

**RECEIVED**

**Aug 17 2023**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Letitia Verdin, Circuit Court Judge

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**Case No. 2022-001389**

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Lois Seaborn

Appellant

v.

CPM Federal Credit Union,

Respondent,

---

**RECORD ON APPEAL**

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Lois Seaborn  
1901 Woodruff Rd #1234  
Greenville, SC 29607  
Appellant-Pro se

Emily Irene Bridges  
110 E. Coffee Street Ste 210  
Greenville, SC 29601  
Attorney for Respondents

August 16, 2023

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Greenville Common Pleas

**Case Caption:** Lois J Seaborn Prs , plaintiff, et al vs. CPM Federal Credit Union  
**Case Number:** 2022CP2301995  
**Type:** Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2022-09-20 14:35:23 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2301995

Lois J Seaborn Prs et al  
PLAINTIFF(S)

CPM Federal Credit Union  
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:

This matter came before the Court on September 19, 2022, by way of Defendant's Motion to Dismiss and Compel Arbitration. After careful consideration of all relevant filings and the arguments of both the Plaintiff and defense counsel, this Court hereby GRANTS Defendant's Motion to Dismiss and Compel Arbitration.

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 09/20/2022 .

Nathaniel J Colbert  
 Nathaniel J Colbert Estate  
 Lois J Seaborn Prs for Lois J Seaborn Prs  
 Lois J Seaborn Prs for Lois J Seaborn Prs

RECEIVED  
 Oct 03 2022  
 SC Court of Appeals

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-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

C.A. No.: 2022-CP-23- 01995

22 APR 18 PM 2:03  
FBI Wickensimer COC GUL SC

The Estate Of:  
NATHANIEL J. COLBERT  
LOIS J. SEABORN, P.R  
*Plaintiff,*

v.


**SUMMONS**

CPM, FCU

*Defendant.*

TO: THE DEFENDANT(S) ABOVE-NAMED:

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of said court and to serve a copy on the Plaintiff's address 1901 Woodruff Rd., Apt 1234 Greenville, South Carolina, 29607 an Answer to the Complaint in this action, a copy of which is herewith served upon you, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be taken against you for the relief demanded in the Complaint, plus costs of this action.

s/   
Lois Seaborn, Personal Representative  
For Nathaniel J. Colbert  
1901 Woodruff Rd. Apt 1234  
Greenville, SC 29607  
864-526-2800

April 5, 2022

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
 )  
The Estate of: )  
NATHANIEL JOVAN COLBERT )  
LOIS SEABORN, )  
Personal Representative )  
Plaintiffs )  
Vs. )  
 )  
CPM, Federal Credit Union )  
\_\_\_\_\_ )  
 )

THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No: 2022-CP-23-0195

COMPLAINT  
(JURY TRIAL DEMANDED)

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The Plaintiff above named, complaining of the Defendants herein, would respectfully show unto the Court:

**Parties and Jurisdiction**

1. That at all times relevant, the Plaintiff, Nathaniel Jovan Colbert (deceased) was a customer of the defendant credit union bank. Plaintiff was a resident of Greenville County, State of South Carolina at the time of his death.
2. That upon information and belief, the Defendants, CPM Federal Credit Union, is a duly federally chartered credit union. Organized, existing and operating in the State of South Carolina and maintains agents and servants within the County of Greenville, State of South Carolina for the purpose of carrying on its business.
3. That the avoidable and negligent incident complained of herein occurred in Greenville County, State of South Carolina.

### **Factual Background**

4. That on or about the times between April 21, 2021 through July 21, 2021, a sum of money was unlawfully and unjustly withheld by the Defendant Bank CPM Credit Union without cause. At all times relevant, the Defendants invited Plaintiffs to patronize its premises and business establishment, located at or about 1270 E. Butler Rd, Mauldin South Carolina, a facility owned managed, operated and controlled by Defendants.
5. That Defendants took advantage of decedent untimely death to enter into his bank account with Defendants and removed a sum of money without justification.
6. That on or about July 19, 2021, documents were filed with the Greenville County Probate Court indicating a lesser amount of funds in the bank account that was due to the estate of the decedent. That at this time the Defendants provided the Greenville county Probate Court fraudulent and misleading information.
7. That an agent for the Defendants took matters upon herself to remove lawful funds in decedents' account and forever deprive decedent's estate of the same.
8. That as a result, the estate of the Plaintiff has suffered, and continues to suffer great emotional distress.
9. That the personal representative was publically humiliated by agents of the Defendants when seeking an explanation of the unlawful removal.

### **FOR A FIRST CAUSE OF ACTION**

#### **Negligence**

The Plaintiff estate, re-alleges each and every preceding allegation as if fully repeated herein.

10. That the Defendants were negligent in the following respects:

- a. In breaching their duty owed to the Plaintiff and his estate in operating said business in a negligent manner without regard for the life and well-being of the owner of the funds removed.
- b. In breaching their duty under the law to be custodians of the decedents' funds and not act as arbitrary owners of the funds, constituting unjust enrichment.
- c. In failing to properly justify any meddling with decedents' lawful account and funds.
- d. In failing to follow the laws of the South Carolina Consumer protection Act.
- e. In violating their duty of trust as custodians of the decedents' funds.
- f. In breaching the duty of care owed to the decedent in failing to properly train its employees and agents on proper procedures for removing funds and providing truthful notification prior to acting arbitrarily adverse to the decedent.

That each of the foregoing willful, wanton, and reckless acts were a direct and proximate cause of the economic injuries and financial suffering sustained by the Decedents' estate, which would not have occurred, but for the negligent conduct of the defendants.

That for this first cause of action, the Plaintiff is informed and believes that she is entitled to a judgement against these Defendants for actual compensatory, pain and suffering, past present and future, lost income, undue financial hardship, enjoyment of life and punitive damages in an amount not less than One Hundred Fifty Thousand Dollars (\$150,000), or any other amount to be determined by a jury, for the costs of this action, and for such other and further relief as this Court deems fair, just and equitable.

FOR A SECOND CAUSE OF ACTION  
Gross Negligence

The Plaintiff estate, re-alleges each and every preceding allegation as if fully repeated herein.

11. That the Defendants were negligent in the following respects:

- a. In breaching the duty of care owed to Plaintiff in operating said business in a negligent manner without regards for the life and well-being of its patrons.
- b. In willfully, wantonly and recklessly breaching the duty of care owed to the Plaintiffs' estate in operating said business in a manner without regards to financial well-being and health of the its patrons
- c. In willfully, wantonly and recklessly breaching the duty of care owed to the Plaintiffs' estate in failing to train its employees and agents on proper procedure under the law.
- d. In willfully, wantonly and recklessly breaching the duty owed to the Plaintiff as custodian of Plaintiffs' funds.

That each of the foregoing willful, wanton, and reckless acts were a direct and proximate cause of the economic injuries and financial suffering sustained by the Decedents' estate, which would not have occurred, but for the negligent conduct of the defendants.

That for this second cause of action, the Plaintiff is informed and believes that she is entitled to a judgement against these Defendants for actual compensatory, pain and suffering, past present and future, lost income, undue financial hardship, enjoyment of life and punitive damages in an amount not less than One Hundred Fifty Thousand Dollars (\$150,000), or any other amount to be determined by a jury, for the costs of

this action, and for such other and further relief as this Court deems fair, just and equitable.

FOR A THIRD CAUSE OF ACTION  
Unjust Enrichment

The Plaintiff estate, re-alleges each and every preceding allegation as if fully repeated herein.

12. Plaintiff repeats and re-alleges all paragraphs as though fully set forth herein. Defendant entered into a contract Decedent to provide funds as a bank customer in the manner above described services, the funds were provided for use by the FCU, and Defendants CPM FCU benefitted from the described deposits and services. As a result, Defendants have been unjustly enriched by the provision of the described deposits and services. Reasonable compensation for the services provided is not less than One Hundred Fifty Thousand Dollars (\$150,000). Wherefore, Plaintiff, the Estate of Nathaniel J. Colbert prays for entry of judgment in its favor and against Defendants CPM FCU in the amount not less than One Hundred Fifty Thousand Dollars (\$150,000), pre-judgment interest, plus the costs and disbursements of this action together with such further and other relief as the Court deems just, proper and equitable

That each of the foregoing willful, wanton, and reckless acts were a direct and proximate cause of the economic injuries and financial suffering sustained by the Decedents' estate, which would not have occurred, but for the negligent conduct of the defendants.

