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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2023-CP-07-00646
App. Case No: 2024-000869

Amber Leigh Lovelace, by and through her
Conservator Richard Cooler, ...Respondent,

v.

Steven Lovelace, Regions Bank,
Cetera Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek, ...Defendants.

Of whom Regions Bank,
Cetera Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek are, ...Appellants.

RECORD ON APPEAL

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Services, and Christopher Lazurek, ...Defendants.

Of whom Regions Bank,
Cetera Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek are, ...Appellants.

RECORD ON APPEAL
(Volume I of II)

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP0700646

Amber Leigh Lovelace, by and through her Conservator
Richard Cooler

Steven Lovelace, Regions Bank, and Cetera
Investment Services d/b/a Regions Investment
Services, and Christopher Lazurak

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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' Motion to Reconsider was heard via Webex on May 2, 2024. Upon review of the briefs filed by the parties, other relevant case materials, and considering the oral arguments presented at the hearing, I hereby deny Defendants' Motion to Reconsider.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

Note: Title abstractors and researchers should refer to the official court order for judgment details.

Michael G. Nettles

2140

5/6/2024

Date _____

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

CLERK OF COURT

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Beaufort Common Pleas

Case Caption: Amber Leigh Lovelace , plaintiff, et al VS Steven Lovelace ,
defendant, et al

Case Number: 2023CP0700646

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NO. 2023-CP-07-00646
COUNTY OF BEAUFORT	)	

AMBER LEIGH LOVELACE, by and	)	
through her Conservator, RICHARD	)	
COOLER,	)	
	)	ORDER DENYING DEFENDANTS'
Plaintiff,	)	MOTION TO COMPEL ARBITRATION
vs.	)	
	)	
STEVEN LOVELACE, REGIONS BANK,	)	
CETERA INVESTMENT SERVICES	)	
d/b/a REGIONS INVESTMENT	)	
SERVICES, and CHRISTOPHER	)	
LAZUREK,	)	
Defendants,	)	
_____	)	

THIS MATTER came before the Court on November 15, 2023 for a hearing on a Motion to Compel Arbitration filed by Defendants Regions Bank ("Regions"), Cetera Investment Services d/b/a Regions Investment Services ("Cetera"), and Christopher Lazurek. Based on the record before the Court and the arguments made by the parties, I make the following findings of fact and conclusions of law:

In September 2015, when Amber Leigh Lovelace ("Amber") was five (5) years old, her mother died tragically in a motor vehicle accident. As a result, Amber inherited assets including life insurance, and ultimately, proceeds from a settlement for the accident. State law required that Amber have a conservator appointed, and Amber's father, Defendant Steven A. Lovelace ("Lovelace"), was appointed to serve in an Order issued by the Beaufort County Probate Court on February 3, 2016. As a condition of his appointment, Lovelace was required to place all conservatorship funds into one or more restricted accounts from which no funds could be expended

without a prior court order. Financial institutions holding conservatorship funds were also ordered to execute a Restricted Account Agreement, acknowledging the restricted nature of the account(s).

Lovelace opened two conservatorship accounts: (1) An investment account with Cetera; and (2) A savings account with Regions. Defendant Lazurek, a representative of Cetera, signed the required Restricted Account Agreement, which set forth that “any and all withdrawal(s) from said account(s) shall be allowed only upon prior written approval of the Beaufort County Probate Court authorizing a specific withdrawal for a specific amount at a specific time or pursuant to a budget which has been pre-approved by the Court...” The Restricted Account also addressed transfers, requiring that if transfers were made, the financial institution to which funds were transferred must also have a new and separate Restricted Account prior to any transfers to that institution. While no separate Restricted Account Agreement for Regions has been produced, Regions received a copy of the Conservator’s Contract and Order of the Probate Court, which set forth that certain transactions required prior court approval. Regions characterized the account as a conservatorship account but failed to set up proper restrictions. In July 2017, just over a year after Lovelace’s appointment, he began withdrawing funds from the Regions account without prior authorization from the Probate Court. When the balance on the Regions account got low, he began transferring funds from Cetera to Regions and then withdrew the funds from Regions, all without prior Court order.

Shortly after Lovelace’s misdeeds were discovered, he left the jurisdiction and Amber was placed in the care and custody of her maternal grandfather, Richard A. Cooler. By December of 2022, both Cetera and Regions had notice that funds had been removed from both conservatorship accounts without authorization from the Probate Court. Both accounts were frozen at that time so further funds could not be expended by Lovelace.

Richard A. Cooler was appointed as Successor Conservator by the Beaufort County Probate Court by Order dated January 13, 2023. That Order required Cooler to enter a Restricted Account Agreement with Defendants that prohibited any distributions without permission of the Court and provided that, “[A]ny financial institution entering into a restricted Account Agreement in doing so submits itself to the personal jurisdiction of this Court.”

Once appointed Successor Conservator for Amber, Cooler contacted Regions Bank to provide the Order appointing him as Conservator and to have his name substituted on the conservatorship accounts. On January 30, 2023, Cooler and Amber visited the Beaufort branch for Regions and Cetera and met with bank manager Mark Weeks. During that meeting, Cooler provided Weeks the Order appointing him as Successor Conservator. Weeks prepared paperwork not only for Regions but also for Cetera to update the accounts.

Following Plaintiff’s filing of this action against Defendants, Defendants Cetera, Regions, and Lazurek filed a motion to compel arbitration, relying upon provisions allegedly referenced or contained in the documents signed by Cooler in January 2023.

In reviewing the documents filed by Defendants, it appears that the document relied upon by Cetera is entitled “New Account Agreement,” despite this being an existing account. According to Cetera, the New Account Agreement was nine pages in length, with the arbitration provisions appearing on Page 9. Plaintiff filed an Affidavit setting forth that he did not receive Pages 7, 8, or 9 of the “New Account Agreement.” Page 6 of the document, signed by Cooler, includes the following language: “By signing below, I acknowledge and agree that...(8) I understand that this agreement contains a predispute arbitration clause that is fully set forth in paragraph 20 on page 9 of this form.” This language is not in bold print, nor is it capitalized or set apart from the other language in the paragraph. The language on Page 9 sets forth that presuit arbitration applies to

“any dispute between me and you arising out of *this agreement*.” [emphasis added.] A plain reading of that language clearly does not extend to the dispute Plaintiff has with the Defendants concerning actions that well predated Cooler’s signature on the “New Account Agreement.”

The Regions paperwork is entitled “Fiduciary Account Maintenance and Signature Form.” Near the signature line is a reference to a “Deposit Agreement,” which included arbitration and waiver of jury trial provisions. The “Deposit Agreement” is a 51-page document that Plaintiff states he never received. The Deposit Agreement contains extensive arbitration language, which Defendants argue encompasses the dispute concerning actions that occurred while Defendant Lovelace served as Conservator, well prior to Cooler’s appointment as Successor Conservator.

A party seeking to enforce an arbitration agreement has the burden of persuasion to show that the parties entered into an enforceable agreement. *Gordon v. TBC Retail Grp., Inc.*, No. 2:14-cv-03365-DCN, 2016 WL 4247738 (D.S.C. August 11, 2016). Courts rule on a motion to compel arbitration using the summary judgment standard, “[t]hus the question is whether the evidence in the record could support a reasonable jury finding that [Defendant] has proven by ‘clear and conclusive evidence’...that an agreement to arbitrate exists between the parties.” *Hill v. Emp. Res. Grp., LLC*, 816 F. App’x 804, 809 (4th Cir. 2020). Only after a defendant meets its burden does the burden shift to plaintiff to show that the contract should not be enforced.

Defendants argue the application of the Federal Arbitration Act (FAA). Section 2 of the FAA requires that an arbitration provision be enforced except for “upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. As such, general contract defenses may apply to invalidate arbitration agreements. *Dr. ’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S. Ct. 1652, 134 L.E.2d 902 (1996).

Contract Defenses

In the instant case, Plaintiff argues that the enforcement of the arbitration provisions Defendants purport were included in the documents signed by Plaintiff when he sought to substitute his name for the prior conservator is unconscionable and fails for lack of consideration.

A determination of unconscionability requires a case-by-case analysis. *S.C. Farm Bureau Mut. Ins Co. v. Kennedy*, 398 S.C. 604, 730 S.E.2d 862 (2012). Unconscionability is based on procedural and substantive unconscionability. Both need not be present to the same extent; the more procedurally unconscionable a contract is, the less substantive unconscionability is required, and vice versa. *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022).

As our Supreme Court set forth in *Damico*, “the touchstone of the analysis begins with the presence or absence of meaningful choice.” *Id.* at 612, 755. Lack of meaningful choice goes to the fundamental fairness of the bargaining process. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49, 790 S.E.2d 1, 4 (2016). In the analysis of whether lack of meaningful choice rises to the level to invalidate a contract term, courts should consider factors including relative disparity in the parties' bargaining power and the parties' relative sophistication, the nature of the injuries suffered by the plaintiff, and the conspicuousness of the clause. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669; see generally at 756, 17A Am Jur. 2d Contracts § 272 (listing a number of factors that courts may considering in conducting an unconscionability analysis); 17 C.J.S. Contracts § 10 (same).

The arbitration clauses at issue in this case appear in contracts of adhesion. Plaintiff had no choice but to sign the paperwork when he sought to remove Defendant Lovelace's name from the account and substitute his own name as Successor Conservator. Not only did he state that he did

not receive the arbitration language but he had no opportunity to negotiate the terms of the purported agreement prior to signing. While contracts of adhesion are not per se unconscionable, courts have looked at them with “considerable skepticism,” as it remains doubtful “any true agreement ever existed to submit disputes to arbitration,” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 27, 644 S.E.2d 663, 670 (2007). *See also* 17A Am. Jur. 2d Contracts § 274 (noting that “[c]ontracts of adhesion are enforceable unless they are unconscionable,” but “[n]evertheless, the fact that a contract is one of adhesion is a strong indicator that [there was] an absence of meaningful choice”); 17 C.J.S. Contracts § 9 (“A consumer transaction which is essentially a contract of adhesion may be examined by the courts with special scrutiny to assure that it is not applied in an unfair or unconscionable manner against the party who did not participate in its drafting.”).

Like in *Damico*, in which the Court found that the plaintiffs (homebuyers) were much less sophisticated than the defendant (large developer/homebuilder), the case at hand also involves a disparity in sophistication of the parties and a significant disparity in the parties’ bargaining power. In the case at bar, we have Regions Bank, a large national bank and Cetera Investment Services, its investment arm, attempting to enforce arbitration provisions that were never provided or explained to a minor child and her maternal grandfather who stepped in as Successor Conservator. In this case, Plaintiff submitted an uncontroverted affidavit that he was not provided with any documentation that included arbitration provisions. Defendants’ counter affidavits do not dispute Mr. Cooler’s testimony, but rather they merely state that they should have given him the documents containing the arbitration language. It is very telling that neither affidavit filed by the Defendants deny Cooler’s testimony; rather they merely state they do not know why he would not have

received the arbitration clauses. I find that Plaintiff lacked a meaningful choice in the ability to negotiate the terms regarding arbitration.

Aside from the disparity in bargaining power and sophistication, I find that the Cetera document, entitled “New Account Agreement” did not provide Plaintiff with conspicuous notice of the arbitration language. On the page signed by Plaintiff, the reference to arbitration is included at the end of a long paragraph, with no bold or capital letters. It is inconspicuous, which is important in light of the consequential nature of the enforcement of the language. It appears that Plaintiff did not receive the remainder of the agreement where the arbitration language appears. Further, even if the purported language were conspicuous and provided to the Plaintiff at the time of signing, the language limits arbitration to matters arising out of “this agreement.” Not only do I find that enforcement of the arbitration provisions would be unconscionable, but I also find that the matters in dispute are not covered by the plain language in the arbitration provisions. The matters in dispute at this time involve actions occurred several years prior to Mr. Cooler’s involvement in this matter.

While the language in the fifty-one-page Deposit Agreement Regions asserts is much broader than that of Cetera, the reference to the Deposit Agreement on the one-page document is insufficient to bring this matter within the broad arbitration clauses. Making an unsophisticated consumer, visiting the Bank to substitute his name on an existing account, subject to onerous arbitration language purporting to cover activities years prior before his involvement as conservator, is unconscionable.

