

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jan 17 2024

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.2023-001506
Case No. 2022-CP-04-02159

Skylar Blume, Virgil Dowis, Rhi Greer, Jonathan Hudson,
Natalie Mann, Mya Ourada, Braden Terrill, & Aneil Tripathi Respondents,

v.

Starbucks Corporation and Melissa Morris, Appellants,

MOTION FOR LEAVE TO RESUBMIT FILING FEE

Appellant Starbucks Corporation (“Starbucks”) hereby files this Motion for Leave to Resubmit its Filing Fee. Starbucks timely filed its Notice of Appeal (“Notice”) with this Court on September 22, 2023. (Notice of Appeal, attached hereto as **Exhibit A.**) Starbucks filed its Notice via the Court’s electronic filing process and received a stamped/clocked of the Notice from this Court via e-mail on September 22, 2023 confirming the Court’s timely receipt of the Notice. (Email from Court of Appeals, attached hereto as **Exhibit B.**) Additionally, Starbucks mailed its filing fee for its Notice to this Court on September 22, 2023. (Starbucks’ Correspondence and Filing Fee, attached hereto as **Exhibit C.**) However, Starbucks’ filing fee was returned as undeliverable, and counsel for Starbucks received notice of the same on January 8, 2024. (Returned Filing Fee Packet, attached hereto as **Exhibit D.**) Before receiving the returned filing fee on

January 8, 2024, Starbucks had not received any notice that its initial filing fee had not been received by this Court or that the mail containing that fee had been returned or was undeliverable.

Accordingly, Starbucks respectfully requests leave from this Court to resubmit its filing fee for the Notice. Starbucks submits that good cause exists grant the relief requested in this Motion given that Starbucks timely submitted its filing fee and Notice of Appeal and further given that the Starbucks' filing fee was returned through no fault of Starbucks.

WHEREFORE, Appellant Starbucks Corporation respectfully requests that this Court GRANT its Motion for Leave to Resubmit Filing Fee for the reasons set forth above.

Respectfully submitted, this 17th day of January, 2024.

LITTLER MENDELSON, P.C.

By: */s/ William H. Foster* _____

William H. Foster
S.C. Bar No. 66221
E-Mail: bfoster@littler.com
Benjamin T. Hepner
S.C. Bar No. 102734
E-Mail: bhepner@littler.com
110 East Court Street/Suite 201
Greenville, SC 29601
(864) 775-3191

NELSON MULLINS RILEY & SCARBOROUGH LLP

C. Mitchell Brown
S.C. Bar No. 12872
E-Mail: mitch.brown@nelsonmullins.com
Blake T. Williams
S.C. Bar 100794
E-Mail: blake.williams@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Starbucks Corporation

EXHIBIT A

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh

Case No. 2022-CP-04-02159

Skylar Blume, Virgil Dowis, Rhi Greer, Jonathan Hudson, Natalie Mann, Mya Ourada,
Braden Terrill, and Aneil Tripathi,

Respondents,

v.

Starbucks Corporation and Melissa Morris,

Appellants.

NOTICE OF APPEAL

Appellant Starbucks Corporation appeals the Order of the Honorable R. Lawton McIntosh dated September 1, 2023 denying Appellant's Motion to Dismiss or, in the Alternative, Compel Arbitration, and the Order of the Honorable R. Lawton McIntosh dated September 15, 2023 denying Appellant's Motion for Reconsideration. Copies of the Orders against which this appeal is made are attached hereto as **Exhibit A**.

LITTLER MENDELSON, P.C.

/s/ William H. Foster

William H. Foster, SC Bar No. 66221

bfoster@littler.com

Benjamin T. Hepner, SC Bar No. 102734

bhepner@littler.com

110 East Court Street, Suite 201

Greenville, South Carolina 29601

Telephone: (864) 775-3191

Attorneys for Appellant Starbucks Corporation

September 22, 2023

OTHER COUNSEL OF RECORD:

Matthew R. Ozment
Matt@go-lawyers.com
GROVE OZMENT LLC
100 Williams Street
Greenville, SC 29601

Mary Joyce Carlson
carlsonmjj@yahoo.com
1629 K St. NW, Suite 1050
Washington, DC 20006

Appearing Pro Hac Vice

Daniel M. Rosenthal
dmrosenthal@jamhoff.com
Michael P. Ellement
mpellement@jamhoff.com
JAMES & HOFFMAN, P.C.
1629 K St. NW, Suite 1050
Washington, DC 20006

