retain their qualified immunity from discovery after termination of the litigation for which the materials were prepared, and that the qualified immunity remains in subsequent and unrelated litigation).

First, the SCAG ignores the fact that days before Mr. Slotchiver was replaced by Ms. Wentworth in November of 2017, he submitted a bill for legal services to Minnie in the amount of \$303,805.00 and pursued a claim against Sonny's estate. Litigation was imminent in early December of 2017 because of the dispute between Minnie and Mr. Slotchiver regarding the fees he was entitled to receive from the estate. The Slotchiver firm sent correspondence to Ms. Wentworth on February 14, 2018, which followed up on the firm's communications "several weeks ago regarding [its] outstanding bill for services submitted to the Mevers Estate." The firm soon thereafter filed a creditor's claim against the Estate, which was settled on the eve of a hearing in the Probate Court. Ms. Wentworth and Mr. Moss were both involved in reviewing the Slotchiver claim. Ms. Wentworth filed pleadings in the Probate Court contesting the claim. Minnie reasonably anticipated that litigation may result in November of 2017 when she replaced Mr. Slotchiver and he responded by pursuing recovery of a contested legal bill.

Second, in November and December of 2019, several months before the SCAG filed this action, the SCAG sent investigatory requests to Minnie seeking records and information. Ms. Wentworth assisted Mr. Moss in responding to these inquiries on Minnie's behalf. Additionally, since this litigation was filed, Mr. Moss has provided assistance to Minnie's current legal counsel in defending against the SCAG's claims. Minnie reasonably anticipated that litigation may result when the SCAG contacted her on November 14, 2019 and demanded information from her regarding these matters.

Mr. Moss's work product is protected from discovery and should not be produced.

### **III. THE SUBPOENAS IMPLICATE PRIVATE AND CONFIDENTIAL TAX RETURNS AND TAX INFORMATION THAT SHOULD NOT BE PRODUCED.**

The SCAG's subpoenas cover Minnie's and Sonny's confidential tax returns and tax information as well as communications with the IRS. The subpoenas contain no time limitations for the requested documents. Disclosure of these records is not warranted in this case.

"Routine discovery of tax returns is not the rule but rather the exception." Trudeau v. New York State Consumer Prot. Bd., 237 F.R.D. 325, 331 (N.D.N.Y. 2006). "By force of statute, income tax returns are confidential communications between the taxpayer and the government, not directly available to third parties except as provided by law or regulations." Austin v. Aluminum Co. of Am., 15 F.R.D. 490, 490 (E.D. Tenn. 1954). Since 1977, tax returns have been described by statute as "confidential." Gates v. Wilkinson, 2005 WL 758793, at \*1 (N.D.N.Y. Apr. 5, 2005) (citing 26 U.S.C. § 6103(a)); Gattegno v. Pricewaterhousecoopers, LLP, 205 F.R.D. 70, 71 (D. Conn. 2001). Such confidentiality "serves both to protect the privacy interests of taxpayers, and 'the need, if the tax laws are to function properly, to encourage taxpayers to file complete and accurate returns.'" Aliotti v. Vessel Senora, 217 F.R.D. 496, 497 (N.D. Cal. 2003) (citation omitted). "Thus, a more stringent standard for discovery of tax returns applies than the general standard of relevance for discovery in [Rule] 26(b)(1)." Gates, 2005 WL 758793 at \*1.

Tax returns are afforded a greater protection in civil discovery that "is aptly characterized as a 'qualified privilege.'" Gattegno v. Pricewaterhousecoopers, LLP, 205 F.R.D. 70, 72 (D. Conn. 2001); Trudeau, 237 F.R.D. at 331 (observing that personal financial information is "presumptively confidential or cloaked with a qualified immunity"). Under this standard, the production of tax returns should not be ordered unless (1) it "clearly appears" they are relevant to the subject matter of the action or to the issues raised thereunder and (2) that there is a "compelling

need” therefor. Richland Wholesale Liquors, Inc. v. Joseph E. Seagram & Sons, Inc., 40 F.R.D. 480, 482-83 (D.S.C. 1966) (citing Cooper v. Hallgarten & Co., 34 F.R.D. 482 (S.D.N.Y.1964)). The Court “must consider whether [the requesting party] has demonstrated a ‘compelling need’ for [the party’s] tax returns, and whether production of those documents is the ‘least intrusive’ means of obtaining the information sought.” I’Mnaedaft, Ltd. v. Intelligent Office Sys., LLC, 2009 WL 824304, at \*3 (D. Colo. Mar. 30, 2009). “[I]f the information contained in the tax return is otherwise available from other less intrusive sources, compelled discovery of the return should be denied.” Trudeau, 237 F.R.D. at 331.