Lack of Consideration

In the instant case, Plaintiff did not open new accounts; he merely substituted his name on two existing accounts in response to the Probate Court appointing him as Successor Conservator for his minor granddaughter. This fails to qualify as consideration to make the disputes herein subject to the arbitration language contained in the documents for Cetera and Regions.

Jurisdiction

Plaintiff contends the dispute in this matter is subject to the court's jurisdiction and that the parties could not contract around that jurisdiction. In the initial order of the Probate Court appointing Defendant Lovelace as Conservator, the Court required that the parties enter into a "Restricted Account Agreement." Representing Cetera, Defendant Lazurek signed the Restricted Account Agreement, which was later approved by Probate Judge Kenneth E. Fulp, Jr. on March 1, 2016. That Agreement provides the terms that restrict the distribution of funds without order of the court. The Restricted Account Agreement does not contain any arbitration provisions. In fact, the Restricted Account Agreement provides, [T]his Restricted Account Agreement shall be read and construed *in pari materia* with pertinent Court Orders, and this Agreement and such Court Orders are hereby mutually incorporated by reference, one with the other."

In the Court Order appointing Cooler as Successor Conservator the Court specified, "Pursuant to S.C. Code. Ann 62-5-409, the Conservator shall enter into a restricted Account Agreement with the approved financial institution located within the State of South Carolina. Proof of such shall be submitted to the Court within thirty (30) days of this Order." The Order further required restricted account agreements be on file, and further clarified that financial institutions signing restricted account agreements are subject to the Court's jurisdiction.

As described above, there is no arbitration provision existing between the parties, but assuming *arguendo* that arbitration provisions could be imputed by vague language, Defendants waived arbitration by submitting the jurisdiction of the Court and availing itself of the Court's jurisdiction since the inception of the Restricted Account Agreement entered on February 3, 2016. In fact, the Court retained the jurisdiction of Defendants and any contractual provisions to the contract are void *ab initio*.

I find not only that enforcement of the arbitration clauses would be unconscionable but also that there was no consideration for the agreement to arbitrate. Finally, I find that these matters are within the court's jurisdiction and the parties were not free to contract around that jurisdiction. Therefore, it is ordered, adjudged and decreed that:

Defendants' Motion to Compel Arbitration is denied.

IT IS SO ORDERED!

The Honorable Michael G. Nettles

_____, 2023

_____, South Carolina



Beaufort Common Pleas

Case Caption: Amber Leigh Lovelace , plaintiff, et al VS Steven Lovelace ,
defendant, et al

Case Number: 2023CP0700646

Type: Order/Compel

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2023-CP-07-_____
	)	
Amber Leigh Lovelace, by and through her	)	
Conservator Richard Cooler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	
Steven Lovelace, Regions Bank, and	)	
Cetera Investment Services	)	JURY TRIAL DEMANDED
d/b/a Regions Investment Services, and	)	
Christopher Lazurek,	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his undersigned attorney at 1001 Craven Street, Beaufort, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

HARVEY & BATTEY, P. A.

/s/ Ashley Amundson
 Ashley Amundson &
 Thomas A. Holloway
 1001 Craven Street
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 Facsimile: (843) 524-6973
Attorneys for the Plaintiff

April 6, 2023.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2023-CP-07-_____
	)	
Amber Leigh Lovelace, by and through her	)	
Conservator Richard Cooler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	JURY TRIAL DEMANDED
	)	
Steven Lovelace, Regions Bank,	)	
Cetera Investment Services LLC	)	
d/b/a Regions Investment Services, and	)	
Christopher Lazurek.	)	
	)	
Defendants.	)	
	)	

The Plaintiff complaining of the Defendants alleges:

1. That the parties hereto, the subject matter hereof, and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.
2. The Plaintiff is a minor and she is a citizen and resident of Beaufort County, State of South Carolina.
3. Upon information and belief, Defendant Steven Lovelace is citizen and resident of Beaufort County, State of South Carolina.
4. Upon information and belief, Defendant Regions Bank ("Regions") is a corporation organized and existing under the laws of Alabama, but doing business in Beaufort County, South Carolina.
5. Upon information and belief, Defendant Cetera Investment Services LLC d/b/a Regions Investment Services ("Cetera") is a corporation organized and existing under the laws of Delaware, but doing business in Beaufort County, South Carolina.

6. Upon information and belief, Regions and Cetera are registered to do business in South Carolina and are in good standing with the Secretary of State. Regions and Cetera engage in systematic activities within the State of South Carolina, including to use of the courts of this state to enforce contractual and other rights against citizens of South Carolina.

7. Regions and Cetera presently conduct business and, at all relevant times, conducted business and performed acts in Beaufort County, South Carolina and has sufficient contacts and business within Beaufort County, South Carolina so as to be subject to the *in personam* jurisdiction of this Court pursuant to the laws of South Carolina.

8. On information and belief, Defendant Christopher Lazurek is a citizen and resident of Beaufort County in the State of South Carolina. At the times relevant to the claims herein Lazurek was an agent, employee, servant and or representative of Cetera assigned to its Beaufort, South Carolina offices. Lazurek was an executive in charge of financial investments in Beaufort County on behalf of customers of Cetera and has obligations of maximizing and increasing the profits of Cetera from its Beaufort County operations.

9. On information and belief, Defendant Lazurek is a citizen and resident of Beaufort County in the State of South Carolina. At all times relevant to the claims herein, Lazurek was an agent, employee, servant and/or representative of Cetera. In that capacity, under the supervision of Cetera, served a person responsible to set up, manage and care for the Restricted Account established for the benefit of the minor child, Amber Leigh Lovelace.

10. At all times relevant to this case, Lazurek was an agent, representative, servant and/or and employee of Cetera. All of his actions, inactions, omissions and wrongdoing were performed for and on behalf of Cetera while in the scope of his agency and/or employment with Cetera. Therefore, in addition to Lazurek's personal liability for his own actions, inactions and

omissions, Cetera is directly liable and jointly, severally, fully accountable, and totally liable for the mismanagement, misconduct, wrongdoing, actions and/or omissions of Lazurek under agency law, common law principles of *respondeat superior*, and state banking laws.

11. All claims arising under this Complaint are governed by the laws of the State of South Carolina. Venue is proper in Beaufort County, South Carolina because most of the substantial parts of the acts and omissions giving rise to the causes of action in this Complaint occurred in Beaufort County. Defendant Regions and Cetera have locations in and hold themselves out as doing business in Beaufort County, South Carolina and because Defendants Lazurek and Lovelace did and do work and live in Beaufort County, South Carolina.

12. The parties and subject matter involved in this Complaint are within the jurisdiction of this Court.

FACTUAL BACKGROUND

13. The Beaufort County Probate Court appointed Steven Lovelace ("Lovelace") as Conservator for his minor child, Plaintiff Amber Leigh Lovelace, in an Order dated February 3, 2016 ("the Order").

14. The conservatorship was established to protect the Plaintiff's funds received in connection with the untimely death of her mother in a motor vehicle accident.

15. The Order prohibited all Defendants from making distributions or disbursements of any nature from the conservatorship estate without prior Court approval, following proper written request therefore. Further, the Order required all Defendants to execute a Restricted Account Agreement(s).

16. Following his appointment, Lovelace opened two conservatorship accounts:

- a. An investment account with Cetera (account number -5218); and

b. A savings account with Regions (account number -3680).

17. Lovelace entered into a Restricted Account Agreement on February 24, 2016 with “Cetera,” located at 146 Sea Island Parkway, Beaufort, South Carolina. A copy of the Restricted Account Agreement is attached hereto as **Exhibit A**.

18. In the Restricted Account Agreement, the parties agreed that “any and all withdrawal(s) from said account(s) shall be allowed only upon prior written approval of the Beaufort County Probate Court authorizing a specific withdrawal for a specific amount at a specific time or pursuant to a budget which has been pre-approved by the Court...”

19. The aforementioned restriction did not “preclude the Conservator, from time to time and at any appropriate time, from transferring funds, in whole or in part, from one institution, investment vehicle, etc., to another, provided that a new and separate Restricted Account Agreement...be executed and approved with appropriate signatories, as provided herein, *prior to* any transfer from the below named institution. The original of such new and separate Restricted Account Agreement shall be filed promptly with this Court.”

20. No Restricted Account Agreement has been filed or produced by Regions.

21. Despite there being no Restricted Account Agreement for Regions, Regions had a copy of the Conservator’s Contract, which is attached hereto and incorporated by reference herein as **Exhibit B**. The Conservator’s Contract, signed by Lovelace, sets forth that:

Certain transactions require prior Court approval...certain restrictions may preclude any payments/distributions without prior written Court approval. (Note: Generally, the Court Order will require that the Conservator follow a Restricted Account Agreement and submit a written request to make such payments/distributions before doing so. In this connection, and elsewhere herein, this Conservator’s Contract must be read *in pari materia* with the aforementioned Court Order any other applicable Orders, and the Restricted Account Agreement referenced *supra*.)” (Conservator’s Contract, ¶ 4.)

22. The signature card for the Regions savings account reflects that Lovelace opened the savings account as “conservator.”

23. Despite Regions’ knowledge of Lovelace’s status as conservator, Regions does not appear to have established proper restrictions on the account to prevent unauthorized withdrawals.

24. In July 2017, Lovelace began withdrawing money from the Regions account without prior court authorization.

25. In 2018, as funds in the Regions savings account were depleted, Lovelace began a pattern of transferring funds from the Cetera account to the Regions account. In doing so, Lovelace incurred wire fees from both Cetera and Regions.

26. Periodically Regions also assessed a fee for “excessive withdrawals.”

27. Between the unauthorized withdrawals, wire fees, and other bank fees, a total of \$169,044.00 was removed from the Regions account between 2017 and March 3, 2022. A summary is attached hereto as **Exhibit C**.

28. A summary of the transfers from Cetera to Regions, and the associated Cetera wire fees, is attached hereto as **Exhibit D**.

29. Cetera also charged the Plaintiff quarterly advisory fees, which do not appear to have been approved by the Probate Court. A summary of the fees, totaling \$14,131.98 is attached hereto as **Exhibit E**.

30. Lovelace has failed to account or to repay Plaintiff for the unauthorized withdrawals from Plaintiff’s accounts.

31. Lovelace resigned as Conservator in an Affidavit filed October 13, 2022.

32. The Court appointed Richard Cooler as Successor Conservator in an Order dated January 13, 2023.

FOR A FIRST CAUSE OF ACTION

(For Negligence, Gross Negligence, Recklessness and/or Willful and Wanton Misconduct against Defendants Regions and Cetera)

33. Paragraphs enumerated above are incorporated herein as if alleged and restated in full herein.

34. Regions and Cetera had a duty to the Plaintiff to honor the restrictions contained in the Order and Fiduciary Letters appointing the Conservator.

35. Regions breached its duty in the following particulars:

- a. By failing to review and adhere to the restrictions in the Court's Order that required conservatorship funds to be held in one or more restricted accounts from which no funds could be obtained without a prior court order;
- b. By allowing the Conservator to open a savings account (account number -3680) with no restrictions on the Conservator's ability to withdraw the Plaintiff's funds;
- c. By allowing the repeated, systematic withdrawal of funds on deposit in the savings account without prior approval by the Probate Court;
- d. By failing to monitor the conservatorship account to stop Lovelace from continuing his pattern of withdrawals from the conservatorship account, despite knowledge, and even charging "excessive withdrawal" fees.
- e. Other particulars as the evidence in the case may demonstrate.

36. Cetera breached its duty in the following particulars:

- a. By repeatedly allowing Conservator to transfer funds to an unrestricted account from which he ultimately withdrew the funds without a prior Court Order;
- b. Other particulars as the evidence in the case may demonstrate.

37. In one or more of the preceding particulars, Defendants acted with imprudence, negligence, gross negligence, recklessness, willful misconduct, fraudulent intent, and/or bad faith and thereby breached the common law duties of care owed to Amber Leigh Lovelace.

38. The breach of duty by Regions and by Cetera as outlined above were the proximate cause of the damage to the Plaintiff. The Plaintiff is entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for bad faith, gross negligence, recklessness, willful misconduct, and or omissions in such an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR A SECOND CAUSE OF ACTION

(For Violation of S.C. Code Ann. §62-5-420 (1976) as to Defendants Regions and Cetera)

39. Paragraphs enumerated above are incorporated herein as if alleged and restated in full herein.

40. S.C. Code Ann. §62-5-420 (1976) sets forth that persons dealing with conservators are bound by the restrictions endorsed on letters issued by the Court.