That for this third cause of action, the Plaintiff is informed and believes that she is entitled to a judgement against these Defendants for actual compensatory, pain and suffering, past present and future, lost income, undue financial hardship, enjoyment of life and punitive

damages in an amount not less than One Hundred Fifty Thousand Dollars (\$150,000), or any other amount to be determined by a jury, for the costs of this action, and for such other and further relief as this Court deems fair, just and equitable.

FOR A FOURTH CAUSE OF ACTION  
Breach of Contract

The Plaintiff estate, re-alleges each and every preceding allegation as if fully repeated herein.

13. Plaintiff repeats and re-alleges all paragraphs as though fully set forth herein. Plaintiff has duly performed its duties and obligations under the Customer Agreement by depositing said funds into the account of the defendant credit union. Defendant have refused to render or pay the balance due, to the estate of the decedent, notwithstanding numerous demands from Plaintiffs' estate. Accordingly, Defendants have materially breached its contract with Plaintiff, proximately causing damages to Plaintiffs' estate. Pursuant to the express terms of the Customer Agreement, Defendants is to pay the attorneys' fees of Plaintiff. Further, under the Agreement, Wherefore, Plaintiffs' estate, Pray for entry of judgment in its favor and against Defendants CPM FCU. in an amount not less than One Hundred Fifty Thousand (\$150,000), interest at 2% per month, attorney's fees, and the costs and disbursements of this action together with such further and other relief as the Court deems just.

That each of the foregoing willful, wanton, and reckless acts were a direct and proximate cause of the economic injuries and financial suffering sustained by the Decedents' estate, which would not have occurred, but for the negligent conduct of the defendants.

That for this fourth cause of action, the Plaintiff is informed and believes that she is entitled to a judgement against these Defendants for actual compensatory, pain and suffering, past

present and future, lost income, undue financial hardship, enjoyment of life and punitive damages in an amount not less than One Hundred Fifty Thousand Dollars (\$150,000), or any other amount to be determined by a jury, for the costs of this action, and for such other and further relief as this Court deems fair, just and equitable.

FOR A FIFTH CAUSE OF ACTION  
Account Under Contract

The Plaintiff estate, re-alleges each and every preceding allegation as if fully repeated herein.

14. Plaintiff repeats and re-alleges all paragraphs as though fully set forth herein. By virtue of the foregoing conduct, an account stated was created between Plaintiff and Defendant whereby Defendant agreed to perform as a credit union and allow Plaintiff access to his accounts upon demand. Defendants have removed funds and restricted the estate of Nathaniel J. Colbert after death, without having any proper justification for doing so. Notwithstanding numerous demands, Defendant failed to pay said amount. Plaintiff is therefore entitled to payment of said amount plus prejudgment interest. Wherefore, Plaintiff the estate of Nathaniel J. Colbert prays for entry of judgment in its favor and against Defendants CPM FCU in the amount an amount not less than One Hundred Fifty Thousand Dollars, (\$150,000), pre-judgment interest, and the costs and disbursements of this action together with such further and other relief as the Court deems just, fair and equitable.

That each of the foregoing willful, wanton, and reckless acts were a direct and proximate cause of the economic injuries and financial suffering sustained by the Decedents' estate, which would not have occurred, but for the negligent conduct of the defendants.

That for this fifth cause of action, the Plaintiff is informed and believes that she is entitled to a judgement against these Defendants for actual compensatory, pain and suffering, past present and future, lost income, undue financial hardship, enjoyment of life and punitive damages in an amount not less than One Hundred Fifty Thousand Dollars (\$150,000), or any other amount to be determined by a jury, for the costs of this action, and for such other and further relief as this Court deems fair, just and equitable.

**FOR A SIXTH CAUSE OF ACTION**  
**Conversion**

The Plaintiff estate, re-alleges each and every preceding allegation as if fully repeated herein.

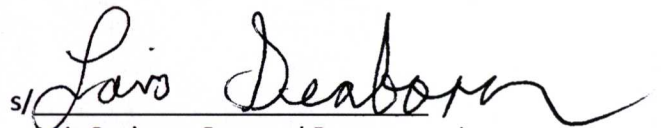
15. That each and every allegation set forth in all preceding Paragraphs, herein above is incorporated herein as if fully set forth herein verbatim. That Defendant, 's, retention of deposited monies due subsequent to , constitutes a conversion of deposited money belonging to Plaintiff, Nathaniel J. Colbert, (Deceased), which conversion was willfully and intentionally done with knowledge that the deposited monies belonged to Plaintiffs' estate, which had and has an immediate right to possession of such deposited monies. That all of the relevant foregoing acts of Defendant, CPM FCU, complained of in Paragraph 1 through Paragraph 15 herein above were willful, wanton, malicious, reckless and done with conscious indifference to the ownership of and immediate right of possession of the deposited monies by Plaintiff, Nathaniel J. Colbert and were in reckless disregard thereof. That, on information and belief, Plaintiffs' estate is entitled to damages in an amount equal to the amount of deposited monies converted by Defendant, CPM FCU, for pre-judgment interest, for punitive damages in an appropriate amount and for the costs and attorney's fees associated with bringing this action.

That each of the foregoing willful, wanton, and reckless acts were a direct and proximate cause of the economic injuries and financial suffering sustained by the Decedents' estate, which would not have occurred, but for the negligent conduct of the defendants.

That for this sixth cause of action, the Plaintiff is informed and believes that she is entitled to a judgement against these Defendants for actual compensatory, pain and suffering, past present and future, lost income, undue financial hardship, enjoyment of life and punitive damages in an amount not less than One Hundred Fifty Thousand Dollars (\$150,000), or any other amount to be determined by a jury, for the costs of this action, and for such other and further relief as this Court deems fair, just and equitable.

WHEREFORE, the estate of Nathaniel J. Colbert, prays that this Honorable Court set this matter for trial by jury as soon as the schedule of the Court permits, and finds after the submission of all evidence that the Plaintiff is entitled to the judgement demanded in the Complaint.

April 5, 2022

A handwritten signature in cursive script that reads "Lois Seaborn". The signature is written in black ink and is positioned above the typed name and address.

Lois Seaborn, Personal Representative  
For Nathaniel J. Colbert  
1901 Woodruff Rd. Apt 1234  
Greenville, SC 29607  
864-526-2800

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2022-CP-23-01995

THE ESTATE OF NATHANIEL J.  
COLBERT  
LOIS SEABORN, P.R.,

Plaintiff,

v.

CPM, FCU,

Defendants.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of **FORM 4, ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND COMPEL ARBITRATION** has been served upon the following pro se Plaintiff by placing the same in the United States mail, certified first class postage prepaid, addressed to the following as shown below this 22nd day of September, 2022.

Lois Seaborn, Personal Representative  
For Nathaniel J. Colbert  
1901 Woodruff Rd., Apt 1234  
Greenville, SC 29607



\_\_\_\_\_  
Leslie C. Cantrell  
Parker Poe Adams & Bernstein LLP

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

THE ESTATE OF NATHANIEL J.  
COLBERT  
LOIS SEABORN, P.R.,

Plaintiff,

v.

CPM, FCU,

Defendant.

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2022-CP-23-01995

**MOTION TO DISMISS AND COMPEL  
ARBITRATION**

PLEASE TAKE NOTICE THAT Defendant CPM Federal Credit Union (“CPM” or “Defendant”), by and through its undersigned counsel, moves to dismiss this action and compel Plaintiff, The Estate of Nathaniel Jovan Colbert, Lois Seaborn, Personal Representative (“Plaintiff”) to submit to mandatory and binding arbitration as provided in the Membership Account Agreement and Disclosures.

CPM is a federal credit union with operations in Greenville, South Carolina. Mr. Colbert, the decedent, was a customer of CPM. (Compl. ¶ 1). As a customer of CPM, Mr. Colbert was bound by the applicable Membership Account Agreement and Disclosures (“Membership Agreement”), relevant portions of which are attached to **Exhibit 1**, the Affidavit of Alan Thrall. Plaintiff alleges CPM “unlawfully and unjustly” withheld a “sum of money.” (Compl. ¶4). Plaintiff filed this action in the Court of Common Pleas for Greenville County, South Carolina, asserting various causes of action relating to Mr. Colbert’s account with CPM.