Appearing Pro Hac Vice

Richard P. Rouco
rrouco@qcwdr.com
QUINN, CONNOR, WEAVER, DAVIES & ROUCO LLP
2-20 Street North, Suite 930
Birmingham, AL 35203

Appearing Pro Hac Vice

Counsel for Respondents

Reginald W. Belcher
Hannah D. Stetson
TURNER PADGET GRAHAM & LANEY P.A.
1901 Main Street, Suite 1700 (29201)
Post Office Box 1473
Columbia, South Carolina 29202
RBelcher@turnerpadget.com
HStetson@turnerpadget.com

Counsel for Defendant Melissa Morris

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SC Court of Appeals

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2022-CP-04-02159

Skylar Blume, Virgil Dowis, Rhi Greer, Jonathan Hudson, Natalie Mann, Mya Ourada,
Braden Terrill, and Aneil Tripathi,

Respondent,

v.

Starbucks Corporation and Melissa Morris,

Appellants.

PROOF OF SERVICE

The undersigned certifies that on the 22nd day of September, 2023, she served a copy of the foregoing Notice of Appeal in the above-captioned matter to all counsel of record, by electronic mail and by placing a copy in the United States Mail, with due and proper postage affixed thereto, as addressed below:

Matthew R. Ozment
Matt@go-lawyers.com
GROVE OZMENT LLC
100 Williams Street
Greenville, SC 29601

Mary Joyce Carlson
carlsonmjj@yahoo.com
1629 K St. NW, Suite 1050
Washington, DC 20006

Appearing Pro Hac Vice

Daniel M. Rosenthal

Reginald W. Belcher
Hannah D. Stetson
Turner Padgett Graham & Laney, P.A.
RBelcher@turnerpadgett.com
HStetson@turnerpadgett.com
1901 Main Street, Suite 1700 (29201)
Post Office Box 1473
Columbia, South Carolina 29202
Attorneys for Melissa Morris

dmrosenthal@jamhoff.com

Michael P. Ellement

mpellement@jamhoff.com

JAMES & HOFFMAN, P.C.

1629 K St. NW, Suite 1050

Washington, DC 20006

Appearing Pro Hac Vice

Richard P. Rouco

rrouco@qcwdr.com

QUINN, CONNOR, WEAVER, DAVIES &

ROUCO LLP

2-20 Street North, Suite 930

Birmingham, AL 35203

Appearing Pro Hac Vice

Counsel for Respondents



Sonya Good

Legal Assistant to William H. Foster

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SC Court of Appeals

September 1, 2023 Order

Denying Starbucks' Motion to

Compel Arbitration

CA. No. 2022-CP-04-02159

State of South Carolina)	IN THE COURT OF COMMON PLEAS
)	
County of Anderson)	Case No.: 2022-CP-04-02159
<hr/>		
Skylar Blume, Virgil Dowis, Rhi Greer,)	
Jonathan Hudson, Natalie Mann, Mya)	
Ourada, Braden Terrill, & Aneil Tripathi,)	
)	
Plaintiffs,)	
)	
v.)	
)	
Starbucks Corporation & Melissa Morris,)	
)	
Defendants.)	
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ORDER

RECEIVED
Sep 22 2023
SC Court of Appeals

This case was brought by Plaintiffs, eight current or former employees of a Starbucks store in Anderson, South Carolina, asserting claims for defamation and abuse of process against Defendants Starbucks Corporation (“Starbucks”) and Melissa Morris (“Morris”) (Starbucks and Morris collectively the “Defendants”). On April 7, 2023, Starbucks filed a motion to dismiss or compel arbitration pursuant to an arbitration agreement between Plaintiffs and Starbucks. Morris joined in this Motion on June 2, 2023. The Court received memoranda in support of the motion from Starbucks Corporation and Morris, a memorandum in opposition from Plaintiffs, and a reply memorandum from Starbucks. The Court also heard oral arguments on June 14, 2023. Based on the parties’ submissions, arguments of counsel, and for the reasons set forth below, Defendants’ motions are **DENIED**.

Defendants have waived the right to compel arbitration. Defendants waited several months to seek to arbitrate Plaintiffs’ claims, and in the meantime have taken advantage of this Court’s processes by filing a motion to dismiss on another ground and a motion to transfer this case to the Business Court. Only after Defendants’ motion to transfer this case to the Business Court was denied did they file the present motion seeking arbitration. This conduct constitutes waiver because

it creates a “reasonable inference . . . that the [party] does not stand upon its right.” *Lawrimore*, 276 S.C. at 118, 276 S.E. 2d at 299 (S.C. 1981) (quoting *Williams v. Philadelphia Life Ins. Co.*, 112 S.C. 436, 447, 100 S.E. 157, 160 (S.C. 1919)). *See also Morgan v. Sundance, Inc.*, 142 S. Ct. 1708 (2022) (holding that courts must apply to arbitration agreements the same test that applies to waiver of other contractual rights or defenses).