41. Defendants had a duty pursuant to S.C. Code Ann. §62-5-420 to honor the restrictions endorsed on letters issued by the Probate Court to Lovelace as Conservator. A copy of the Fiduciary Letters is attached hereto as **Exhibit F**.

42. In this matter, the Fiduciary Letters containing the following restrictions:

No distributions, of any nature, may be made from the Conservatorship estate (income or principal), nor from any assets of the protected person, without prior written approval of this Court, after proper petition therefor. See pertinent file for the appointment Order, which sets out the parameters of this appointment.

43. Regions breached its duty in the following particulars:

- a. By ignoring the restrictions set forth in the Fiduciary Letters, specifically by failing to properly establish the Plaintiff's savings account as a restricted account from which no funds could be expended without a Court Order;
 - b. By allowing the systematic, repeated withdrawal of the funds contained in the Plaintiff's savings account without a prior Court Order;
 - c. By failing to stop Lovelace from withdrawing funds despite the bank assessing several fees for "excessive withdrawals"; and
 - d. Other particulars as the evidence in the case may demonstrate.
44. Cetera breached its fiduciary duties in the following particulars:
- a. By failing to ensure that transfers from the conservatorship account were made to accounts with proper restrictions;
 - b. By repeatedly allowing Lovelace to transfer conservator funds to an unrestricted account;
 - c. By deducting quarterly advisory fees from the Plaintiff's account without prior Court approval; and
 - d. Other particulars as the evidence in the case may demonstrate.
45. The breach of duty of Regions and Cetera as outlined above were the proximate cause of the damage to the Plaintiff.
46. The minor Plaintiff has suffered substantial actual damages.

FOR A THIRD CAUSE OF ACTION
(For Negligent Hiring/Training/Supervision as to Defendants Regions and Cetera)

47. Paragraphs enumerated above are incorporated herein as if alleged and restated in full herein.

48. At all times relevant hereto, Defendants owed a duty of reasonable care in the operation of their businesses, including specifically a duty of reasonable care to ensure its employees who establish and monitor conservatorship accounts do so in accordance with the laws in South Carolina and pertinent Court Orders and Fiduciary Letters issued by the Probate Court.

49. Regions breached its duty of care and otherwise acted in a negligent, grossly negligent, willful, wanton, and reckless manner in a number of particulars, including but not limited to some or all of the following:

- a. Failing to adopt adequate policies and procedures in establishing conservatorship accounts;
- b. Failing to adequately and properly hire, train, and supervise its employees to establish conservator accounts;
- c. Failing to adequately and properly monitor conservatorship accounts to confirm appropriate safeguards are in place; and
- d. Other particulars as the evidence in the case may demonstrate.

50. Cetera breached its duty of care and otherwise acted in a negligent, grossly negligent, willful, wanton, and reckless manner in a number of particulars, including but not limited to some or all of the following:

- a. Failing to adopt adequate policies and procedures in setting up permissible transfers from restricted conservatorship accounts;
- b. Failing to adequately and properly hire, train, and supervise its employees to establish conservator accounts;
- c. Failing to adequately and properly monitor conservatorship accounts to confirm appropriate safeguards are in place; and

d. Other particulars as the evidence in the case may demonstrate.

51. As a direct and proximate cause of the conduct of Defendants, the Plaintiff has suffered significant economic harm.

52. The Plaintiff is entitled to and prays for separate awards of damages against Defendants, both actual, in a sum to sufficient to compensate Plaintiff for her damages as well as punitive damages in an amount sufficient to impress upon Defendants the seriousness of their conduct and to deter such similar conduct in the future.

FOR A FOURTH CAUSE OF ACTION

(Breach of Contract against Defendants Cetera, Lazurek, and Lovelace)

53. Paragraphs enumerated above are incorporated herein as if alleged and restated in full herein.

54. Cetera, Lazurek, and Lovelace entered into a Restricted Account Agreement.

55. Cetera, Lazurek, and Lovelace breached the terms of the agreement in the following particulars:

- a. By violating the provision in the agreement that set forth that the Conservator was not permitted to transfer funds from the account unless there was a Restricted Account Agreement executed and approved prior to the transfers.
- b. Other particulars as the evidence in the case may demonstrate.

56. Lovelace breached the terms of the agreement in the following particulars:

- a. By transferring funds to the unrestricted Regions savings account, which did not have an executed, approved Restricted Account Agreement on file;
- b. By failing to obtain a court order prior to transferring and withdrawing conservatorship funds;
- c. Other particulars as the evidence in the case may demonstrate.

57. Plaintiff has suffered severe financial harm as a result of the breach of the Restricted Account Agreement.

FOR A FIFTH CAUSE OF ACTION
(For an Accounting against Defendant Lovelace)

58. Paragraphs enumerated above are incorporated herein as if alleged and restated in full herein.

59. Defendant Lovelace had a duty to account for all conservatorship funds.

60. Plaintiff is entitled to a full and fair accounting of the subject money from the date of delivery to present.

FOR A SIXTH CAUSE OF ACTION
(For Conversion against all Defendants)

61. Paragraphs enumerated above are incorporated herein as if alleged and restated in full herein.

62. Upon information and belief, the procurement/conversion of the Plaintiff's money was done knowingly and purposefully and with intent to convert the property of the Plaintiff to all Defendants.

63. That Defendants have held this money as their own to the exclusion of Plaintiff.

64. Cetera wrongfully converted "advisory fees and costs" for its own use and benefit to the exclusion of Plaintiff from the Plaintiff's accounts without prior Court approval.

65. That Lovelace has failed to return the converted funds and has failed to account for the funds.

66. Lovelace has wrongfully converted the subject money to his own benefit and use to the exclusion of Plaintiff, the rightful owner.

FOR A SEVENTH CAUSE OF ACTION

(South Carolina Unfair Trade Practices against Defendants Regions and Cetera)

67. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Seventh Cause of Action.

68. To the extent that the Restricted Accounts or any other product or service recommended or sold to or performed for Plaintiff are not considered securities under South Carolina Law, Defendant engaged in unfair methods of competition and or unfair or deceptive acts in the practice and conduct of trade or commerce.

69. Regions' unfair acts and practices included:

- a. Ignoring the restrictions set forth in the Fiduciary Letters, specifically by failing to properly establish the Plaintiff's savings account as a restricted account from which no funds could be expended without a Court Order; and
- b. Allowing the systematic, repeated withdrawal of the funds contained in the Plaintiff's savings account without a prior Court Order;
- c. Failing to stop Lovelace from withdrawing funds despite the bank assessing several fees for "excessive withdrawals."
- d. Failing to adequately and properly hire, train, and supervise its employees to establish conservator accounts;
- e. Failing to adequately and properly monitor conservatorship accounts to confirm appropriate safeguards are in place;

70. Cetera and Lazurek's unfair acts and practices include:

- a. Repeatedly allowing Lovelace to transfer conservator funds to an unrestricted account; and

- b. Deducting quarterly advisory fees from the Plaintiff's account without prior Court approval.

71. All Defendants' unfair acts and practices include:

- a. Participating and allowing the unlawful conversion of the minor Plaintiff's account funds; and
- b. Other particulars as the evidence in the case may demonstrate.

72. The unfair and deceptive acts and practices committed by Defendant in the conduct of its trade and commerce have a potential for repetitive impact on the public and public interest.

73. Such unfair acts and practices constitute a violation of the Unfair Trade Practices Act, S.C. Code Ann. §39-51-10, *et seq.* (1976).

74. Insofar as they do not involve securities, Defendants unfair acts and practices described above constitutes willful, intentional, and knowing violations of the Unfair Trade Practices Act.

75. The Plaintiff has suffered damages as a result of the aforementioned unfair and deceptive acts and practices of Defendants in that she has suffered financial losses and other damages to be shown at the time of trial.

WHEREFORE, the Plaintiff prays to this Honorable Court for an award of damages against the Defendants herein, for actual damages, in a sum sufficient to compensate her for her losses herein, as well as an award of special damages, pre-judgment interest, and punitive damages in an amount necessary to impress upon the Defendants the seriousness of their conduct and to deter such similar conduct in the future, together with such further relief as the court deems just and proper.

This 6th day of April, 2023.

HARVEY & BATTEY, P. A.

/s/ Ashley Amundson
Ashley Amundson &
Thomas A. Holloway
Post Office Drawer 1107
1001 Craven Street
Beaufort, SC 29901-1107
Telephone: (843) 524-3109
Facsimile: (843) 524-6973
Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

PROBATE COURT
RESTRICTED ACCOUNT AGREEMENT
CASE NUMBER: 2015GC0700057
PROTECTED PERSON: AMBER LEIGH LOVELACE, a minor

WHEREAS, Steven Allen Lovelace has been appointed as Conservator for Amber Leigh Lovelace by the Beaufort County Probate Court; and

WHEREAS, said Court has imposed certain restrictions on the disbursement of Conservatorship funds; and

WHEREAS, an initial deposit of monies may be made to the within named banking or financial institution, pending appropriate investment decisions by the Conservator;

NOW, THEREFORE, THE PARTIES HERETO AGREE TO THIS RESTRICTED ACCOUNT AGREEMENT AS FOLLOWS:

1. Cetera/Regions Investment (financial/investment institution) agrees to establish restricted account(s) in the name of Steven Lovelace, as Conservator for Amber Lovelace (protected person/minor).
2. Cetera/Regions Investment (financial/investment institution) and Steven Lovelace, as Conservator, expressly agree that any and all withdrawal(s) from said account(s) shall be allowed only upon prior written approval of the Beaufort County Probate Court authorizing a specific withdrawal for a specific amount at a specific time or pursuant to a budget which has been pre-approved by the Court. This restriction, as further explained in #3 below, does not preclude the Conservator, from time to time and at any appropriate time, from transferring funds, in whole or in part, from one institution, investment vehicle, etc., to another, provided that a new and separate Restricted Account Agreement (the within BCPC Form #G/C-205-RAA) be executed and approved with appropriate signatories, as provided herein, prior to any transfer from the below named institution. The original of such new and separate Restricted Account Agreement shall be filed promptly with this Court.
3. Notwithstanding the restrictions provided for in this Agreement, Steven Lovelace as Conservator, is permitted to transfer, invest and re-invest the Conservatorship funds in accordance with applicable statutory constraints and parameters, so long as the funds remain in account with the within named financial/investment institution, and properly identified as Conservatorship funds, subject to the restrictions noted herein.
4. This Restricted Account Agreement shall be read and construed *in pari materia* with pertinent Court Orders, and this Agreement and such Court Orders are hereby mutually incorporated by reference, one with the other.

Executed this 24th day of February, 2016.

Steven Lovelace
Signature of Conservator as Conservator for:

Amber Lovelace
Name of protected person

Cetera Investments / Regions Investment
Name of financial/investment institution

By: Christopher R. Lard
Signature of financial/investment institution qualified representative

Please print the following:
Name: Christopher R. Lard
Title: Financial Consultant
Address: 196 Leg Island Pkwy
Beaufort SC 29907
Telephone: 843-25-8426

NOTE: Institutional
Signatory must be
Officially authorized
to sign such documents

Date Opened: 2/24/2016
Account # 38N35148
Amount of Initial Deposit: 100.00

APPROVED: Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court
DATE APPROVED: March 19 2016



STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 AMBER LEIGH LOVELACE, a minor)
)
)

PROBATE COURT

CASE NUMBER: 2015GC0700057

CONSERVATOR'S CONTRACT

Steven Allen Lovelace, having been appointed, pursuant to this Court's Order dated February 1, 2016, as Conservator for Amber Leigh Lovelace, a minor, understands and agrees as follows:

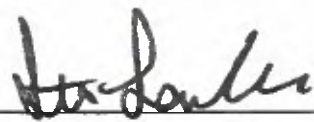
1. **Inventory & Appraisalment:** No later than thirty (30) days after appointment, the Conservator will file a complete and detailed Inventory and Appraisalment (Form #550PC).
2. **Record Keeping:** The Conservator must keep precise and detailed records and make them available to this Court and to persons entitled to same, or as Court-ordered.
3. **Accounting/Reporting:** The Conservator will timely and properly account/report to this Court as follows:
 - a. Annually, as required by Court Order;
 - b. Promptly, upon resignation or removal of Conservator;
 - c. Promptly, upon death of protected person or termination of incapacity;
 - d. Promptly, any change of address, residence or domicile of Conservator or protected person; and
 - e. At other times as Court directs.
4. **Accounting/Details:** Said accounting will show, to the Court's satisfaction, the complete financial picture of the Conservatorship Estate, including conditions of bond, if any; assets (and sources, description, basis, FMV, etc.); liabilities; receipts and disbursements; names of payees and reasons for payment, etc.. The accounting will be substantiated by receipts, cancelled checks, and any other proof the Court may request. The Court may require a physical check of Conservatorship holdings.
5. **Court Approval of Transactions:** Certain transactions require prior Court approval. For example, real estate cannot be sold without prior notice and a hearing before the Probate Court. Also, certain restrictions may preclude any payments/distributions without prior written Court approval. (Note: Generally, the Court Order will require that the Conservator follow a Restricted Account Agreement and submit a written request to make such payments/distributions before doing so. In this connection, and elsewhere herein, this Conservator's Contract must be read *in pari materia* with the aforementioned Court Order, any other applicable Orders, and the Restricted Account Agreement referenced *supra*.)
6. **Fiduciary Standards of Care:** The Conservator is a fiduciary and is subject to certain standards of care, e.g., the "prudent investor rule."