First, in accordance with South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, *et seq.*, the Membership Agreement, on the opening pages immediately following the table of contents, in underlined, bold capital letters, states: **THIS AGREEMENT IS SUBJECT TO**

**ARBITRATION PURSUANT TO S.C. CODE ANN. § 15-48-10 ET. AL., AND THE  
FEDERAL ARBITRATION ACT §9 USC 1 ET SEQ.. See Ex. 1.**

Further, the Membership Account Agreement contains an arbitration provision, which states in relevant part:

**RESOLVING CLAIMS:**

If you and the Credit Union are not able to resolve a claim ourselves, then you and we agree that the claim will be resolved as provided in this Resolving Claims section. This is a dispute resolution provision. Please read it carefully.

**ARBITRATION:** This section does not apply to any dispute in which the amount in controversy is within the jurisdictional limits of, and is filed in, a small claims court. These arbitration provisions shall survive closure of your account or termination of all business with us. If any provision of this section is ruled invalid or unenforceable, the invalid or unenforceable part of this "ARBITRATION" sub-section shall be rendered null and void, but the remaining terms of this Resolving Claims section shall remain in full force and effect – See "Rules of Interpretation" below.

**Arbitration Rules:** In the event of a dispute relating to or arising out of your account, this Agreement, any loan agreements or any other services you may have with us now or at any time in the future - you or we may elect to arbitrate the dispute. At your election, the arbitration shall be conducted by either JAMS or the American Arbitration Association ("AAA") (or, if neither of these arbitration organizations will serve, then a comparable substitute arbitration organization agreed upon by the parties or, if the parties cannot agree, chosen by a court of competent jurisdiction). If JAMS is selected, the arbitration will be handled according to its Streamlined Arbitration Rules unless the Claim is for \$250,000 or more, in which case its Comprehensive Arbitration Rules shall apply. If the AAA is selected, the arbitration will be handled according to its Commercial Arbitration Rules. You may obtain rules and forms for JAMS by contacting JAMS at 1.800.352.5267 or [www.jamsadr.com](http://www.jamsadr.com) and for the AAA by contacting the AAA at 1.800.778.7879 or [www.adr.org](http://www.adr.org). Any arbitration hearing that you attend will take place in the federal judicial district in which you reside. Without regard to which arbitration body is selected to resolve the dispute, any disputes between you and us as to whether your claim falls within the scope of this arbitration clause shall be determined solely by the arbitrator, and not by any court.

**Arbitration Process:** Arbitration involves the review and resolution of the dispute by a neutral party. The arbitrator's decision will generally be final and binding. At your request, for claims made to consumer accounts, we will advance your filing and hearing fees for any claim you may file against us; the arbitrator will decide whether we or you will ultimately be responsible for those fees. Arbitration can only decide our or your dispute and cannot consolidate or join claims of other persons who may have similar claims. There will be no authority or right for any disputes to be arbitrated on a class action basis.

**Effects of Arbitration:** If either of us chooses arbitration, neither of us will have the right to litigate the dispute in court or have a jury trial. In addition, you will not have the right to participate as a representative or member of any class of claimants, or in any other form of representative capacity that seeks monetary or other relief beyond your individual circumstances, pertaining to any dispute subject to arbitration. There shall be no authority for any claims to be arbitrated on a class action or any other form of representative basis. Arbitration can only decide your or our claim, and you may not consolidate or join the claims of other persons who may have similar claims, including without limitation claims for public injunctive or other equitable relief as to our other customers or members of the general public. Any such monetary, injunctive, or other equitable relief shall be limited solely to your accounts, agreements, and transaction with us. Notwithstanding the foregoing, any question as to the validity and effect of this class action waiver shall be decided solely by a court of competent jurisdiction, and not by the arbitrator.

(See Ex. 1).

Federal and South Carolina law strongly favor the validity and enforceability of arbitration agreements, and any doubts regarding the scope or validity of arbitration agreements are to be resolved in favor of arbitration. See *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S.

643, 650 (1986); *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 217 (1985); *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013). “[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 271, 776 S.E.2d 91, 94 (Ct. App. 2015) (alteration in original) (quoting *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014)).

The Court’s function is to determine the two “gateway matters” based on the allegations of the Complaint: (1) whether an applicable arbitration agreement exists, and (2) whether the specific dispute falls within the scope of the arbitration agreement. *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 629, 667 S.E.2d 1, 5 (Ct. App. 2008). Upon determining a valid arbitration agreement exists and applies to the controversy before the Court, the Court’s duty is to compel the matter to arbitration wherein the arbitrator has the authority to decide questions which grow out of the dispute and bear on its final disposition. *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964).

The applicable Membership Agreement contains a clear and unequivocal arbitration provision which requires the arbitration of Plaintiff’s claims against CPM. The claims arise out of the account held by Mr. Colbert with CPM, and the arbitration provision explicitly states it survives the closure of the account. Therefore, CPM respectfully requests that this Court enter an Order dismissing this action and compelling Plaintiff to proceed with arbitration.

This Motion is based on and will be supported by the pleadings in this action, the controlling statutes and rules, applicable case law, and any appropriate memoranda of law or affidavits filed in support of this Motion, any additional documents required by the Court, and such supporting arguments as may be submitted in connection herewith.

Respectfully submitted,

s/ Emily I. Bridges

Emily I. Bridges (SC Bar No. 102199)

Email: emilybridges@parkerpoe.com

Parker Poe Adams & Bernstein LLP

110 East Court St., Suite 200

Greenville, SC 29601

ATTORNEYS FOR PLAINTIFF

June 10, 2022

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

THE ESTATE OF NATHANIEL J.  
COLBERT  
LOIS SEABORN, P.R.,

Plaintiff,

v.

CPM, FCU,

Defendants.

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2022-CP-23-01995

**CERTIFICATE OF SERVICE**

This is to certify that a copy of **MOTION TO DISMISS AND COMPEL ARBITRATION** has been served upon the following pro se Plaintiff by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 10th day of June, 2022.

Lois Seaborn, Personal Representative  
For Nathaniel J. Colbert  
1901 Woodruff Rd., Apt 1234  
Greenville, SC 29607

s/ Emily I. Bridges

Emily I. Bridges (SC Bar No. 102199)  
Email: emilybridges@parkerpoe.com  
Parker Poe Adams & Bernstein LLP  
110 East Court St., Suite 200  
Greenville, SC 29601

**EXHIBIT 1**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

THE ESTATE OF NATHANIEL J.  
COLBERT  
LOIS SEABORN, P.R.,

Plaintiff,

v.

CPM, FCU,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2022-CP-23-01995

**AFFIDAVIT OF ALAN THRALL**

PERSONALLY APPEARED before me, Alan Thrall, who being first duly sworn, deposes and says:

1. The following is given of my own personal knowledge and based upon the business records of CPM Federal Credit Union ("CPM") maintained in the ordinary course of business.
2. I am the Risk and Compliance Manager for CPM and I am familiar with the account of Nathaniel J. Colbert, who was a customer of CPM until his death.
3. I am familiar with CPM's policies, procedures, and membership agreements to which all customers agree as part of opening an account with CPM.
4. Mr. Colbert was a customer of CPM during the years 2020 and 2021, until his death in 2021.
5. As a customer of CPM, Mr. Colbert was subject to the Membership Account Agreement and Disclosures ("Membership Agreement") applicable during the time relevant to this lawsuit.
6. A copy of the relevant provisions of the Membership Agreement from November 2020, which was in effect during the time at issue, is attached hereto as **Exhibit A**.

7. Mr. Colbert received notice of these provisions through an Important Changes notification, attached hereto as **Exhibit B**.

8. The Membership Agreement includes the following language in bold, underlined, and capital letters: **THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE ANN. § 15-48-10 ET. AL., AND THE FEDERAL ARBITRATION ACT §9 USC 1 ET SEQ.** See Ex. A.

9. The Membership Agreement includes a section entitled "Resolving Claims", which states, in relevant part:

**RESOLVING CLAIMS:**

If you and the Credit Union are not able to resolve a claim ourselves, then you and we agree that the claim will be resolved as provided in this Resolving Claims section. This is a dispute resolution provision. Please read it carefully.

**ARBITRATION:** This section does not apply to any dispute in which the amount in controversy is within the jurisdictional limits of, and is filed in, a small claims court. These arbitration provisions shall survive closure of your account or termination of all business with us. If any provision of this section is ruled invalid or unenforceable, the invalid or unenforceable part of this "ARBITRATION" sub-section shall be rendered null and void, but the remaining terms of this Resolving Claims section shall remain in full force and effect – See "Rules of Interpretation" below.