Even if Defendants had not waived their right to compel arbitration, the Court would deny their motions because Plaintiffs’ claims are not arbitrable under the agreement. The agreement only covers claims “related” to “employment.” But here, Plaintiffs do not pursue an employment claim, nor do their claims turn on their employment status at Starbucks. As the South Carolina Court of Appeals has held, even the most broadly worded arbitration agreement between an employee and employer does not apply to claims that “do not truly relate to [the employee’s] employment.” *Davis v. ISCO Industries, Inc.*, 434 S.C. 488, 499, 864 S.E.2d 391, 397 (S.C. Ct. App. 2021). Similarly, the South Carolina Supreme Court has held that arbitration agreements do not apply to “wholly unexpected tortious conduct” that a party to the agreement “could not possibly have foreseen” in the course of “normal business dealings.” *Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (S.C. 2007). I find that when Plaintiffs started working at Starbucks, they could not have anticipated that the claims asserted in this action would be subject to arbitration.

For the first time in reply, Starbucks claims that a delegation clause in the arbitration agreement requires the Court to allow an arbitrator to decide these issues. The Court disagrees. By raising this argument for the first time on reply, Starbucks waived this argument. *See Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E. 2d 475, 577 (S.C. Ct. App. 1989) (holding that a litigant “may not use either oral argument or the reply brief as a vehicle to argue issues not argued” in the

initial brief). Even if Starbucks had properly raised this argument, “the issue of waiver of arbitration through litigation is one for the court to decide rather than arbitrators.” *Samuel v. Schumacher Homes of S.C.*, Unpublished Opinion No. 2022-UP-148, 2022 BL99863 (S.C. Ct. App. Mar. 23, 2022).

Moreover, the agreement does not “clear[ly] and unmistakabl[y]” delegate questions of arbitrability to an arbitrator. *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (S.C. Ct. App. 2020). That is because “the arbitration agreement excludes ‘(c) actions to enforce this Agreement, compel arbitration, [or] compel arbitration.’” *Wilson v. Starbucks Corp.*, 385 F. Supp. 3d 557, 561 (E.D. Ky. 2019). As the adjudication of the present motion constitutes a “civil action to compel arbitration,” it is excluded from the arbitration agreement. *Id.* (quotation marks omitted). As such, this Court possesses the authority to determine whether the claims asserted in the Complaint are subject to and governed by the Arbitration Agreement.

Accordingly, Defendants’ motions to dismiss or compel arbitration are **DENIED**.

IT IS SO ORDERED.

R. Lawton McIntosh
Tenth Judicial Circuit

August _____, 2023

Anderson, South Carolina



Anderson Common Pleas

Case Caption: Skylar Blume , plaintiff, et al VS Melissa Morris , defendant, et al

Case Number: 2022CP0402159

Type: Order/Dismissal

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Certificate of Electronic Notification

Recipients

Hannah Stetson - Notification transmitted on 09-01-2023 09:13:21 AM.

Benjamin Hepner - Notification transmitted on 09-01-2023 09:13:21 AM.

William Foster - Notification transmitted on 09-01-2023 09:13:21 AM.

Matthew Ozment - Notification transmitted on 09-01-2023 09:13:21 AM.

Katie Towery - Notification transmitted on 09-01-2023 09:13:21 AM.

Reginald Belcher - Notification transmitted on 09-01-2023 09:13:21 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2022CP0402159

Official File Stamp: 09-01-2023 09:11:13 AM

Court: CIRCUIT COURT

Common Pleas

Anderson

Case Caption: Skylar Blume , plaintiff, et al VS Melissa Morris ,
defendant, et al

Document(s) Submitted: Order/Dismissal DENIED Order/Dismissal

Filed by or on behalf of: R. Lawton Mcintosh

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Hannah Davis Stetson for Melissa Morris

Reginald Wayne Belcher for Melissa Morris

William Harrell Foster, III for Starbucks
Corporation

Katie Elizabeth Towery for Starbucks Corporation

Benjamin Tradd Hepner for Starbucks
Corporation

Matthew R Ozment for Skylar Blume et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Michael P Ellement for Skylar Blume, Rhi Greer,
Virgil Dowis, Aneil Tripathi, Branden Terrill, Mya
Ourada, Natalie Mann, Jonathan Hudson