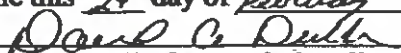


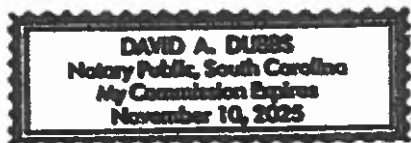
7. *Compensation:*

- a. The Conservator is entitled to fair and reasonable compensation as determined by the Court. In appropriate circumstances, it is possible for the Court, in its discretion, to approve a fee measured by approximately 5% of the total gross amount on the Inventory/Appraisal. One-half (1/2) of said 5% fee may be allowed after the filing of the Inventory, and the remaining one-half (1/2) may be allowed upon proof of satisfactory completion of Conservatorship duties. In addition to the possible 5% fee, the Conservator may request additional compensation, based on the particular circumstances of the matter. Any such request should be made in conjunction with the timely filing of the annual accounting, and should explain in detail the justification for the request for additional compensation. In extenuating circumstances, such request may be made at any time.
- b. As an alternative to the methodology noted above, the Court may consider compensation to the Conservator based on an hourly rate for services rendered, or other appropriate methodology.
- c. In any event, the Court looks at the "totality of the circumstances" in arriving at a fair and reasonable compensation arrangement which is in the "best interests" of the protected person.

8. *Conservator's Representation:* The Conservator's signature below attests to the fact that he/she/it fully understands the duties and responsibilities described above and agrees to abide by them; also, receipt of a copy of this document is hereby acknowledged.


Name: _____

SWORN to and subscribed before
me this 24th day of February, 2016.

Notary Public for South Carolina
My commission expires: 11-10-2025



BCPC Form #G/C 204 CONSERVATOR'S CONTRACT
REV. 01/06/11
SCPC §§62-5-414; 418-19; 424-26; 7-302

EXHIBIT C**Unauthorized Regions Bank Withdrawals and Associated Fees**

Date	Amount	Type	Notes
7/3/2017	1,000.00	Teller cashed withdrawal	
9/7/2017	1,500.00	Teller cashed withdrawal	
11/17/2017	750.00	Teller cashed withdrawal	
12/1/2017	1,750.00	Teller cashed withdrawal	
12/6/2017	1,000.00	Teller cashed withdrawal	
12/15/2017	1,250.00	Teller cashed withdrawal	
12/29/2017	1,250.00	Teller cashed withdrawal	
12/29/2017	3.00	EXCESSIVE WITHDRAWAL/ITEM FEE	
2/15/2018	792.00	Teller cashed withdrawal	
2/28/2018	3,500.00	Teller cashed withdrawal	
3/9/2018	1,500.00	Teller cashed withdrawal	
3/27/2018	3,000.00	Teller cashed withdrawal	
4/17/2018	1,000.00	Teller cashed withdrawal	
7/20/2018	1,500.00	Teller cashed withdrawal	
7/27/2018	1,500.00	Teller cashed withdrawal	
8/31/2018	2,000.00	Teller cashed withdrawal	
9/7/2018	1,000.00	Teller cashed withdrawal	
9/28/2018	1,500.00	Teller cashed withdrawal	
10/15/2018	2,500.00	Teller cashed withdrawal	
11/30/2018	15.00	Wire Transfer Fee	
12/3/2018	4,000.00	Teller Cashed Withdrawal	Coincides with \$5,000 wire transfer from Cetera on 11/30/18
12/31/2018	800.00	Teller Cashed Withdrawal	
6/19/2019	15.00	Wire Transfer Wire Fee	
6/20/2019	4,000.00	Teller Cashed Withdrawal	Coincides with \$5000 wire transfer from Cetera account on 6/19
6/28/2019	15.00	Wire Transfer Wire Fee	
6/28/2019	3,000.00	Teller Cashed Withdrawal	Coincides with \$3000 wire transfer from Cetera account on 6/28
7/10/2019	1,000.00	Teller Cashed Withdrawal	
7/25/2019	15.00	Wire Transfer Wire Fee	
7/26/2019	4,000.00	Teller Cashed Withdrawal	Coincides with \$5000 wire transfer from Cetera account on 7/25



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7/29/2019	900.00	Teller Cashed Withdrawal	
8/15/2019	4,000.00	Teller Cashed Withdrawal	Coincides with \$4500 wire transfer from Cetera on 8/15
8/15/2019	15.00	Wire Transfer Wire Fee	
8/19/2019	2,000.00	Teller Cashed Withdrawal	Coincides with \$2000 wire transfer from Cetera on 8/19
8/19/2019	15.00	Wire Transfer Wire Fee	
9/13/2019	2,800.00	Teller Cashed Withdrawal	Coincides with \$2,300 wire transfer from Cetera on 9/13
9/13/2019	15.00	Wire Transfer Wire Fee	
9/23/2019	4,000.00	Teller Cashed Withdrawal	Coincides with \$4000 wire transfer from Cetera on 9/23
9/23/2019	15.00	Wire Transfer Wire Fee	
10/3/2019	4,000.00	Teller Cashed Withdrawal	coincides with \$4,500 wire transfer from Cetera on 10/3
10/3/2019	15.00	Wire Transfer Wire Fee	
10/18/2019	3,500.00	Teller Cashed Withdrawal	coincides with \$3000 wire transfer from Cetera on 10/18
10/18/2019	15.00	Wire Transfer Wire Fee	
10/29/2019	3,500.00	Teller Cashed Withdrawal	coincides with \$4000 wire transfer from Cetera on 10/29
10/29/2018	15.00	Wire Transfer Wire Fee	
11/4/2019	450.00	Teller Cashed Withdrawal	
11/8/2019	2,500.00	Teller Cashed Withdrawal	Coincides with \$4000 wire transfer from Cetera on 11/8
11/8/2019	15.00	Wire Transfer Wire Fee	
11/14/2019	1,500.00	Teller Cashed Withdrawal	
11/19/2019	3,000.00	Teller Cashed Withdrawal	Coincides with \$4000 wire transfer from Cetera on 11/19
11/19/2018	15.00	Wire Transfer Wire Fee	
11/27/2019	1,000.00	Teller Cashed Withdrawal	
11/29/2019	3,500.00	Teller Cashed Withdrawal	Coincides with \$3,500 wire transfer from Cetera on 11/29
11/29/2018	15.00	Wire Transfer Wire Fee	
12/3/2019	2,500.00	Teller Cashed Withdrawal	Coincides with \$3,000 wire transfer from Cetera on 12/3
12/3/2019	15.00	Wire Transfer Wire Fee	
12/6/2019	3,000.00	Teller Cashed Withdrawal	Coincides with \$3500 wire transfer from Cetera on 12/6
12/6/2019	15.00	Wire Transfer Wire Fee	
12/13/2019	950.00	Teller Cashed Withdrawal	
12/17/2019	15.00	Wire Transfer Wire Fee	
12/18/2019	4,500.00	Teller Cashed Withdrawal	Coincides with \$5,000 wire transfer from Cetera on 12/17
12/20/2019	2,500.00	Teller Cashed Withdrawal	Coincides with \$3,000 wire transfer from Cetera on 12/20
12/20/2019	15.00	Wire Transfer Wire Fee	
12/27/2019	900.00	Teller Cashed Withdrawal	Coincides with \$3500 wire transfer from Cetera on 12/30

12/30/2019	15.00	Wire Transfer Wire Fee	
12/31/2019	12.00	EXCESSIVE WITHDRAWAL/ITEM FEE	
1/10/2020	500.00	Teller Cashed Withdrawal	
1/14/2020	15.00	Wire Transfer Wire Fee	
1/15/2020	1,800.00	Teller Cashed Withdrawal	Coincides with \$1,800 wire transfer from Cetera on 1/14
1/22/2020	2,100.00	Teller Cashed Withdrawal	Coincides with \$2,105.34 wire transfer from Cetera on 1/22
1/22/2020	15.00	Wire Transfer Wire Fee	
1/27/2020	3,000.00	Teller Cashed Withdrawal	Coincides with \$3,000 wire transfer from Cetera on 1/27
1/27/2020	15.00	Wire Transfer Wire Fee	
1/31/2020	3.00	EXCESSIVE WITHDRAWAL/ITEM FEE	
2/3/2020	15.00	Wire Transfer Wire Fee	
2/4/2020	3,000.00	Teller Cashed Withdrawal	Coincides with \$3,000 wire transfer from Cetera on 2/3
2/7/2020	2,500.00	Teller Cashed Withdrawal	Coincides with \$3,000 wire transfer from Cetera on 2/7
2/7/2022	15.00	Wire Transfer Wire Fee	
2/11/2020	2,000.00	Teller Cashed Withdrawal	Coincides with \$2,500 wire transfer from Cetera on 2/11
2/11/2020	15.00	Wire Transfer Wire Fee	
2/19/2020	3,000.00	Teller Cashed Withdrawal	Coincides with \$3000 wire transfer from Cetera on 2/19
2/19/2020	15.00	Wire Transfer Wire Fee	
2/21/2019	900.00	Teller Cashed Withdrawal	Coincides with \$2,000 wire transfer from Cetera on 2/21
2/21/2019	15.00	Wire Transfer Wire Fee	
2/27/2020	1,500.00	Teller Cashed Withdrawal	
2/28/2020	9.00	EXCESSIVE WITHDRAWAL/ITEM FEE	
3/3/2020	3,000.00	Teller Cashed Withdrawal	Coincides with \$3,000 wire transfer from Cetera on 3/3
3/3/2020	15.00	Wire Transfer Wire Fee	
3/6/2020	460.00	Teller Cashed Withdrawal	
3/12/2020	1,500.00	Teller Cashed Withdrawal	Coincides with \$3,500 wire transfer from Cetera on 3/12
3/12/2020	15.00	Wire Transfer Wire Fee	
3/16/2020	1,800.00	Teller Cashed Withdrawal	
3/31/2020	1,700.00	Teller Cashed Withdrawal	Coincides with \$2,500 wire transfer from Cetera on 3/31
3/31/2020	15.00	Wire Transfer Wire Fee	
4/13/2020	15.00	Wire Transfer Wire Fee	Coincides with \$2,900 wire transfer from Cetera on 4/13
4/29/2020	1,995.00	Teller Cashed Withdrawal	Coincides with \$2,000 wire transfer from Cetera on 4/29
4/29/2020	15.00	wire transfer wire fee	
5/11/2020	2,085.00	Teller Cashed Withdrawal	Coincides with \$2,100 wire transfer from Cetera on 5/11