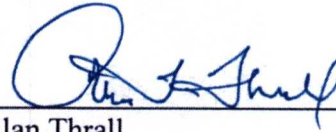
**Arbitration Rules:** In the event of a dispute relating to or arising out of your account, this Agreement, any loan agreements or any other services you may have with us now or at any time in the future - you or we may elect to arbitrate the dispute. At your election, the arbitration shall be conducted by either JAMS or the American Arbitration Association ("AAA") (or, if neither of these arbitration organizations will serve, then a comparable substitute arbitration organization agreed upon by the parties or, if the parties cannot agree, chosen by a court of competent jurisdiction). If JAMS is selected, the arbitration will be handled according to its Streamlined Arbitration Rules unless the Claim is for \$250,000 or more, in which case its Comprehensive Arbitration Rules shall apply. If the AAA is selected, the arbitration will be handled according to its Commercial Arbitration Rules. You may obtain rules and forms for JAMS by contacting JAMS at 1.800.352.5267 or [www.jamsadr.com](http://www.jamsadr.com) and for the AAA by contacting the AAA at 1.800.778.7879 or [www.adr.org](http://www.adr.org). Any arbitration hearing that you attend will take place in the federal judicial district in which you reside. Without regard to which arbitration body is selected to resolve the dispute, any disputes between you and us as to whether your claim falls within the scope of this arbitration clause shall be determined solely by the arbitrator, and not by any court.

**Arbitration Process:** Arbitration involves the review and resolution of the dispute by a neutral party. The arbitrator's decision will generally be final and binding. At your request, for claims made to consumer accounts, we will advance your filing and hearing fees for any claim you may file against us; the arbitrator will decide whether we or you will ultimately be responsible for those fees. Arbitration can only decide our or your dispute and cannot consolidate or join claims of other persons who may have similar claims. There will be no authority or right for any disputes to be arbitrated on a class action basis.

**Effects of Arbitration:** If either of us chooses arbitration, neither of us will have the right to litigate the dispute in court or have a jury trial. In addition, you will not have the right to participate as a representative or member of any class of claimants, or in any other form of representative capacity that seeks monetary or other relief beyond your individual circumstances, pertaining to any dispute subject to arbitration. There shall be no authority for any claims to be arbitrated on a class action or any other form of representative basis. Arbitration can only decide your or our claim, and you may not consolidate or join the claims of other persons who may have similar claims, including without limitation claims for public injunctive or other equitable relief as to our other customers or members of the general public. Any such monetary, injunctive, or other equitable relief shall be limited solely to your accounts, agreements, and transaction with us. Notwithstanding the foregoing, any question as to the validity and effect of this class action waiver shall be decided solely by a court of competent jurisdiction, and not by the arbitrator.

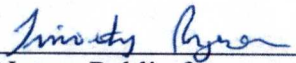
10. As a customer of CPM, Mr. Colbert was subject to the above provision regarding the resolution of claims with CPM.

FURTHER AFFIANT SAYETH NOT.

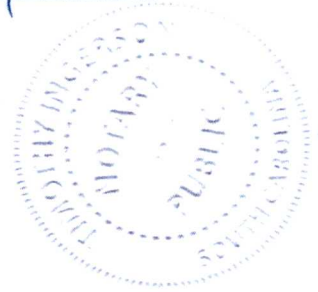


Alan Thrall

Sworn to and subscribed before me  
this 10<sup>th</sup> day of June, 2022

  
Notary Public for South Carolina  
My commission expires: 5-13-2026

**TIMOTHY INGERSON**  
Notary Public, State of South Carolina  
My Commission Expires 5/13/2026





**EXHIBIT A**



Dream. Plan. Own.

# **CPM Federal Credit Union Membership Account Agreement and Disclosures**

## **November 2020**

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<i>* These items are provided separately and contain important terms concerning rates, minimum balances, fees, and contacting us. Be sure to review and keep them as permanent records. They will be updated from time to time as needed.</i>	

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE ANN. §15-48-10 ET. AL., AND THE FEDERAL ARBITRATION ACT §9 USC 1 ET SEQ.**

**Special Notices:** The laws and regulations governing the financial services we provide are complex. To ensure your understanding of our relationship with you, we provide this detailed agreement which explains both your responsibilities and ours.

**Cellular Phone Contact Policy:** By providing us with a telephone number for a cellular phone or other wireless device, including a number that you later convert to a cellular number, you are expressly consenting to receiving communications- including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system-from us and our affiliates and agents at that number. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from your cellular provider.

**Active Military Members and Dependents:** Any terms or conditions herein contrary to the Military Lending Act ("MLA") are void for the period(s) during which you are entitled to the protections of the MLA.

Please also note that the terms of this Agreement and the Rate Sheet and Fee Schedule may change from time to time as provided for in this Agreement and applicable laws.

## INTRODUCTION

This Agreement and Disclosures and the Rate Sheet and Fee Schedule ("Schedule") explain the rules which govern your account(s) and account services with us. Please read these carefully and keep them in a safe and convenient place.

**Special Note:** Your relationship with the Credit Union is also governed by state and federal laws, which may change from time to time. The body of law is too large and complex to be reproduced here. The purpose of this Agreement and Disclosures is to: (1) summarize the rules applicable to common Transactions; (2) establish rules to govern Transactions not regulated by state or federal law; (3) establish variations that will apply to certain rules, events or Transactions as permitted by applicable law; and (4) provide you with certain disclosures and information regarding our policies as required by law. By signing a Membership Application or Account Change Form or your use or continued use of any account or account services after receiving this Agreement and Disclosures, notice of its availability or notification of any change in terms, you, jointly and severally, agree that you understand and agree to the terms and conditions stated in this Agreement and Disclosures, and the Rate Sheet and Fee Schedule, as amended from time to time.

## MEMBERSHIP, ACCOUNTS AND ACCOUNT SERVICES AGREEMENT GENERAL TERMS AND CONDITIONS

1. **Terms, Conditions and Limitations of Your Relationship with the Credit Union:** The following terms govern our relationship with you. All Credit Union services are further governed by the terms and conditions set forth in any future agreements and/or disclosures together with the Credit Union's Bylaws, Policies and Procedures, which are herein collectively referred to as "Agreement". To the extent there is any conflict between the terms of this Agreement and any of these items or any other documents, the terms of this Agreement shall govern. This Agreement governs all services whether opened now or in the future. This Agreement may be amended or revised by us at any time, and any change in the Agreement shall be immediately effective unless otherwise specifically required by applicable law. This Agreement is binding upon the account owner and all parties hereto together with their heirs, successors, assigns and any other person claiming any right or interest under or through said parties. Otherwise, to the extent there is any conflict between the terms of this Agreement and any of these items or any other documents, the terms of this Agreement shall govern. You agree at all times that you will comply with all App li cable Laws. " Applicable Laws" shall include: "(i) Visa U.S.A. Inc. Bylaws, Visa U.S.A. Inc. Operating Regulations, Visa U.S.A. Inc. Certificate of Incorporation, Visa International Bylaws , and Visa International Operating Regulations ; (ii) NACHA's (The National Automated Clearing House Association) Operating Rules (iii ) the Operating Regulations of any network through whom you initiate or process any transaction(s); and (iv) any and all laws, treaties, rules , regulations, or regulatory guidance of the government of the United States, as the same may be amended and in effect from time to time; and you agree that such Applicable Law shall govern despite any other general or specific terms or conditions set forth in the entirety of this Agreement. The Credit Union is not in any way limited in the use of the name of any person or entity that claims trademark, copyright or other such status regarding a name in the ordinary course of Credit Union business, in providing any services we may offer; or in using such name in any other manner authorized by our agreements or applicable laws. This agreement governs personal, family and household accounts and you agree that all accounts and services will be used for those purposes. If we in our discretion ascertain that an account's primary use is for business, we may require the account/service be closed or converted to a business account subject to business account disclosures.

2. **General Definitions / Requirements / Biometrics:** In this Agreement and Disclosures the words "you" or "your(s)" mean everyone that signs any Membership Application or Account Change Form or is authorized to make Transactions regarding your account(s) as provided herein or by governing law, including any account service(s). "Credit Union," "We," "us," or "our" means the Credit Union providing this Agreement to you. "Access Device" means any card, electronic access device and/or any codes, passwords or personal identification numbers (PIN) that we issue to allow you to access and/or use any account or other services. With regard to online or internet transactions an access device shall also include any computer, smart-phone or other hardware used to make or process a transaction. **Use of Biometrics / Fingerprints:** The Credit Union or various apps you may choose to use may provide access to your accounts and services through the use of fingerprints or other biometrics. You agree to the use of such biometrics and will cooperate with the Credit Union in implementing any requirements we or the third party may require associated with this technology. Biometric technologies may be used for authentication. A biometric identifier measures an individual's unique physical characteristics and compares it to a stored digital template for authentication. A physical characteristic can be a thumbprint, fingerprint, facial recognition or iris pattern. A biometric identifier can be used as a single or multifactor process. We may require the use of biometrics and/or fingerprinting with regard to any service we offer; and any refusal to cooperate with such use shall allow us to refuse to make any transaction, including but not limited to cashing any on-us item presented by any holder.