Richard P Ruoco for Skylar Blume, Rhi Greer,
Virgil Dowis, Aneil Tripathi, Branden Terrill, Mya
Ourada, Natalie Mann, Jonathan Hudson

Daniel M Rosenthal for Skylar Blume, Rhi Greer,
Virgil Dowis, Aneil Tripathi, Branden Terrill, Mya
Ourada, Natalie Mann, Jonathan Hudson

Mary Jo Carlson for Skylar Blume, Rhi Greer,
Virgil Dowis, Aneil Tripathi, Branden Terrill, Mya
Ourada, Natalie Mann, Jonathan Hudson

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Sep 22 2023

SC Court of Appeals

September 15, 2023 Order

Denying Starbucks' Motion to

Reconsider Order Denying

Starbucks' Motion to Compel

Arbitration

CA. No. 2022-CP-04-02159

Skylar Blume et al
PLAINTIFF(S)

Melissa Morris 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:

Defendants Starbucks Corporation and Melissa Morris' motions for reconsideration of the courts order denying motion to dismiss, or, in the alternative, compel arbitration, are denied without the necessity of a formal hearing. No formal order is required by the court unless counsel for either party requests one. In the event that a formal order is requested, Plaintiffs counsel is to prepare the formal order.

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 09/15/2023 .

Michael P Ellement for Skylar Blume,Rhi Greer,Virgil Dowis,Aneil Tripathi,Branden Terrill,Mya Ourada,Natalie Mann,Jonathan Hudson
Richard P Ruoco for Skylar Blume,Rhi Greer,Virgil Dowis,Aneil Tripathi,Branden Terrill,Mya Ourada,Natalie Mann,Jonathan Hudson
Daniel M Rosenthal for Skylar Blume,Rhi Greer,Virgil Dowis,Aneil Tripathi,Branden Terrill,Mya Ourada,Natalie Mann,Jonathan Hudson
Mary Jo Carlson for Skylar Blume,Rhi Greer,Virgil Dowis,Aneil Tripathi,Branden Terrill,Mya Ourada,Natalie Mann,Jonathan Hudson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

RECEIVED

Sep 22 2023

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.



Anderson Common Pleas

Case Caption: Skylar Blume , plaintiff, et al VS Melissa Morris , defendant, et al

Case Number: 2022CP0402159

Type: Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

EXHIBIT B

From: [Court Of Appeals Filings](#)
To: [Good, Sonya](#); [Court Of Appeals Filings](#)
Cc: [Foster, Bill](#); [Hepner, Benjamin](#); HStetson@turnerpadget.com
Subject: RE: Blume et al v. Starbucks Corporation and Melissa Morris
Date: Friday, September 22, 2023 9:22:31 AM
Attachments: [image001.png](#)
[image002.png](#)
[Blume v. Starbucks - NOA.pdf](#)
[Blume v. Starbucks - OR.pdf](#)
[Blume v. Starbucks - OR \(2\).pdf](#)

Dear Counsel:

The Court has received your filing. A stamped copy is attached for your records.

Thank you.

From: Good, Sonya <SGood@littler.com>
Sent: Friday, September 22, 2023 9:17 AM
To: Court Of Appeals Filings <ctappfilings@sccourts.org>
Cc: Foster, Bill <BFoster@littler.com>; Hepner, Benjamin <BHepner@littler.com>;
HStetson@turnerpadget.com
Subject: Blume et al v. Starbucks Corporation and Melissa Morris

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

Appeal from the Anderson County Court of Common Pleas
Civil Action No. 2022-CP-04-02159

Good morning,

On behalf of Attorney William H. Foster, please find attached Appellant Starbucks Corporation's Notice of Appeal in the above-referenced case. A hard copy of the same with the filing fee of \$250 has been sent to the indicated mailing address. Should you have any questions, please contact our office.

Sonya Good

Legal Secretary

864.775.3192 direct, 816.898.4689 mobile, 704.333.4005 fax

SGood@littler.com

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Littler Mendelson, P.C. is part of the international legal practice Littler Global, which operates worldwide through a number of separate legal entities.