5/11/2020	15.00	Wire Transfer Wire Fee	
5/15/2020	2,070.00	Teller Cashed Withdrawal	Coincides with \$2,100 wire transfer from Cetera on 5/15
5/15/2020	15.00	Wire Transfer Wire Fee	
5/29/2020	1,000.00	Teller Cashed Withdrawal	
6/11/2020	2,000.00	Teller Cashed Withdrawal	
6/22/2020	2,000.00	Teller Cashed Withdrawal	
6/26/2020	1,200.00	Teller Cashed Withdrawal	
7/9/2020	2,750.00	Teller Cashed Withdrawal	Coincides with \$2750 wire transfer from Cetera on 7/9
7/9/2020	15.00	Wire Transfer Wire Fee	
7/15/2020	1,000.00	Teller Cashed Withdrawal	Coincides with \$2500 wire transfer from Cetera on 7/15
7/15/2020	15.00	Wire Transfer Wire Fee	
7/31/2020	2,100.00	Teller Cashed Withdrawal	Coincides with \$2,025 wire transfer from Cetera on 7/31
7/31/2020	15.00	Wire Transfer Wire Fee	
8/10/2020	1,750.00	Teller Cashed Withdrawal	
8/28/2022	15.00	Wire Transfer Wire Fee	Coincides with \$1600 wire transfer from Cetera on 8/28
8/31/2020	1,900.00	Teller Cashed Withdrawal	
9/9/2020	2,500.00	Teller Cashed Withdrawal	
9/9/2020	15.00	Wire Transfer Wire Fee	Coincides with \$2,500 wire transfer from Cetera on 9/9
9/30/2020	2,000.00	Teller Cashed Withdrawal	
9/30/2020	15.00	Wire Transfer Wire Fee	Coincides with \$2000 wire transfer from Cetera on 9/30
10/16/2020	1,300.00	Teller Cashed Withdrawal	
10/16/2020	15.00	Wire Transfer Wire Fee	Coincides with \$1250 Wire transfer from Cetera on 10/16; also \$15,000 deposit from unknown source on 10/27
12/1/2020	3,500.00	Teller Cashed Withdrawal	Coincides with deposit from Cetera account (not wire) for \$3,500
2/5/2021	3,000.00	Teller Cashed Withdrawal	Coincides with \$1500 deposit from Cetera on 2/4 and 2/5 (\$3,000 total)
4/20/2021	2,000.00	Teller Cashed Withdrawal	Coincides with \$2000 deposit from Cetera account on 4/14
12/31/2021	5,000.00	Teller Cashed Withdrawal	Coincides with \$1700 deposit from Cetera on 11/30 and \$3,330 on 12/31.
3/3/2022	2,400.00	Teller Cashed Withdrawal	Coincides with \$2425 deposit from Cetera on 3/3

TOTAL	169,044.00
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Exhibit D

Cetera Transfers and Withdrawals Description

Date	Amount	Assoc. Fees	Description
11/30/2018	\$5,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
6/19/2019	\$5,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
6/28/2019	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
7/25/2019	\$5,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
8/15/2019	\$4,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
8/19/2019	\$2,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
9/13/2019	\$2,300.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
9/23/2019	\$4,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
10/3/2019	\$4,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
10/18/2019	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
10/29/2019	\$4,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
11/8/2019	\$4,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
11/19/2019	\$4,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
11/29/2019	\$3,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
12/3/2019	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
12/6/2019	\$3,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
12/17/2019	\$5,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
12/20/2019	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
12/30/2019	\$3,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
1/14/2020	\$1,800.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
1/22/2020	\$2,105.34	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
1/27/2020	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
2/3/2020	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
2/7/2020	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
2/11/2020	\$2,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
2/19/2020	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
2/21/2020	\$2,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
3/3/2020	\$3,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
3/12/2020	\$3,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
3/31/2020	\$2,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator



4/13/2020	\$2,900.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
4/29/2020	\$2,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
5/11/2020	\$2,100.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
5/15/2020	\$2,100.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
7/9/2020	\$2,750.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
7/15/2020	\$2,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
7/31/2020	\$2,025.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
8/28/2020	\$1,600.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
9/9/2020	\$2,500.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
9/30/2020	\$2,000.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
10/16/2020	\$1,250.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
12/1/2020	\$3,500.00	\$0.00	Manual ACH Debit TRF Funds ACM Regions Bank
2/4/2021	\$1,500.00	\$0.00	Manual ACH Debit TRF Funds ACM Regions Bank
2/5/2021	\$1,500.00	\$0.00	Manual ACH Debit TRF Funds ACM Regions Bank
4/14/2021	\$2,000.00	\$0.00	Manual ACH Debit TRF Funds ACM Regions Bank
11/30/2021	\$1,700.00	\$0.00	Manual ACH Debit TRF Funds ACM Regions Bank
12/31/2021	\$3,300.00	\$0.00	Manual ACH Debit TRF Funds ACM Regions Bank
3/3/2022	\$2,450.00	\$25.00	Funds Withdrawn Fed Wire Regions Bank - Steven Lovelace Conservator
TOTAL	\$140,880.34	\$1,050.00	

Exhibit E

Regions Investment Solutions Advisory Fees

\$14,131.98

Date	Amount	Description
3/22/2016	\$109.29	February 2016 fee
4/20/2016	\$319.34	Q2 2016 Advisory Fee
7/19/2016	\$328.20	Q3 2016 Advisory Fee
10/20/2016	\$337.37	Q4 2016 Advisory Fee
1/18/2017	\$345.38	Q1 2017 Advisory Fee
3/20/2017	\$150.68	Q1 2017 Feb Adj Advisory Fee
4/20/2017	\$673.46	Q2 2017 Advisory Fee
7/20/2017	\$699.39	Q3 2017 Advisory Fee
10/19/2017	\$717.77	Q4 2017 Advisory Fee
1/22/2018	\$722.19	Q1 2018 Advisory Fee
4/18/2018	\$726.04	Q2 2018 Advisory Fee
7/18/2018	\$733.93	Q3 2018 Advisory Fee
10/18/2018	\$750.13	Q4 2018 Advisory Fee
1/22/2019	\$660.95	Q1 2019 Advisory Fee
4/23/2019	\$719.91	Q2 2019 Advisory Fee
7/18/2019	\$721.17	Q3 2019 Advisory Fee
10/29/2019	\$667.75	Q4 2019 Advisory Fee
1/21/2020	\$559.79	Q1 2020 Advisory Fee
4/29/2020	\$393.66	Q2 2020 Advisory Fee
7/20/2020	\$419.41	Q3 2020 Advisory Fee
10/20/2020	\$396.14	Q4 2020 Advisory Fee
12/18/2020	\$34.59	Q4 2020 Adj Advisory Fee
1/20/2021	\$481.96	Q1 2021 Advisory Fee
4/20/2021	\$488.24	Q2 2021 Advisory Fee
7/20/2021	\$510.53	Q3 2021 Advisory Fee
10/19/2021	\$506.17	Q4 2021 Advisory Fee
1/20/2022	\$496.22	Q1 2022 Advisory Fee
4/20/2022	\$462.32	Q2 2022 Advisory Fee

TOTAL	\$14,131.98
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Book 375
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
AMBER LEIGH LOVELACE, a minor.

IN THE PROBATE COURT

FIDUCIARY LETTERS

CASE NUMBER: 2015GC0700057

- ☐ Personal Representative
☒ Conservatorship
☐ Trusteeship
☐ Special Administrator

On the 3rd day of February, 2016, STEVEN ALLEN LOVELACE was appointed and qualified as Fiduciary of the above matter by this Court, with all the authority granted to a fiduciary by law, except as noted in the "Restrictions" below.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the above fiduciary to do and to perform all acts which may be authorized by law, except as noted in the "Restrictions" below.

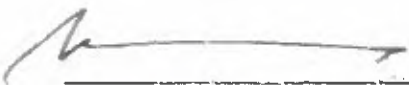
RESTRICTIONS:

No distributions, of any nature, may be made from the Conservatorship estate (income or principal), nor from any assets of the protected person, without prior written approval of this Court, after proper petition therefor.

See pertinent file for the appointment Order, which sets out the parameters of this appointment.

Executed this 3rd day of February, 2016

BEAUFORT COUNTY SC - SMD
BK 3440 Pg 2382
FILE NUM 2015005795
02/05/2016 01:34:41 PM
REC'D BY shirley SCPT 0000
PROCESSING FEE \$10.00


Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court

2016 FEB 17 PM 12:02



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

Amber Leigh Lovelace, by and through her
Conservator Richard Cooler,

)

Case No. 2023-CP-07-00646

)

Plaintiff,

)

vs.

)

**DEFENDANTS' MOTION TO COMPEL
ARBITRATION AND TO DISMISS OR STAY
THE ACTION SET FORTH IN THE
AMENDED COMPLAINT**Steven Lovelace, Regions Bank, and Cetera
Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek,

)

)

)

)

)

Defendants.

)

)

Pursuant to Rule 12 of the South Carolina Rules of Civil Procedure, the Federal Arbitration Act ("FAA"), Section 15-48-20 of the South Carolina Uniform Arbitration Act, and other applicable rules and laws, Defendants Regions Bank, Cetera Investment Services d/b/a Regions Investment Services, and Christopher Lazurek (collectively, "Defendants," but individually "Regions," "Cetera," and "Mr. Lazurek," respectively), by and through undersigned counsel, move this Court to compel Plaintiff to arbitrate any and all disputes with Defendants and to dismiss or stay this action until arbitration has been completed.¹

Plaintiff filed his Complaint in this action on April 6, 2023. Plaintiff's Complaint alleges that the Defendants failed to prevent Defendant Steven Lovelace ("Defendant Lovelace") from wrongfully removing funds subject to a court appointed conservatorship from two accounts in violation of a Restricted Account Agreement. During his alleged tortious conduct, Defendant Lovelace was the court appointed conservator of the funds in the Cetera and/or Regions account.

¹ Defendants file this Motion in lieu of filing an answer. *See Stokes v. Metropolitan Life Ins. Co.*, 571 S.E.2d 711, 713 (S.C. Ct. App. 2002). To the extent an answer is required, Defendants deny all allegations contained in Plaintiffs' Complaint.

Defendants deny any liability arising from the allegations in Plaintiff's Complaint. Plaintiff alleges that Defendant Lovelace resigned on October 13, 2022, (Compl. ¶ 31.) and Plaintiff was appointed as the successor conservator on January 13, 2023. (*Id.* at ¶ 32.)

After Plaintiff was appointed conservator, he entered into agreements with Regions and Cetera to arbitrate claims he has against Regions and Cetera and their respective employees and/or agents. As it relates to Cetera, Plaintiff completed a New Account Application on or about January 20, 2023. *See* Cooler Signed New Account Application, attached as Exhibit A. In doing so, Plaintiff acknowledged that he was agreeing to arbitrate his claims subject to an arbitration provision found in paragraph 20 on page 9. (*Id.*) The arbitration agreement provides as follows:

20. Arbitration. THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT THE PARTIES AGREE AS FOLLOWS:

- (A) ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.**
- (B) ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.**
- (C) THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.**
- (D) THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD UNLESS, IN AN ELIGIBLE CASE, A JOINT REQUEST FOR AN EXPLAINED DECISION HAS BEEN SUBMITTED TO ALL PARTIES TO THE PANEL AT LEAST 20 DAYS PRIOR TO THE FIRST SCHEDULED HEARING DATE.**
- (E) THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.**
- (F) THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.**
- (G) THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.**

ARBITRATION CLAUSE: I AGREE THAT ANY DISPUTE BETWEEN ME AND YOU ARISING OUT OF THIS AGREEMENT SHALL BE SUBMITTED TO ARBITRATION CONDUCTED UNDER THE PROVISIONS OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.'S CODE OF ARBITRATION PROCEDURE ADMINISTERED BY FINRA DISPUTE RESOLUTION, INC. ARBITRATION MUST BE COMMENCED WITHIN THE STATUTORY LIMITATION PERIODS APPLICABLE TO THE CLAIMS. I FURTHER AGREE THAT, IF THE FINRA ARBITRATION FORUM IS NOT AVAILABLE FOR THE DISPUTE, THE DISPUTE WILL BE SUBMITTED TO ARBITRATION CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION.

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION, OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (i) THE CLASS CERTIFICATION IS DENIED; (ii) THE CLASS IS DECERTIFIED; OR (iii) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

See a clean copy of the entire New Account Application, attached hereto as **Exhibit B**.

On or about February 15, 2023, Plaintiff completed a Fiduciary Account Maintenance and Signature Form with Regions. See Copy of Fiduciary Account Maintenance and Signature Form, attached as **Exhibit C**. Beside Plaintiff's signature, the form provides in bolded font,

By signing, I acknowledge receiving and agree to each and every term, condition, and provision of the Deposit Agreement (including without limitation, the Arbitration and Waiver of Jury Trial provisions thereof and the provisions for changing the terms thereof) and related disclosures for this account.