**Important Notice on Biometrics:** When you enable biometric access every person with an enrolled fingerprint on your accounts, services or device used to access your accounts and services will have access to your accounts and services, and may access your accounts, view your information, conduct transactions on your behalf, and has your authority to engage in these activities. Enrolled biometrics expand the number of persons who have access to your account regardless of the signers listed on your account agreement with us. CREDIT UNION ADVISES YOU TO REVIEW AND CONFIRM THAT ALL REGISTERED BIOMETRICS BELONG TO INDIVIDUALS WITH AUTHORITY AS DESCRIBED ABOVE. BY ACTIVATING ACCESS/SERVICES REQUESTED BY YOU THE CREDIT UNION RELIES ON YOUR REPRESENTATION THAT ANYONE WITH A REGISTERED BIOMETRIC HAS PROPER AUTHORITY TO ACCESS AND USE YOUR ACCOUNTS AND ASSOCIATED ACCOUNT INFORMATION.

"Authorized User" and "Authorized Use" means any person who has actual, implied or apparent authority, or to whom any owner has at any time given any information, access device or documentation that enables such a person to access, withdraw, make transactions to or from your accounts, or to use any of your account services. If you authorize anyone to use your access devices that authority shall continue until you specifically revoke such authority by notifying the Credit Union in writing or as required by applicable laws. If we or any of our agents contact you regarding any transaction(s) and you verify the transaction(s) you agree we may rely on your verification; and that any such transaction(s) shall be deemed authorized by you. If you fail to maintain the security of these access codes and the Credit Union suffers a loss or otherwise makes a determination that the Credit Union is at risk for potential loss, we may terminate any or all of your account services immediately. This definition is intended to be construed broadly and includes without limitation all users acting under a written document such as a power of attorney as well as any person or entity that is authorized to make deposits or debits to or from your accounts with us. An authorized signer may stop payment on an item they have drawn or otherwise ordered but may not close any account(s) or terminate any services without the owners specific written consent. "Check" means an acceptable written "instrument" on your account(s) and includes the term "share draft."

## RESOLVING CLAIMS:

If you and the Credit Union are not able to resolve a claim ourselves, then you and we agree that the claim will be resolved as provided in this Resolving Claims section. This is a dispute resolution provision. Please read it carefully.

**ARBITRATION:** This section does not apply to any dispute in which the amount in controversy is within the jurisdictional limits of, and is filed in, a small claims court. These arbitration provisions shall survive closure of your account or termination of all business with us. If any provision of this section is ruled invalid or unenforceable, the invalid or unenforceable part of this "ARBITRATION" sub-section shall be rendered null and void, but the remaining terms of this Resolving Claims section shall remain in full force and effect – See "Rules of Interpretation" below.

**Arbitration Rules:** In the event of a dispute relating to or arising out of your account, this Agreement, any loan agreements or any other services you may have with us now or at any time in the future - you or we may elect to arbitrate the dispute. At your election, the arbitration shall be conducted by either JAMS or the American Arbitration Association ("AAA") (or, if neither of these arbitration organizations will serve, then a comparable substitute arbitration organization agreed upon by the parties or, if the parties cannot agree, chosen by a court of competent jurisdiction). If JAMS is selected, the arbitration will be handled according to its Streamlined Arbitration Rules unless the Claim is for \$250,000 or more, in which case its Comprehensive Arbitration Rules shall apply. If the AAA is selected, the arbitration will be handled according to its Commercial Arbitration Rules. You may obtain rules and forms for JAMS by contacting JAMS at 1.800.352.5267 or [www.jamsadr.com](http://www.jamsadr.com) and for the AAA by contacting the AAA at 1.800.778.7879 or [www.adr.org](http://www.adr.org). Any arbitration hearing that you attend will take place in the federal judicial district in which you reside. Without regard to which arbitration body is selected to resolve the dispute, any disputes between you and us as to whether your claim falls within the scope of this arbitration clause shall be determined solely by the arbitrator, and not by any court.

**Arbitration Process:** Arbitration involves the review and resolution of the dispute by a neutral party. The arbitrator's decision will generally be final and binding. At your request, for claims made to consumer accounts, we will advance your filing and hearing fees for any claim you may file against us; the arbitrator will decide whether we or you will ultimately be responsible for those fees. Arbitration can only decide our or your dispute and cannot consolidate or join claims of other persons who may have similar claims. There will be no authority or right for any disputes to be arbitrated on a class action basis.

**Effects of Arbitration:** If either of us chooses arbitration, neither of us will have the right to litigate the dispute in court or have a jury trial. In addition, you will not have the right to participate as a representative or member of any class of claimants, or in any other form of representative capacity that seeks monetary or other relief beyond your individual circumstances, pertaining to any dispute subject to arbitration. There shall be no authority for any claims to be arbitrated on a class action or any other form of representative basis. Arbitration can only decide your or our claim, and you may not consolidate or join the claims of other persons who may have similar claims, including without limitation claims for public injunctive or other equitable relief as to our other customers or members of the general public. Any such monetary, injunctive, or other equitable relief shall be limited solely to your accounts, agreements, and transaction with us. Notwithstanding the foregoing, any question as to the validity and effect of this class action waiver shall be decided solely by a court of competent jurisdiction, and not by the arbitrator.

**THE FOLLOWING SECTIONS APPLY ONLY TO THE EXTENT THERE IS AN EXPRESSLY APPLICABLE LAW OR JUDICIAL RULING THAT EXPRESSLY PREVENTS USE OF ARBITRATION AS THE METHOD OF DISPUTE RESOLUTION; OR IN ANY CASE WHERE A NON-ARBITRATION PROCESS IS USED AS THE METHOD OF DISPUTE RESOLUTION BY THE AGREEMENT OF THE PARTIES, OR WHERE ARBITRATION IS EXPRESSLY EXCLUDED FROM ARBITRATION PURSUANT TO THE JURISDICTION LIMITS STATED ABOVE.**

**What does "Claim" Mean?** Claim means any claim, dispute or controversy (whether under a statute, in contract, tort or otherwise and whether for money damages, penalties or declaratory or equitable relief) by either you or the Credit Union against the other; or against any employee, agent or volunteer of the other, arising from or relating in any way to this Agreement or any Agreements to which the Membership Account Agreement & Disclosures apply, in any manner (including any renewals, extensions or modifications) or any relationships between us.

## How Claims will be Resolved

IF either party does not elect Arbitration as provided for above; or If Arbitration is deemed invalid or unenforceable, then the parties agree that the following terms and conditions shall apply:

### JURY TRIAL AND CLASS ACTION WAIVER

AS PERMITTED BY LAW, YOU AND WE AGREE AND UNDERSTAND THAT YOU AND WE BOTH GIVE UP THE RIGHT TO TRIAL BY JURY. THIS IS A JURY TRIAL WAIVER.

AS PERMITTED BY LAW YOU AND WE AGREE AND UNDERSTAND THAT YOU AND WE BOTH AGREE THAT WE ARE PRECLUDED FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS ACTION; OR JOINING OR CONSOLIDATING THE CLAIMS OF OTHER PERSONS. THIS IS A CLASS ACTION WAIVER.

You and we both agree that all Claims will be resolved in court by a judge without a jury trial, as permitted by law. However, if permitted by law, then instead of a trial by judge without a jury trial, any claim(s) will be sent to a judicial reference to be heard by a neutral individual (commonly referred to a "referee") which remains in the court system subject to the same rules of procedure, discovery, evidence and appeal. The judicial referee will generally be an active or retired judge or attorney with 10 or more years of experience, chosen by mutual agreement between you and the Credit Union. If we are unable to agree on a judicial referee, then the referee will be appointed according to the procedure for appointment under applicable law.

The judicial referee, sitting alone without a jury, will decide questions of law and fact; and will resolve the Claim. This includes the applicability of the Resolving Claims section and the validity of the Membership Account Agreement & Disclosures.