The burden is on the party seeking the discovery to establish both prongs of this test. Melendez v. Primavera Meats, Inc., 270 F.R.D. 143, 144 (E.D.N.Y. 2010); Carmody v. Vill. of Rockville Ctr., 2007 WL 2042807, at \*2 (E.D.N.Y. July 13, 2007); Trudeau, 237 F.R.D. at 331. In this case, the SCAG has not made a clear showing that the entirety of Minnie’s and Sonny’s confidential tax returns and tax information for an unlimited period of time are relevant to this case. The SCAG has completely failed to demonstrate a “compelling need” for this information. Any relevant information in the tax returns can be obtained by less intrusive means, such as interrogatories or depositions. Gates, 2005 WL 758793 at \*3 (denying production of tax returns when the information sought appeared to be available through depositions and other discovery); Carmody, 2007 WL 2042807 at \*3 (denying production of tax returns where there was no indication that the defendants had attempted to obtain the requested information through the use of any other, less intrusive, discovery device).

The SCAG’s subpoenas should be quashed to the extent they cover Minnie’s and Sonny’s confidential tax returns and tax information or communications with the IRS. Austin, 15 F.R.D. at

490 (“What is not directly available should not be made indirectly available by court order in an action between private litigants.”).

#### **IV. THE SUBPOENAS ARE OVERBROAD IN SCOPE, SEEK IRRELEVANT MATERIALS, AND ARE UNDULY BURDENSOME.**

The SCAG’s subpoenas seek production of Mr. Moss’s entire file involving Minnie and Sonny’s Estate for an undefined and unlimited period of time.

The scope of discovery through subpoena is the same as that applicable to Rule 34 and other discovery rules. As tools of discovery, subpoenas are not exempt from the requirement of relevance. Miscellaneous Docket Matter No. 1 v. Miscellaneous Docket Matter No. 2, 197 F.3d 922, 925 (8th Cir. 1999); see also Dering v. Service Experts Alliance LLC, 2007 WL 4299968, \*2 (N.D. Ga. 2007) (“the scope of subpoenas for production of documents pursuant to Rule 45 is the same as the scope of discovery under Rule 26(b)”).

Demonstrating relevance of requested information is the burden of the party seeking the discovery, American Elec. Power Co., Inc. v. U.S., 191 F.R.D. 132, 136 (S.D. Ohio 1999) (citing Katz v. Batavia Marine & Sporting Supplies, 984 F.2d 422, 424 (Fed. Cir. 1993), and a court may quash a subpoena that seeks irrelevant matter. United States v. McGrady, 508 F.2d 13 (8th Cir. 1974). Moreover, even if the information sought is relevant, discovery must not be allowed where no need is shown. Insulate America v. Masco Corp., 227 F.R.D. 427, 432 (W.D.N.C. 2005).

The Court may quash a subpoena on grounds of irrelevance or overbreadth because either irrelevance or overbreadth necessarily establishes undue burden. In re Subpoenas for Documents Issued to ThompsonMcMullan, P.C., 2016 WL 1071016, at \*5 (E.D. Va. Mar. 17, 2016). “A subpoena imposes an undue burden on a party when a subpoena is overbroad.” In re Subpoena Duces Tecum to AOL, LLC, 550 F. Supp. 2d 606, 612 (E.D. Va. 2008). “This undue burden

category ‘encompasses situations where the subpoena seeks information irrelevant to the case.’”  
In re Monitronics Int’l, Inc., 2014 WL 12623046, at \*3 (N.D.W. Va. June 19, 2014).

Discovery may not be had on matters irrelevant to the claims and defenses involved in the pending action and “[e]ven if relevant, discovery is not permitted where no need is shown, or compliance would be unduly burdensome, or where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information.” Miscellaneous Docket Matter No. 1, 197 F.3d at 925 (quoting Micro Motion, Inc. v. Kane Steel Co., 894 F.2d 1318, 1323 (Fed. Cir. 1990)); see also Spilker v. Medtronic, Inc., 2015 WL 12851391, at \*2 (E.D.N.C. Jan. 6, 2015).

The Court “may find that a subpoena presents an undue burden when the subpoena is facially overbroad.” Andra Group, LP v. JDA Software Group, Inc., 312 F.R.D. 444, 450 (N.D. Tex. 2015) (citation omitted). Courts have also found discovery to be unduly burdensome when it requested the duplication of other information already obtained or obtainable through other discovery methods. See Dongguk Univ. v. Yale Univ., 270 F.R.D. 70, 74 (D. Conn. 2010); Kinetic Concepts, Inc. v. Convatec Inc., 268 F.R.D. 255, 262-63 (M.D.N.C. 2010).

The SCAG has made no showing that Mr. Moss’s entire file is relevant to this litigation. On its face, it would be extremely burdensome, expensive, time-consuming, and intrusive into Minnie’s private matters to require Mr. Moss to search for, retrieve, compile, and produce the information and records requested by the SCAG’s subpoenas. The subpoenas are unduly burdensome, overbroad in scope, and seek irrelevant information and should be quashed.

### CONCLUSION

For the forgoing reasons, Minnie respectfully requests the Court to quash the above-referenced subpoenas to Mr. Moss.



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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March 24, 2022.

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CERTIFICATE OF COUNSEL

SC Court of Appeals

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