Id. The Deposit Agreement contains, *inter alia*, an arbitration agreement between Plaintiff and Regions. See Deposit Agreement, attached hereto as **Exhibit D**. On the first two pages of the Deposit Agreement, the Plaintiff was notified that that either party could be require any claims to be submitted to binding arbitration. (*Id.* at p 1-2.) Regions Arbitration Provision provides that any claim relating to, *inter alia*, any account; any alleged contract or tort arising out of or relating in

any way to the Agreement, any account, any agreement, any transaction, any advertisement or solicitation, or your business, interaction or relationship with Regions; any property loss or damage; or any claim, demand or request for compensation or damages from or against Regions would be required to be settled by binding Arbitration under the FAA if either party elects to arbitrate. (*Id.* at p 3–4.)

Plaintiff has voluntarily entered into binding arbitration agreements, and his claims against Defendants should be submitted to binding arbitration. The account relationships necessarily affects interstate commerce as Regions and Cetera are out of state Defendants triggering the application of the FAA. (Compl. ¶ 4–5.)

Accordingly, Defendants seek an Order compelling Plaintiff to arbitrate all claims against Defendants in accordance with the binding arbitration agreements, and dismissing the claims against Defendants with prejudice or, in the alternative, staying all proceedings in this action, including discovery, related to the claims against Defendants until after Plaintiffs have submitted all claims to arbitration and the arbitration proceedings have been completed.

This Motion is supported by the FAA; the South Carolina Uniform Arbitration Act; the South Carolina Rules of Civil Procedure; applicable federal and state case law; and such other authorities, arguments, and/or exhibits as may be included in any memoranda submitted by Defendants in support of this Motion prior to a ruling on the same.

[signature page to follow]

NELSON MULLINS RILEY & SCARBOROUGH LLP

/s/Cory E. Manning

Cory E. Manning (SC Bar No. 14702)

cory.manning@nelsonmullins.com

Andrew Rawl (SC Bar No. 102807)

andrew.rawl@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

Tel: (803) 799-2000

Fax: (803) 256-7500

Attorneys for Defendants Regions Bank, Cetera

Investment Services, LLC d/b/a Regions

Investment Services, and Christopher Lazurek

Columbia, SC

June 16, 2023

EXHIBIT A



INVESTMENT
SERVICES LLC
Member FINRA/SIPC

NEW ACCOUNT APPLICATION INCLUDING ANNUITIES AND LIFE INSURANCE

☐ New Account ☐ Update ☐ Conversion

Account #: _____

Principal Approval: _____

Branch Office #: 3RN Rep #: 3GQ Branch Location: Beaufort Lady's Island (004017)

ACCOUNT REGISTRATION — Check only one

*Additional documents required

This form applies to persons/entities issued a Social Security Number (SSN).

Account Type: ☒ Individual ☐ Community Property ☐ Trust*
☐ Joint with Survivorship ☐ Qualified Plan* ☐ Estate*
☐ 529 Plan* (add beneficiary information below) ☐ Custodian for Minor
☐ Other: _____
☐ Tenants in Common — Percent of ownership (total must equal 100%) Co-Owner 1: _____ Co-Owner 2: _____

Third-party as custodian IRAs

☐ IRA ☐ CESA
☐ Roth IRA ☐ Bene Trad IRA
☐ SEP IRA ☐ Bene Roth IRA
☐ SIMPLE IRA ☐ HSA

ACCOUNT ATTRIBUTE — Optional

☒ Advisory - Additional documents required

☐ PrimeSweep

☐ Mutual Fund Only - If you are selecting Mutual Fund Only, you may not commingle other investments within this account.

If you elected to have a Mutual Fund Only account, and your investments are not limited only to mutual funds, then the Custodian, in the Custodian's sole discretion and without your prior consent, may convert your Mutual Fund Only account to the appropriate Account type. Funds in a Mutual Fund Only account can be held in a cash or money market account while awaiting investment.

ACCOUNT INFORMATION — Required of all applicants

Owner A LC
First/Middle/Last Name (If UGMA/UTMA, list minor name here)

SSN _____ Birth Date 2009

Phone Number _____ Phone Number Type: ☐ Home ☒ Cell ☐ Office ☐ Fax ☐ Other

Citizenship: ☒ U.S. Citizen ☐ Resident Alien** ☐ Non-Resident Alien**

11 CHESTERFIELD DR
Home Street Address — No P.O. Box

BEAUFORT SC 29906 United States
City State Zip Country

PO BOX 4301
Mailing Address — P.O. Box allowed (Only if different than Home Street Address)

BEAUFORT SC 29903 United States
City State Zip Country

STEVE0111707@GMAIL.COM
Email Address (By providing your address, you authorize Cetera Investment Services to contact you by email)

Co-Owner Richard Ashley Cooler
First/Middle/Last Name (If UGMA/UTMA, list custodian name here)

SSN _____ Birth Date March 3, 1948

843-812-1168 Phone Number Type: ☐ Home ☒ Cell ☐ Office ☐ Fax ☐ Other
Phone Number



Co-Owner Account Information Continued

Citizenship: ☒ U.S. Citizen ☐ Resident Alien** ☐ Non-Resident Alien**Home Street Address — No P.O. Box (Only if different than Owner Home Street Address)
11 Chesterfield Dr. Beaufort S.C. 29906

PO Box 4301 Beaufort S.C.

City
BeaufortState
SCZip
29903Country
USAEmail Address (By providing your address, you authorize Cetera Investment Services to contact you by email)
cetera@beaufortsc.com

** If any owner is a resident or non-resident alien, specify country: _____ Obtain W-8 Supplemental Customer Identification form if non-resident. Please note: Additional documentation may be required.

Will there be more than two account owners? ☐ Yes ☒ No If yes, Additional Account Owner Information form PV-119 is required.

IDENTIFICATION INFORMATION — Required of all applicants

Owner Other 1 SOCIAL SECURITY
 Identification Type Valid Government Issued Photo ID# Issuing Entity
12/1/2009 12/1/2089 ☒ Government issued photo ID viewed by financial professional
 Issue Date Expiration Date
 Other Verification Done: Other

Co-Owner _____
 Identification Type Valid Government Issued Photo ID# Issuing Entity

 Issue Date Expiration Date ☐ Government issued photo ID viewed by financial professional
 Other Verification Done: _____

EMPLOYMENT INFORMATION — Required of all applicants. If retired, unemployed, or disabled, complete with the most recent employment information (include name of business and industry). If self-employed, please specify name of business and industry.

Owner Student STUDENT STUDENT
 Employment Status Employer Name Occupation
BEAUFORT SC 843-812-2891
 Employer City/State Phone Number

Co-Owner _____
 Employment Status Employer Name Occupation

 Employer City/State Phone Number

AFFILIATION INFORMATION — Required of all applicants.

- ☐ Yes ☒ No Is any owner (or a member of your immediate family) a director, 10% shareholder or policy-making officer of a publicly traded company?
 If yes, specify company name: _____
 Trading Symbol: _____
- ☐ Yes ☒ No Is any owner (or a member of your immediate family) a politically exposed person?
 If yes, specify name of country: _____
- ☐ Yes ☒ No Is any owner (or a member of your immediate family) a registered representative of a broker-dealer?
 If yes, specify firm name: _____
- ☐ Yes ☒ No Is any owner (or a member of your immediate family) employed by, or otherwise affiliated with, FINRA or any broker-dealer?
 If yes, specify firm name: _____

Account #: _____

ADDITIONAL REGISTRATION INFORMATION — May be required**Required for:** Trusts, Estates, Third-party as Custodian IRAs, Qualified Plans and Managed Accounts**STEVEN ALLEN LOVELACE CONS**

Trustee/Executor/Financial Institution Name/Agent

Agreement Date

529 Plans — Beneficiary Information

First/Middle/Last Name

SSN

Birth Date

ACCOUNT INSTRUCTIONS — Required. All securities are held in street name**Settlement Options****Sweep Options (eligible accounts)**

- ☒ FlexInsured Account® (brokerage, non-qualified advisory, and brokerage retirement accounts)
☐ Insured Deposit Sweep Account (advisory IRAs)
☐ Federated Treasury Obligations Fund (advisory ERISA accounts, including advisory 401(k), and qualified plans)

By signing this form below, you are providing your written affirmative consent to have any cash balances in your account automatically transferred to the following default sweep option: (i) for brokerage and non-qualified advisory accounts, the default sweep option is the FlexInsured Account, a FDIC-insured bank deposit program; (ii) for advisory IRAs, the default sweep option is the Insured Deposit Sweep Account, a FDIC-insured bank deposit program; and (iii) for advisory ERISA accounts including advisory 401(k) accounts, the default sweep option is the Federated Treasury Obligations Fund, a money market fund. The sweep option applied to your account is subject to account type eligibility. If the sweep option selected above is ineligible for your account type, or an option is not selected, the default sweep option will automatically be used. For detailed information regarding the terms and conditions of the products, see the applicable prospectus or program disclosure document. General terms and conditions for the products in the sweep program are also described in the document entitled Cetera Investment Services Sweep Program, which is available online at <https://www.ceterafinancialinstitutions.com> (search "sweep"). We may change the products available for your selection.

Other Settlement Options (If not selecting a Sweep Option above)

- ☐ Check
☐ ACH to/from Financial Institution (ACH instructions below must be completed)

Dividend/Interest Options (Select one)

- ☐ Check to customer
☐ Check to Financial Institution (Letter of Instruction signed by client must be included)
☐ ACH to/from Financial Institution (ACH instructions below must be completed)
☒ Money Market Sweep (Same as settlement option)

Money Movement on Demand? ☒ Yes Please complete ACH instructions below to allow money movement on demand.

ACH Instructions — Complete this information if ACH to/from Financial Institution or Money Movement on Demand are checked above.

REGIONS BANK

Financial Institution Name

Account Name at Financial Institution (Third-party prohibited)

Account #

ACH ABA Routing #

☐ Checking Account # ☒ Savings Account #

Are there additional ACH Instructions? ☐ Yes ☒ No If yes, Authorization for ACH Payments form PV-020 is required at account opening. Additional ACH instructions may be added at a later date by completing form PV-556.

Wire Instructions — Required for outgoing wire transfers. ☒ Standard ☐ Special (fee will apply)

REGIONS BANK

Financial Institution Name

Wire ABA #

(Please note that the Wire ABA Number may be different from the ACH ABA Number. Please verify the Wire ABA Number with the financial institution.)

STEVEN LOVELACE CONSERVATOR

Account Name at Financial Institution (Ownership)

Account #

Further Credit

Account #: **3RN35218**

Intermediary Financial Institution (if applicable)

ABA #

Financial Institution Name

Reference

Are there additional Wire Instructions? ☐ Yes ☒ No If yes, Letter of Instruction form PV-284 is required.

I am interested in electronic delivery of trade confirmations and/or statements and other shareholder communications: ☒ Yes ☐ No
 I acknowledge that by choosing yes, I will receive online viewing and electronic delivery enrollment instructions via email.

ACCOUNT PROFILE — Required of all applicantsDo any of the owners have investment experience? ☐ Yes ☒ No

Please specify number of years (even if the number is zero) next to each investment product below:

Stocks: ____ yrs. Bonds: ____ yrs. Mutual Funds/ETFs: ____ yrs. Options: ____ yrs. DPPs: ____ yrs.

REITs: ____ yrs. Annuities: ____ yrs. Other (identify): _____ yrs.