Judicial reference will be governed by applicable laws of the state having jurisdiction of any Claim. If permitted by law the referee is empowered to provide all temporary or provisional remedies and rule on any motion that would be authorized in pretrial or trial proceedings in court, including but not limited to motions for summary judgement or summary adjudication. The decision that results from the decision of the referee will be entered as a judgment in the court that appointed the referee. You and the Credit Union both reserve the right to seek appellate review of any judgment or order to the same extent permitted in a court of law.

**Limitation and Non-Severability** Regardless of any other provision of this Resolving Claims section, you and we both agree that the validity and effect of the jury trial and class action waiver may be determined only by a court or judicial referee as provided herein. You and we both have the right to appeal any limitation or invalidation of these waivers.

**Rules of Interpretation** Except as provided in the Limitation and Non-Severability clause above, if any portion of this Resolving Claims section is determined to be invalid or unenforceable, it will not invalidate the remaining portions of this section or any other part of this Agreement. If there is any conflict or inconsistency between this Resolving Claims section and the other terms of this Agreement or any other applicable agreements, this Resolving Claims section shall govern. If there is any conflict between this Resolving Claims section and any other dispute provisions (whether it be for reference or any other form of dispute resolution), this Resolving Claims section will prevail form Claims arising out of or relating to this Membership Account Agreement & Disclosures or other agreements or transactions referred to herein or contemplate by this Membership Account Agreement & Disclosures.

**Jurisdiction and Venue** Any action or proceeding regarding your account or this Membership Account Agreement & Disclosures must be brought in the state where the Credit Union maintains your account. You submit to the personal jurisdiction of that state. Any action or proceeding will be governed by and interpreted in accordance with the Governing Law section of this Agreement. Please refer to section 34 "Miscellaneous/Governing Law" above.

**EXHIBIT B**

## Important Changes Effective December 1, 2020

We amended our Membership Agreement and Account Disclosure.

Key changes below:

Starting on Page	Change
2	We added a table of contents to make it easier to find information.
8	We added a section on virtual currency. We do not accept account transacting in any type of virtual currency.
9	We added a section on face masks. We may prohibit them if not medically required, and even if medically required, we may require you to temporarily remove your mask so we may identify you.
10	We added a section on a privacy exception for fraud or financial exploitation. To protect the elderly and others we have a right, but not an obligation, to report suspected fraud or financial exploitation.
10	We added language about electronically created items deposited to your account. You agree to indemnify us against third party claims of loss for a subsequent deposit of the same item, whether such action was authorized by your or not.
13	We added wording about multiple presentments to reiterate that fees apply to each presentment. This is not a change and this language was already found in both our Fee Schedule and Overdraft Privilege Disclosure.
16	We added more information about International ACH Transactions (IATs). These are subject to review and examination under OFAC rules. We detailed the instances in which we have the right to reject, delay or suspend certain transactions.

*Additional information on other side*

ELECTRONICALLY FILED: 2020 Jun 10 2:00 PM - G

Key changes continued from other side

Starting on Page	Change
21	We added information reiterating that if we pay an item contrary to your stop payment order we may require you to establish the fact and amount of loss. This is not a change and reflects existing law under the Uniform Commercial Code.
30	We added a new section on resolving claims. We both agree to use arbitration for most disputes.
37	We amended language on remittance transfers affecting international wires. We are not required to provide you the opportunity to cancel an international remittance, and you should presume you cannot cancel such a remittance.
47	We amended one element of our Privacy Disclosure. If you have a joint account and opt to limit sharing your choice will now

We made these and other changes. To obtain a complete copy of our Membership Agreement and Account Disclosure please visit [cpmfed.com](http://cpmfed.com) (you will find Disclosures at the bottom of our main page) or request a copy from your local branch. If you receive an electronic statement, you may also use the link embedded in our email notifying you that your September 20, 2020 statement is available.

By continuing to use your CPM accounts and access devices you agree to the amended terms.

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STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
)  
The Estate of: )  
NATHANIEL JOVAN COLBERT )  
LOIS SEABORN, )  
Personal Representative )  
Plaintiffs )  
Vs. )  
CPM, Federal Credit Union )  
\_\_\_\_\_ )

THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No: 2022-CP-23-1995

PLAINTIFF'S MEMORANDUM OF  
LAW IN OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS

2022 SEP 27 PM 1:41  
FILED  
CLERK OF SUPERIOR COURT  
GREENVILLE, SOUTH CAROLINA  
DN

Plaintiff submits this Memorandum of Law in Opposition to Defendant's Motion to Dismiss and Compel Arbitration (the "Motion") would respectfully show unto the Court:

**Factual Background**

This action was brought by Plaintiff filing a Complaint against the Defendants for a suit involving a bank account at Defendant's CPM Credit Union. The account was in the name of Nathaniel J. Colbert. Mr. Colbert passed away on or about April 21, 2021. The conduct complained of, occurred after Mr. Colbert's death.

That on or about the times April 21, 2021 through July 21, 2021 a sum of money was unlawfully and unjustly withheld by the Defendant Bank CPM Credit Union without cause. The amount of money was intentionally left out of Defendant's report to the Greenville County Probate Judge. That Defendants took advantage of decedent untimely death to enter into his bank account with malice when Defendants removed a sum of money without notice or justification.

Specifically, to add insult to injury, on or about July 19, 2021, Defendants submitted documents that were filed with the Greenville County Probate Court indicating a lessor amount of funds in

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Verified

the bank account that was due to the estate of the decedent. That at this time the Defendants provided the Greenville County Probate Court fraudulent and misleading information.

That an agent for the Defendants took matters upon herself to remove lawful funds in decedents' account and forever deprive decedent's estate of the same.

That as a result, the estate of Nathaniel J. Colbert has suffered, and continues to suffer great financial and emotional distress. In bringing this matter to the attention of Defendant's bank supervisors, the personal representative was publically humiliated by agents of the Defendants when seeking an explanation of the unlawful removal of the funds, and their failure to disclose.

#### STANDARD OF REVIEW

A defendant may move to dismiss a complaint based on a plaintiff's failure to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRPC; Spence v. Spence, 368 S.C. 106, 116, 626 S.E.2d 869, 874 (2006). A court's decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. Spence, 368 S.C. at 116, 628 S.E.2d at 874; Clearwater Trust v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006).

In reviewing a motion to dismiss, the Court must accept as true the well-pleaded facts in the complaint. See Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006). Essentially, the plaintiff must describe each element of the cause of action in terms of the facts of the case. "The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." McCormick v. England, 328 S.C. 627, 494 S.E.2d 431, 433 9Ct. App. 2007). The Court is required to construe the complaint in light most favorable to the nonmovant." Freemantle v. Preston, 398 S.C. 186, 192, 728 S.E.2d 40, 42 (2012).

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank v. Christianson, 377 S.C. 210 659 S.E.2d 209 (S.C Ct. App. 2008). It is well established that where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exist in the first place. If no agreement is found, the court must deny any application to arbitrate., Simpson v. MSA of Myrtle Beach Inc., 373 S.C. 14 644 S.E.2d 663, 667 (S.C. 2007). (internal citation omitted). Whether a valid arbitration exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C.67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013). Whether the parties agreed to arbitrate is a question of substantial state law. Simpson v. MSA of Myrtle Beach Inc., 373 S.C. 14 644 S.E.2d 663, 668 (S.C. 2007)

- 1. Motion to dismiss should be dismiss because Plaintiff's complaint state facts sufficient to constitute a cause of action.**

Plaintiff's complaint has sufficiently stated facts in order to constitute a cause of action. As of the date of this filing of this opposition memorandum, Defendants has not filed any supporting document(s) setting forth its allegations with regards to the sufficiency of Plaintiff's complaint.

- 2. Motion to compel arbitration should be denied because the account does not require Arbitration and is unrelated to the Membership Account Agreement. The attached excerpt from "Resolving Claims" relative to an arbitration does not survive the death of the account holder.**

The Personal representatives are not bound by an arbitration agreement, if there exist such an executed agreement to arbitrate. Because the document is titled "Subject to Arbitration" it is unlikely to possess a requirement to arbitrate. The Defendants must provide the Court and the Plaintiff verification of a valid executed agreement to arbitrate in order for the court to order the parties to arbitrate which survives the death of Mr. Colbert.