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# EXHIBIT C



**Littler Mendelson, PC**  
110 E. Court Street, Suite 201  
Greenville, SC 29601

September 22, 2023

William H. Foster  
864.775.3191 direct  
864.775.3190 main  
[bfoster@littler.com](mailto:bfoster@littler.com)

**Via E-Mail and U.S. Mail**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Re: *Skylar Blume, et al. Virgil Dowis, Rhi Greer, Jonathan Hudson, Natalie Mann, Mya Ourada, Braden Terrill, and Aneil Tripathi Tracy Harvey v. Starbucks Corporation and Melissa Morris*  
Appeal from the Anderson County Court of Common Pleas  
Civil Action No. 2022-CP-04-02159

Dear Ms. Kitchings:

Enclosed for filing is Appellant Starbucks Corporation's Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondents and all counsel of record;
- (2) A copy of the orders which are to be challenged on appeal; and
- (3) A filing fee of \$250.

Please let me know if you need any additional information regarding this matter.

Very truly yours,

William H. Foster  
*Attorney for Appellant Starbucks Corporation*

Enclosures

September 22, 2023

Page 2

cc:

Matthew R. Ozment  
[Matt@go-lawyers.com](mailto:Matt@go-lawyers.com)  
GROVE OZMENT LLC  
100 Williams Street  
Greenville, SC 29601

Mary Joyce Carlson  
[carlsonmjj@yahoo.com](mailto:carlsonmjj@yahoo.com)  
1629 K St. NW, Suite 1050  
Washington, DC 20006

Daniel M. Rosenthal  
[dmrosenthal@jamhoff.com](mailto:dmrosenthal@jamhoff.com)  
Michael P. Ellement  
[mpellement@jamhoff.com](mailto:mpellement@jamhoff.com)  
JAMES & HOFFMAN, P.C.  
1629 K St. NW, Suite 1050  
Washington, DC 20006

Richard P. Rouco  
[rrouco@qcwdr.com](mailto:rrouco@qcwdr.com)  
QUINN, CONNOR, WEAVER, DAVIES & ROUCO LLP  
2–20 Street North, Suite 930  
Birmingham, AL 35203

*Counsel for Respondents*

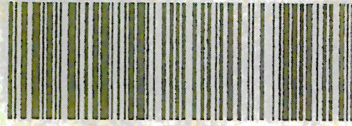
Reginald W. Belcher  
[RBelcher@turnerpadget.com](mailto:RBelcher@turnerpadget.com)  
Hannah D. Stetson  
[HStetson@turnerpadget.com](mailto:HStetson@turnerpadget.com)  
TURNER PADGET GRAHAM & LANEY P.A.  
1901 Main Street, Suite 1700 (29201)  
Post Office Box 1473  
Columbia, South Carolina 29202

*Counsel for Melissa Morris*

# **EXHIBIT D**

SONYA GOOD  
LITTLER MENDELSON  
110 E COURT ST STE 201  
GREENVILLE, SC 29601-4905

CERTIFIED MAIL®

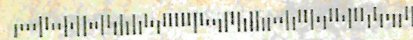


9314 8699 0430 0112 4075 48  
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\$ 010.21



The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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Columbia, SC 29211

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58

# Littler

Wells Fargo Bank, N.A

11-24/1210

2301 McGee St., 8th Floor 816-772-0600  
Kansas City, MO 64108

| CHECK NO.             | CHECK DATE          | AMOUNT                 |
|-----------------------|---------------------|------------------------|
| <del>██████████</del> | <del>09/21/23</del> | <del>*****250.00</del> |

PAY *TWO HUNDRED FIFTY AND 00/100 Dollars*  
TO THE ORDER OF

LITTLER MENDELSON, P.C.  
CONTROLLED DISBURSEMENT

SOUTH CAROLINA COURT OF APPEALS  
PO BOX 11629  
COLUMBIA, SC 29211

SECOND SIGNATURE REQUIRED OVER \$1500

*Eri D. [Signature]*  
VOID AFTER 90 DAYS



~~██████████ ██████████ ██████████~~

| VENDOR NO.    | CHECK NO. | CHECK DATE                                                    | LITTLER MENDELSON, P.C. |          |        |
|---------------|-----------|---------------------------------------------------------------|-------------------------|----------|--------|
| 32454         | 35339     | 09/21/23                                                      |                         |          |        |
| INVOICE       | DATE      | COMMENTS                                                      | AMOUNT                  | DISCOUNT | NET    |
| 092123-GRE    | 09/21/23  | CHA - 118048.1036 (RE: STARBUCKS CORPORATION v. SKYLAR BLUME) | 250.00                  | 0.00     | 250.00 |
| <b>TOTALS</b> |           |                                                               | 250.00                  | 0.00     | 250.00 |