Account Objective

(Select one)

- ☐ Capital Preservation
☐ Income
☐ Total Return
☒ Growth
☐ Aggressive Growth

Risk Tolerance

(Select one)

- ☐ Conservative
☐ Moderately Conservative
☒ Moderate
☐ Moderately Aggressive
☐ Significant Risk

Account Time Horizon

(Select one)

- ☐ 4 years or less
☐ 5 - 8 years
☒ More than 8 years

Annual Income

(Select one)

- ☒ \$0 - 29,999
☐ 30,000 - 49,999
☐ 50,000 - 74,999
☐ 75,000 - 99,999
☐ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 399,999
☐ 400,000 - Over

Adjusted Net Worth

(Exclude primary residence)

- ☐ \$0 - 74,999
☐ 75,000 - 99,999
☒ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 499,999
☐ 500,000 - 999,999
☐ 1,000,000 - 2,999,999
☐ 3,000,000 - Over

Liquid Net Worth

(Cannot exceed adjusted net worth)

- ☐ \$0 - 74,999
☐ 75,000 - 99,999
☒ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 499,999
☐ 500,000 - 999,999
☐ 1,000,000 - 2,999,999
☐ 3,000,000 - Over

Account Liquidity Needs

(over next 3 years)

- ☒ None
☐ \$1 - 4,999
☐ 5,000 - 9,999
☐ 10,000 - 24,999
☐ 25,000 - 49,999
☐ 50,000 - 74,999
☐ 75,000 - 99,999
☐ 100,000 - Over

Federal Tax Bracket: ☒ 0 - 15% ☐ 16 - 28% ☐ 29 - 36% ☐ >36%

Other Investments Not Held Through Cetera Investment Services (list amounts held next to investment type below):

☒ None ☐ Client Declined to Disclose

Equities	\$ _____	Unit Investment Trusts	\$ _____	Annuities - Variable	\$ _____
Options	\$ _____	Exchange Traded Funds	\$ _____	Annuities - Fixed	\$ _____
Fixed Income	\$ _____	Real Estate	\$ _____	Precious Metals	\$ _____
Mutual Funds	\$ _____	Insurance	\$ _____	Commodities & Futures	\$ _____
Other (please list type):	_____		\$ _____		

Other relevant financial information provided:

Account #: 3RN35218

TRUSTED CONTACT PERSON INFORMATION

By choosing to provide information about a trusted contact person, you authorize Cetera Investment Services to contact the person listed below and disclose information about your account to that person in the following circumstances: to confirm the specifics of your current situation, including your contact information, health status, or the identity of any legal guardian, executor, trustee, or holder of a power of attorney; or to address possible abuse or exploitation; or as otherwise permitted by FINRA Rule 2165 (Financial Exploitation of Specified Adults). This form will NOT authorize your trusted contact person to act on your behalf regarding your account. Your trusted contact person must be 18 years of age or older.

RICHARD

First Name of Contact*

COOLER

Last Name of Contact*

FATHER IN LAW

Relationship to Account Owner*

8438121168

Phone Number*

OR☐ I do not want to provide a trusted contact person at this time.

*Required information if designating a trusted contact person.

FOR IRA ACCOUNTS ONLY

It is important to understand that your financial professional may have participated in activities that would hold him/her to an ERISA fiduciary standard when it comes to your retirement plan assets. This standard ensures that your financial professional must always have your best interests in mind and may prohibit him/her from engaging in certain transactions. This standard would also impact your financial professional's ability to solicit and/or accept your rollover dollars if you choose to roll retirement plan dollars into an IRA.

Cetera generally prohibits an IRA rollover account from being established in any of the following circumstances:

- If the financial professional previously provided and continued to offer fiduciary services within the meaning of ERISA to you as a plan participant concerning the investment of your plan account through the date on which you discussed rollover IRA services with the financial professional;
- If the financial professional serves as the plan's financial professional, and the plan sponsor promoted or encouraged you to engage the financial professional to provide rollover IRA services; or
- If, during a plan meeting held by the plan sponsor for participants (when the financial professional was serving as the plan's financial professional), the financial professional recommended or encouraged you to take a rollover distribution from the plan or discussed rollover investment strategies.

Client Attestation

I have received the "Things to Consider Before Making an IRA Rollover" educational document.

If rollover IRA services are being offered to me, or will be offered to me in the future, then such services are, or will be, separate and unrelated to any services that may be provided by any financial professional on behalf of the plan. I am not obligated in any way to work with the plan's financial professional when selecting a provider of rollover IRA services.

If my financial professional serves as the plan's financial professional, I understand that the financial professional is not acting as a plan officer or as a "fiduciary" to the plan (as defined above) when offering rollover IRA services to me, and the financial professional is not offering any rollover IRA services in a fiduciary capacity on behalf of the plan.

I understand that my financial professional may make recommendations on how funds rolled over into an IRA should be invested. Any fee for rollover IRA services will be payable individually by me or through my IRA, rather than the plan or the plan sponsor.

SELECTION OF RELATIONSHIP TYPE

Based on the information provided within this document and our discussions, I elect to establish either a brokerage (commission-based) or an advisory (fee-based) account. Depending upon the relationship type selected, additional documentation may be required.

Please select the one option below that best describes your overall relationship type:

☐ Buy and Hold Charge Per Transaction (Purchases and Sales) My Authorization Prior to Each Transaction Client-Directed Trading - No Monitoring	OR	☒ Active Trading Asset-Based or Fixed Fee Advisor Discretion (Client Authorization Per Trade Not Required) Ongoing Advice and Monitoring by Advisor
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W-9 TAXPAYER CERTIFICATION

By signing below, I certify under penalty of perjury that: (1) the Social Security Number/Taxpayer Identification Number provided on page 1 is correct; (2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) the IRS has never notified me that I am subject to backup withholding as a result of failure to report interest or dividends, or if I have been notified, the IRS has notified me that I am no longer subject to backup withholding; (3) I am a U.S. citizen or other U.S. person.

☐ I am subject to backup withholding. (If applicable, check this box in lieu of line 2 above). If I am not a U.S. citizen or resident alien, the three statements above do not apply to me.

The Internal Revenue Service does not require that I consent to any provision other than the certifications required to avoid backup withholding.

Account #: **3RN35218**

ACKNOWLEDGEMENTS

Securities and insurance products are offered through Cetera Investment Services LLC (doing insurance business in CA as CFG STC Insurance Agency LLC). Advisory services are offered through Cetera Investment Advisers LLC.

Disclosure for Bank Locations

Neither Cetera Investment Services LLC nor Cetera Investment Advisers LLC is affiliated with the financial institution where investment services are offered. Investments are (1) not insured by the Federal Deposit Insurance Corporation (FDIC), any government agency or any other deposit insurance program; (2) not deposits with, obligations of, or guaranteed by the financial institution where you obtained Cetera Investment Services services or any of its affiliates; and (3) subject to investment risk, including possible loss of the principal amount invested. (Certain brokered certificates of deposit may be FDIC insured.) (4) To obtain credit, the financial institution may not (a) require me to purchase any insurance or annuity from the financial institution or any of its affiliates or (b) require me to agree not to purchase, or prohibit me from purchasing, any insurance or annuity from any unaffiliated party.

By signing below, I acknowledge and agree that: (1) I have received, read, understand and agree with all of the information contained within this document; (2) the Internal Revenue Service does not require that I consent to any provision other than the certifications required to avoid backup withholding; (3) I have received, read and understand "Form CRS: Customer Relationship Summary for Cetera Investment Services LLC"; (4) I have read and understand the section labeled "The Big Picture," which describes the differences between commission-based brokerage and fee-based advisory services; (5) I have received, read and understand the separate document entitled "Things to Consider Before Making an IRA Rollover"; (6) I have received, read, understand the document titled "Regulation Best Interest Supplemental Disclosure for Cetera Investment Services LLC"; (7) I have received the brochure titled "Important Information About Your Cetera Investment Services Relationship, including Cetera Investment Services' Privacy Policy"; and (8) I understand that this agreement contains a predispute arbitration clause that is fully set forth in paragraph 20 on page 9 of this form.

CLIENT SIGNATURE(S)

Please note that ALL Account Owners or Trustees must sign this agreement.

AM LC

Printed Name of Owner

Signature of Owner

Date

If an entity (e.g. corporation), Title

Richard A. Cooker

Printed Name of Co-Owner (if applicable)

Richard A. Cooker

Signature of Co-Owner (if applicable)

1-30-23

Date

INVESTMENT STRATEGY RECOMMENDATION — To be completed by financial professional (optional)

Based on the information provided within this document and our discussions, the following account investment strategy recommendation(s) is/are made (some investment strategy recommendations may require additional paperwork):

(If applicable, select all that apply)

☒ Asset Allocation

☐ Diversification

☐ Value Investing

☐ Income Oriented

☐ Passive/Indexing Strategy

☐ Tax Management

☐ Dollar Cost Averaging

☐ Socially Responsible Investing

☐ Other (briefly describe):

FINANCIAL PROFESSIONAL SIGNATURE

I am introducing this application for approval. I have provided all required information, including a prospectus (if applicable).

Butler/Cobb Team

Printed Name of Financial Professional

Signature of Financial Professional

Date

Account #: 3RN35218

EXHIBIT B



INVESTMENT
SERVICES LLC
Member FINRA/SIPC

NEW ACCOUNT APPLICATION INCLUDING ANNUITIES AND LIFE INSURANCE

☐ New Account ☐ Update ☐ Conversion

Account #: _____

Principal Approval: _____

Branch Office #: _____ Rep #: _____ Branch Location: _____

ACCOUNT REGISTRATION — Check only one.

*Additional documents required.

This form applies to persons/entities issued a Social Security Number (SSN).

Account Type: ☐ Individual ☐ Community Property ☐ Trust*
☐ Joint with Survivorship ☐ Qualified Plan* ☐ Estate*
☐ 529 Plan* (add beneficiary information below) ☐ Custodian for Minor
☐ Other: _____
☐ Tenants in Common — Percent of ownership (total must equal 100%) Co-Owner 1: _____ Co-Owner 2: _____

Third-party as custodian IRAs

☐ IRA ☐ CESA
☐ Roth IRA ☐ Bene Trad IRA
☐ SEP IRA ☐ Bene Roth IRA
☐ SIMPLE IRA ☐ HSA

ACCOUNT ATTRIBUTE — Optional.

☐ Advisory - Additional documents required

☐ PrimeSweep

☐ Mutual Fund Only - If you are selecting Mutual Fund Only, you may not comeingle other investments within this account.

If you elected to have a Mutual Fund Only account, and your investments are not limited only to mutual funds, then the Custodian, in the Custodian's sole discretion and without your prior consent, may convert your Mutual Fund Only account to the appropriate Account type. Funds in a Mutual Fund Only account can be held in a cash or money market account while awaiting investment.

ACCOUNT INFORMATION — Required of all applicants.

Owner

First/Middle/Last Name (If UGMA/UTMA, list minor name here) _____

SSN _____

Birth Date _____

Phone Number _____

Phone Number Type: ☐ Home ☐ Cell ☐ Office ☐ Fax ☐ Other

Citizenship: ☐ U.S. Citizen ☐ Resident Alien** ☐ Non-Resident Alien**

Home Street Address — No P.O. Box _____

City _____

State _____

Zip _____

Country _____

Mailing Address — P.O. Box allowed (Only if different than Home Street Address) _____

City _____

State _____

Zip _____

Country _____

Email Address (By providing your address, you authorize Cetera Investment Services to contact you by email) _____

Co-Owner

First/Middle/Last Name (If UGMA/UTMA, list custodian name here) _____

SSN _____

Birth Date _____

Phone Number _____

Phone Number Type: ☐ Home ☐ Cell ☐ Office ☐ Fax ☐ Other



Co-Owner Account Information Continued

Citizenship: ☐ U.S. Citizen ☐ Resident Alien** ☐ Non-Resident Alien**

Home Street Address — No P.O. Box (Only if different than Owner Home Street Address)

City

State

Zip

Country

Email Address (By providing your address, you authorize Cetera Investment Services to contact you by email)

** If any owner is a resident or non-resident alien, specify country: _____. Obtain W-8 Supplemental Customer Identification form if non-resident. Please note: Additional documentation may be required.

Will there be more than two account owners? ☐ Yes ☐ No If yes, Additional Account Owner Information form PV-119 is required.

IDENTIFICATION INFORMATION — Required of all applicants.
Owner

Identification Type

Valid Government Issued Photo ID#

Issuing Entity

Issue Date

Expiration Date

☐ Government issued photo ID viewed by financial professional

Other Verification Done: _____

Co-Owner

Identification Type

Valid Government Issued Photo ID#

Issuing Entity

Issue Date

Expiration Date

☐ Government issued photo ID viewed by financial professional

Other Verification Done: _____

EMPLOYMENT INFORMATION — Required of all applicants. If retired, unemployed or disabled, complete with the most recent employment information (include name of business and industry). If self-employed, please specify name of business and industry.
Owner

Employment Status

Employer Name

Occupation

Employer City/State

Phone Number

Co-Owner

Employment Status

Employer Name

Occupation

Employer City/State

Phone Number

AFFILIATION INFORMATION — Required of all applicants.

☐ Yes ☐ No Is any owner (or a member of your immediate family) a director, 10% shareholder or policy-making officer of a publicly traded company?

If yes, specify company name: _____

Trading Symbol: _____

☐ Yes ☐ No Is any owner (or a member of your immediate family) a politically exposed person?

If yes, specify name of country: _____

☐ Yes ☐ No Is any owner (or a member of your immediate family) a registered representative of a broker-dealer?