### **Arbitration is a Matter of Contract**

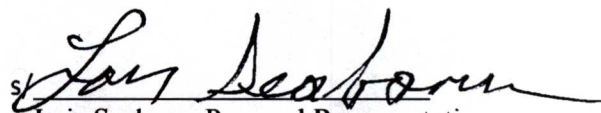
“The question of the arbitration of a claim is an issue for judicial determination, unless the parties provide otherwise.” Stokes v. Metro Life Ins. Co., 351 S.C. 606, 609, 571 S.E.2d 711, 713 (Ct. App. 2002) citing Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 533 S.E.2d 110, 118 (2001). Arbitration is a matter of contract, and our evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law. See e.g. Munoz v. Green tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). “The parties to an arbitration agreement are at liberty to choose the terms under the terms under which they will arbitrate.” Grant v. Magnolia manor-Greenwood, Inc. 383 S.C. 125, 130, 678 S.E.2d 435, 438 (2009), citing Dowling v. Home Buyers Warranty Corp., II 311 S.C. 233, 236, 428 S.E.2d 709, 710 (1993).

In order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the contract. Player v. Chandler, 299 S.C. 101, 105, 382, S.E.2d 891 (1989). Finally, if there is a genuine issue of fact, the Federal Arbitration Act (FAA) directs the court to hold a trial to determine whether an arbitration agreement exists. 9 U.S.C. 4.

The Personal Representative, Plaintiff would not be bound by an executed and valid arbitration agreement because the arbitration agreement would be separate and distinct from the membership agreement for which the Personal representative received no benefit. See, Thompson v. Pruitt Construction S.C. Supreme Court (2014).

**WHEREFORE**, the estate of Nathaniel J. Colbert, prays that this Honorable Court finds that there is not a valid arbitration agreement for which would be unenforceable under South Carolina law. The Court should find that the Complaint consists of causes of actions that are not subject to arbitration. The Plaintiff further prays that the Court deny Defendant’s motion altogether and set the matter for trial.

August 31, 2022

A handwritten signature in black ink, appearing to read "Lois Seaborn". The signature is written in a cursive style with a small "s" at the beginning.

Lois Seaborn, Personal Representative

For Nathaniel J. Colbert

1901 Woodruff Rd. Apt 1234

Greenville, SC 29607

864-686-0745

**RECEIVED**

**Oct 03 2022**

**SC Court of Appeals**

FILED  
2022 OCT 04 PM 2:00  
PARKER POE  
CLERK OF COURT  
GREENVILLE, SC

THE STATE OF SOUTH CAROLINA

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Judge Letitia Verdin

Case No. 2022-CP-23-1995

CPM,  
Federal Credit Union  
Respondent,

v.

Lois Seaborn, PR  
The Estate of Nathaniel J. Colbert  
Appellant.

**NOTICE OF APPEAL**

The Appellant, Lois Seaborn, Personal Representative for the Estate of Nathaniel J. Colbert hereby appeals the order of the Honorable Judge Letitia Verdin, Greenville County Court of Common Pleas dated September 21, 2022. Appellant received written notice of entry of this order on September 23, 2022,

September 26, 2022



Lois Seaborn, PR  
1901 Woodruff Rd #123  
Greenville, SC 29607  
Appellant-Pro se

On Record:  
The Honorable  
Judge Letitia Verdin  
Greenville County Court  
Greenville, South Carolina 29601

Emily Irene Bridges  
110 East Court St. Ste 200  
Greenville, SC 29601  
emilybridges@parkerpoe.com

IN THE SOUTH CAROLINA  
COURT OF APPEALS

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**Oct 03 2022**

SC Court of Appeals

LOIS SEABORN, PR  
THE ESTATE OF  
NATHANIEL J. COLBERT

APPELLANT

VS.

CASE NO. 2022-CP-23-1995

CPM FEDERAL CREDIT UNION;

RESPONDENTS

**CERTIFICATE OF SERVICE**

COMES NOW before this Court, Lois Seaborn, Personal Representative for the Estate of Nathaniel J. Colbert and files this Certificate of Service, and hereby certify that on September 26, 2022, the above-mentioned parties have received, via U.S. mail, a true and correct copy of the Attached Order hereto as Exhibit "A" is a copy is placed with the United States Postal Service for delivery the above-listed parties.

I, the undersigned attorney, do hereby certify that on this day, I have electronically filed the foregoing with the Clerk of the South Carolina Court of Appeals using the ECF System, and hereby certify that I have this day mailed, via electronic mail, a true and correct copy of the foregoing to:

Attorney of Record:

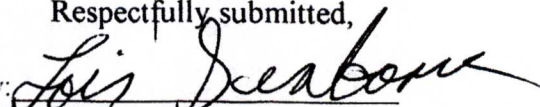
Emily Irene Bridges  
110 E. Court Street Ste 200  
Greenville, SC 29601  
[emilybridges@parkerpoe.com](mailto:emilybridges@parkerpoe.com)

Clerk, Greenville County  
Court of Common Pleas  
305 E. North Street  
Greenville, SC 29601

THIS, the 26<sup>th</sup> day of September, 2022.

Respectfully submitted,

By:

  
Lois Seaborn, PR  
1901 Woodruff Rd #1234  
Greenville, SC 29607

THE STATE OF SOUTH CAROLINA  
APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Judge Letitia Verdin

Case No. 2022-CP-23-1995

CPM,  
Federal Credit Union  
Respondent,  
v.

Lois Seaborn, PR  
The Estate of Nathaniel J. Colbert  
Appellant.

**RECEIVED**

Oct 03 2022

SC Court of Appeals

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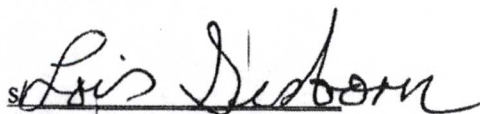
Oct 13 2022

SC Court of Appeals

**NOTICE OF APPEAL**

The Appellant, Lois Seaborn, Personal Representative for the Estate of Nathaniel J. Colbert hereby appeals the order of the Honorable Judge Letitia Verdin, Greenville County Court of Common Pleas dated September 21, 2022. Appellant received written notice of entry of this order on September 23, 2022,

September 26, 2022



Lois Seaborn, PR  
1901 Woodruff Rd #123  
Greenville, SC 29607  
Appellant-Pro se

On Record:  
The Honorable  
Judge Letitia Verdin  
Greenville County Court  
Greenville, South Carolina 29601

Emily Irene Bridges  
110 East Court St. Ste 200  
Greenville, SC 29601  
emilybridges@parkerpoe.com

IN THE SOUTH CAROLINA  
COURT OF APPEALS

**RECEIVED**

**Oct 03 2022**

**SC Court of Appeals**

**LOIS SEABORN, PR  
THE ESTATE OF  
NATHANIEL J. COLBERT**

**APPELLANT**

**VS.**

**CASE NO. 2022-CP-23-1995**

**CPM FEDERAL CREDIT UNION;**

**RESPONDENTS**

**CERTIFICATE OF SERVICE**

COMES NOW before this Court, Lois Seaborn, Personal Representative for the Estate of Nathaniel J. Colbert and files this Certificate of Service, and hereby certify that on September 26, 2022, the above-mentioned parties have received, via U.S. mail, a true and correct copy of the Attached Order hereto as Exhibit "A" is a copy is placed with the United States Postal Service for delivery the above-listed parties.

I, the undersigned attorney, do hereby certify that on this day, I have electronically filed the foregoing with the Clerk of the South Carolina Court of Appeals using the ECF System, and hereby certify that I have this day mailed, via electronic mail, a true and correct copy of the foregoing to:

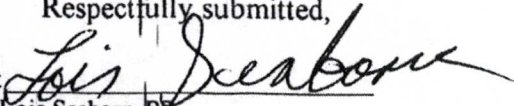
Attorney of Record:

Emily Irene Bridges  
110 E. Court Street Ste 200  
Greenville, SC 29601  
[emilybridges@parkerpoe.com](mailto:emilybridges@parkerpoe.com)

Clerk, Greenville County  
Court of Common Pleas  
305 E. North Street  
Greenville, SC 29601

THIS, the 26<sup>th</sup> day of September, 2022.

Respectfully submitted,

By:   
Lois Seaborn, PR  
1901 Woodruff Rd #1234  
Greenville, SC 29607



I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1  
2 THE COURT: This is Lois Seaborn vs. CPM Federal Credit  
3 Union. And this is -- and this is 2022-CP-23-1995. And  
4 this is Defendant's motion to dismiss.

5 Yes, ma'am.

6 And just to let you know how this will go,  
7 Ms. Seaborn. You -- you might have been in here lots on  
8 these cases. I have no idea. But how this will go is  
9 I'll hear from Ms. Bridges since it's her motion for about  
10 five minutes. I'll come to you for about five minutes.  
11 Y'all don't have to take all that time if you don't want  
12 to. But just -- and then since it's her motion, I'll give  
13 her the last word. And then that'll leave just a couple  
14 of minutes for me to be able to ask any questions, if I  
15 need to.

16 Okay. Fair enough?

17 MS. SEABORN: Thank you.

18 THE COURT: Okay. Yes, ma'am.

19 MS. BRIDGES: Yes, Your Honor. May it please the  
20 Court.

21 THE COURT: Yes.

22 MS. BRIDGES: My name is Emily Bridges. I'm with  
23 Parker Poe. And we represent the Defendant in this case,  
24 CPM Federal Credit Union. CPM is a federal credit union.  
25 And Mr. Colbert, who's the decedent in this case, was a

1 customer. There's not a dispute about whether or not he  
2 originally had an account with CPM Federal Credit Union.

3 Unfortunately, Mr. Colbert has passed away. And  
4 Ms. Seaborn is the personal representative of  
5 Mr. Colbert's estate. As a customer of CPM, he was bound  
6 by the applicable membership agreement. And this  
7 membership agreement included within it an arbitration  
8 provision.

9 Our motion today is to dismiss and then compel  
10 arbitration --

11 THE COURT: Okay.

12 MS. BRIDGES: -- is what we're here on today.

13 THE COURT: Okay.

14 MS. BRIDGES: So this membership agreement had an  
15 arbitration provision in it, which we have included  
16 excerpts from in our motion that was --

17 THE COURT: Right.

18 MS. BRIDGES: -- filed with the Court and is  
19 previously part of the record.

20 Specifically, the arbitration provision is fairly  
21 broad. It says that a dispute relating to or arising out  
22 of your account, this agreement, any loan agreement, or  
23 any other services you may have with us now or at any time  
24 in the future.

25 Furthermore, it includes a provision stating that it

1 shall survive closure of account or termination of any  
2 business with us. It's a very broad arbitration  
3 provision.

4 The allegations of [inaudible] a customer of this  
5 account Mr. Seaborn -- I apologize, Mr. Colbert was bound  
6 by the terms of this. He operated an account. There is  
7 no dispute in this case that he had an account with CPM  
8 Federal Credit Union.

9 The allegations of the complainant, Ms. Seaborn, has  
10 brought all have to do with this account. They all have  
11 to do with funds that were a part of the account  
12 originally. And that Ms. Seaborn, as the personal  
13 representative, is claiming to be entitled to.

14 All this is outside the scope of our motion to compel  
15 arbitration. The funds were subject to an investigation  
16 and then will return to another state subject to -- after  
17 the course of an investigation. But it all has to do with  
18 funds in the account --

19 THE COURT: Okay.

20 MS. BRIDGES: -- is what this dispute is about. And  
21 so it does have to do -- relating to or arising out of the  
22 account of Mr. Colbert.

23 That clearly falls within the arbitration provision.  
24 As you'll see in our brief, there's a lot of case law in  
25 the state strongly favoring preference arbitration. There

1 were the necessary disclaimers. There was necessary  
2 notations of this, as you'll see in our brief in the  
3 attached affidavit, that sets forth these membership  
4 account agreements. And since it states it survives  
5 closure of account, it would still apply to this case.

6 To distinguish from some of the cases that  
7 Ms. Seaborn has brought forth in her motion that I saw was  
8 on the filing system. We have not -- we have not received  
9 a copy via mail. But I did see that it was on the public  
10 index.

11 Specifically, one of the cases that she cites has to  
12 do with the Tom -- the Thompson case. This case is -- can  
13 be distinguished in -- this involves a situation where an  
14 original individual did not sign the agreement, but had  
15 been capable to do that. That's not what we have here.

16 THE COURT: Okay.

17 MS. BRIDGES: Mr. Colbert was, in fact, the account  
18 holder. He was subject to the terms of the account. He  
19 agreed to the terms of the situation. So that situation  
20 did not -- is not analogous. What would be analogous is,  
21 say, we were trying to bind Mr. Colbert to something that  
22 was signed by Ms. Seaborn on -- on, you know, his behalf.  
23 That's not the situation here and is clearly  
24 distinguishable.

25 Furthermore, Ms. Seaborn would be a beneficiary if

1 these funds -- were done that. Beneficiaries can be  
2 subject to arbitration provisions. She's seeking this  
3 alleged amount from the account itself. So this would  
4 then be a benefit to her.

5 So for those reasons, as well as those stated in our  
6 original motion, Your Honor, we would ask this Court to  
7 dismiss this case and compel it to arbitration pursuant to  
8 the clear unambiguous arbitration provision that was part  
9 of the terms and conditions of Mr. Colbert's membership  
10 account.

11 THE COURT: All right. Thank you.

12 Yes, ma'am.

13 MS. SEABORN: Good morning.

14 THE COURT: Good morning.

15 MS. SEABORN: I -- Your Honor, I am not educated in  
16 the law.

17 THE COURT: That's okay.

18 MS. SEABORN: I wants [sic] to stand by my filing  
19 with the Court.

20 THE COURT: Yes, ma'am.

21 MS. SEABORN: And in Ross vs. West Ashley, 2021.

22 THE COURT: Okay.

23 MS. SEABORN: Do you want me to go on?

24 THE COURT: Yes, ma'am.

25 MS. SEABORN: Okay. This case is very simple in our

1 case. Therefore, I am submitting this in opposition.

2 THE COURT: Sure.

3 MS. SEABORN: The South Carolina Supreme Court has  
4 ruled that there might be a signed AA and a -- and that  
5 the AA must be value enforced of covered and the  
6 disconstrued [sic]. I'm sorry.

7 THE COURT: All right. Yes, ma'am. Is there else  
8 you'd like to say?

9 MS. SEABORN: Yeah. Your Honor, I have other supreme  
10 cases I would like to submit.

11 THE COURT: Okay.

12 MS. BRIDGES: Your Honor --

13 THE COURT: Sure. You take a look at those.

14 (Pause.)

15 MS. SEABORN: Thank you.

16 THE COURT: Thank you so much.

17 All right. Well, I will -- I will, certainly, take a  
18 look at these. And I appreciate you giving them to me.

19 MS. SEABORN: Thank you.

20 THE COURT: Because, you know, I need some time to  
21 read these things that you've given me, these cases. I'm  
22 going to take this matter under advisement.

23 If you would maybe give me, oh, something around  
24 maybe -- I've got that other case that I just took under  
25 advisement. So if y'all -- but if you'd, say, maybe give

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me about a week.

MS. BRIDGE: Yes Your Honor.

THE COURT: Fair enough.

MS. SEABORN: Thank you.

THE COURT: Thank you very much. I appreciate it.

\*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

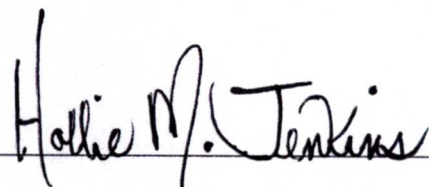
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 19th day of September, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 8, 2023

  
\_\_\_\_\_  
Hollie M. Jenkins, Court Reporter

**RECEIVED**  
**Dec 08 2022**  
**SC Court of Appeals**

**SOUTH CAROLINA COURT OF APPEALS**

December 6, 2022

Ms. Hollie M. Jenkins  
Post Office Box 16506  
Greenville, South Carolina 29606

RE: Lois Seaborn PR, Appellant v. CPM, Respondent,  
Case No. 2022-CP-23-1995 Greenville County, 13  
S.C. Court of Appeals case No. 2022-1389

Dear Ms. Jenkins:

On September 19, 2022, the above case was tried before the Honorable Letitia Verdin, Circuit Court Judge, in Greenville County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record [except for the following parts:

- (1) Transcription of the proceedings;

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely  
s/ Lois Seaborn  
Lois Seaborn, PR  
1901 Woodruff Rd 1234  
Greenville, South Carolina 29607  
(864) 686-0745  
Appellant-Pro se

cc: Emily Irene Bridges, Esquire  
Clerk, Court of Appeals

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.

August 16, 2023

**RECEIVED**

**Aug 17 2023**

**SC Court of Appeals**

/s/ Lois Seaborn  
Lois Seaborn,  
1901 Woodruff Rd #1234  
Greenville, SC 29607  
Appellant-Pro se

Emily Irene Bridges  
110 E. Coffee Street Ste 210  
Greenville, SC 29601  
Attorney for Respondents