If yes, specify firm name: _____

☐ Yes ☐ No Is any owner (or a member of your immediate family) employed by, or otherwise affiliated with, FINRA or any broker-dealer?

If yes, specify firm name: _____

Account #: _____

ADDITIONAL REGISTRATION INFORMATION — May be required.

Required for: Trusts, Estates, Third-party as Custodian IRAs, Qualified Plans and Managed Accounts

Trustee/Executor/Financial Institution Name/Agent

Agreement Date

529 Plans — Beneficiary Information

First/Middle/Last Name

SSN

Birth Date

ACCOUNT INSTRUCTIONS — Required. All securities are held in street name.**Settlement Options****Sweep Options (eligible accounts)**

- ☐ FlexInsured Account® (brokerage, non-qualified advisory, and brokerage retirement accounts)
- ☐ Insured Deposit Sweep Account (advisory IRAs)
- ☐ Federated Treasury Obligations Fund (advisory ERISA accounts, including advisory 401(k), and qualified plans)

By signing this form below, you are providing your written affirmative consent to have any cash balances in your account automatically transferred to the following default sweep option: (i) for brokerage and non-qualified advisory accounts, the default sweep option is the FlexInsured Account, a FDIC-insured bank deposit program; (ii) for advisory IRAs, the default sweep option is the Insured Deposit Sweep Account, a FDIC-insured bank deposit program; and (iii) for advisory ERISA accounts including advisory 401(k) accounts, the default sweep option is the Federated Treasury Obligations Fund, a money market fund. The sweep option applied to your account is subject to account type eligibility. If the sweep option selected above is ineligible for your account type, or an option is not selected, the default sweep option will automatically be used. For detailed information regarding the terms and conditions of the products, see the applicable prospectus or program disclosure document. General terms and conditions for the products in the sweep program are also described in the document entitled Cetera Investment Services Sweep Program, which is available online at <https://www.ceterafinancialinstitutions.com> (search "sweep"). We may change the products available for your selection.

Other Settlement Options (If not selecting a Sweep Option above)

- ☐ Check
- ☐ ACH to/from Financial Institution (ACH instructions below must be completed)

Dividend/Interest Options (Select one)

- ☐ Check to customer
- ☐ Check to Financial Institution (Letter of Instruction signed by client must be included)
- ☐ ACH to/from Financial Institution (ACH instructions below must be completed)
- ☐ Money Market Sweep (Same as settlement option)

Money Movement on Demand? ☐ Yes Please complete ACH instructions below to allow money movement on demand.

ACH Instructions — Complete this information if ACH to/from Financial Institution or Money Movement on Demand are checked above.

Financial Institution Name

Account Name at Financial Institution (Third-party prohibited)

Account #

ACH ABA Routing #

☐ Checking Account # ☐ Savings Account #

Are there additional ACH Instructions? ☐ Yes ☐ No If yes, Authorization for ACH Payments form PV-020 is required at account opening. Additional ACH instructions may be added at a later date by completing form PV-556.

Wire Instructions — Required for outgoing wire transfers. ☐ Standard ☐ Special (fee will apply)

Financial Institution Name

Wire ABA #

(Please note that the Wire ABA Number may be different from the ACH ABA Number. Please verify the Wire ABA Number with the financial institution.)

Account Name at Financial Institution (Ownership)

Account #

Further Credit

Account #: _____

Intermediary Financial Institution (if applicable)

ABA #

Financial Institution Name

Reference

Are there additional Wire Instructions? ☐ Yes ☐ No If yes, Letter of Instruction form PV-284 is required.I am interested in electronic delivery of trade confirmations and/or statements and other shareholder communications: ☐ Yes ☐ No

I acknowledge that by choosing yes, I will receive online viewing and electronic delivery enrollment instructions via email.

ACCOUNT PROFILE — Required of all applicants.Do any of the owners have investment experience? ☐ Yes ☐ No

Please specify number of years (even if the number is zero) next to each investment product below:

Stocks: ____ yrs. Bonds: ____ yrs. Mutual Funds/ETFs: ____ yrs. Options: ____ yrs. DPPs: ____ yrs.

REITs: ____ yrs. Annuities: ____ yrs. Other (identify): _____ yrs.

Account Objective

(Select one)

- ☐ Capital Preservation
☐ Income
☐ Total Return
☐ Growth
☐ Aggressive Growth

Risk Tolerance

(Select one)

- ☐ Conservative
☐ Moderately Conservative
☐ Moderate
☐ Moderately Aggressive
☐ Significant Risk

Account Time Horizon

(Select one)

- ☐ 4 years or less
☐ 5 - 8 years
☐ More than 8 years

Annual Income

(Select one)

- ☐ \$0 - 29,999
☐ 30,000 - 49,999
☐ 50,000 - 74,999
☐ 75,000 - 99,999
☐ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 399,999
☐ 400,000 - Over

Adjusted Net Worth

(Exclude primary residence)

- ☐ \$0 - 74,999
☐ 75,000 - 99,999
☐ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 499,999
☐ 500,000 - 999,999
☐ 1,000,000 - 2,999,999
☐ 3,000,000 - Over

Liquid Net Worth

(Cannot exceed adjusted net worth)

- ☐ \$0 - 74,999
☐ 75,000 - 99,999
☐ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 499,999
☐ 500,000 - 999,999
☐ 1,000,000 - 2,999,999
☐ 3,000,000 - Over

Account Liquidity Needs

(over next 3 years)

- ☐ None
☐ \$1 - 4,999
☐ 5,000 - 9,999
☐ 10,000 - 24,999
☐ 25,000 - 49,999
☐ 50,000 - 74,999
☐ 75,000 - 99,999
☐ 100,000 - Over

Federal Tax Bracket: ☐ 0 - 15% ☐ 16 - 28% ☐ 29 - 36% ☐ >36%

Other Investments Not Held Through Cetera Investment Services (list amounts held next to investment type below):

☐ None ☐ Client Declined to Disclose

Equities	\$ _____	Unit Investment Trusts	\$ _____	Annuities - Variable	\$ _____
Options	\$ _____	Exchange Traded Funds	\$ _____	Annuities - Fixed	\$ _____
Fixed Income	\$ _____	Real Estate	\$ _____	Precious Metals	\$ _____
Mutual Funds	\$ _____	Insurance	\$ _____	Commodities & Futures	\$ _____
Other (please list type): _____		\$ _____			

Other relevant financial information provided:

Account #: _____

TRUSTED CONTACT PERSON INFORMATION

By choosing to provide information about a trusted contact person, you authorize Cetera Investment Services to contact the person listed below and disclose information about your account to that person in the following circumstances: to confirm the specifics of your current situation, including your contact information, health status, or the identity of any legal guardian, executor, trustee, or holder of a power of attorney; or to address possible abuse or exploitation; or as otherwise permitted by FINRA Rule 2165 (Financial Exploitation of Specified Adults). This form will NOT authorize your trusted contact person to act on your behalf regarding your account. Your trusted contact person must be 18 years of age or older.

First Name of Contact*

Last Name of Contact*

Relationship to Account Owner*

Phone Number*

OR

☐ I do not want to provide a trusted contact person at this time.

*Required information if designating a trusted contact person.

FOR IRA ACCOUNTS ONLY

It is important to understand that your financial professional may have participated in activities that would hold him/her to an ERISA fiduciary standard when it comes to your retirement plan assets. This standard ensures that your financial professional must always have your best interests in mind and may prohibit him/her from engaging in certain transactions. This standard would also impact your financial professional's ability to solicit and/or accept your rollover dollars if you choose to roll retirement plan dollars into an IRA.

Cetera generally prohibits an IRA rollover account from being established in any of the following circumstances:

- If the financial professional previously provided and continued to offer fiduciary services within the meaning of ERISA to you as a plan participant concerning the investment of your plan account through the date on which you discussed rollover IRA services with the financial professional;
- If the financial professional serves as the plan's financial professional, and the plan sponsor promoted or encouraged you to engage the financial professional to provide rollover IRA services; or
- If, during a plan meeting held by the plan sponsor for participants (when the financial professional was serving as the plan's financial professional), the financial professional recommended or encouraged you to take a rollover distribution from the plan or discussed rollover investment strategies.

Client Attestation

I have received the "Things to Consider Before Making an IRA Rollover" educational document.

If rollover IRA services are being offered to me, or will be offered to me in the future, then such services are, or will be, separate and unrelated to any services that may be provided by any financial professional on behalf of the plan. I am not obligated in any way to work with the plan's financial professional when selecting a provider of rollover IRA services.

If my financial professional serves as the plan's financial professional, I understand that the financial professional is not acting as a plan officer or as a "fiduciary" to the plan (as defined above) when offering rollover IRA services to me, and the financial professional is not offering any rollover IRA services in a fiduciary capacity on behalf of the plan.

I understand that my financial professional may make recommendations on how funds rolled over into an IRA should be invested. Any fee for rollover IRA services will be payable individually by me or through my IRA, rather than the plan or the plan sponsor.

SELECTION OF RELATIONSHIP TYPE

Based on the information provided within this document and our discussions, I elect to establish either a brokerage (commission-based) or an advisory (fee-based) account. Depending upon the relationship type selected, additional documentation may be required.

Please select the one option below that best describes your overall relationship type:

☐ Buy and Hold Charge Per Transaction (Purchases and Sales) My Authorization Prior to Each Transaction Client-Directed Trading – No Monitoring	OR	☐ Active Trading Asset-Based or Fixed Fee Advisor Discretion (Client Authorization Per Trade Not Required) Ongoing Advice and Monitoring by Advisor
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W-9 TAXPAYER CERTIFICATION

By signing below, I certify under penalty of perjury that: (1) the Social Security Number/Taxpayer Identification Number provided on page 1 is correct; (2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) the IRS has never notified me that I am subject to backup withholding as a result of failure to report interest or dividends, or if I have been notified, the IRS has notified me that I am no longer subject to backup withholding; (3) I am a U.S. citizen or other U.S. person.

☐ I am subject to backup withholding. (If applicable, check this box in lieu of line 2 above). If I am not a U.S. citizen or resident alien, the three statements above do not apply to me.

The Internal Revenue Service does not require that I consent to any provision other than the certifications required to avoid backup withholding.

Account #: _____

ACKNOWLEDGEMENTS

Securities and insurance products are offered through Cetera Investment Services LLC (doing insurance business in CA as CFG STC Insurance Agency LLC). Advisory services are offered through Cetera Investment Advisers LLC.

Disclosure for Bank Locations

Neither Cetera Investment Services LLC nor Cetera Investment Advisers LLC is affiliated with the financial institution where investment services are offered. Investments are (1) not insured by the Federal Deposit Insurance Corporation (FDIC), any government agency or any other deposit insurance program; (2) not deposits with, obligations of, or guaranteed by the financial institution where you obtained Cetera Investment Services services or any of its affiliates; and (3) subject to investment risk, including possible loss of the principal amount invested. (Certain brokered certificates of deposit may be FDIC insured.) (4) To obtain credit, the financial institution may not (a) require me to purchase any insurance or annuity from the financial institution or any of its affiliates or (b) require me to agree not to purchase, or prohibit me from purchasing, any insurance or annuity from any unaffiliated party.

By signing below, I acknowledge and agree that: (1) I have received, read, understand and agree with all of the information contained within this document; (2) the Internal Revenue Service does not require that I consent to any provision other than the certifications required to avoid backup withholding; (3) I have received, read and understand "Form CRS: Customer Relationship Summary for Cetera Investment Services LLC"; (4) I have read and understand the section labeled "The Big Picture," which describes the differences between commission-based brokerage and fee-based advisory services; (5) I have received, read and understand the separate document entitled "Things to Consider Before Making an IRA Rollover"; (6) I have received, read, understand the document titled "Regulation Best Interest Supplemental Disclosure for Cetera Investment Services LLC"; (7) I have received the brochure titled "Important Information About Your Cetera Investment Services Relationship, including Cetera Investment Services' Privacy Policy"; and (8) I understand that this agreement contains a predispute arbitration clause that is fully set forth in paragraph 20 on page 9 of this form.

CLIENT SIGNATURE(S)

Please note that ALL Account Owners or Trustees must sign this agreement.

Printed Name of Owner

Signature of Owner

Date

If an entity (e.g. corporation), Title

Printed Name of Co-Owner (if applicable)

Signature of Co-Owner (if applicable)

Date

INVESTMENT STRATEGY RECOMMENDATION — To be completed by financial professional. Optional.

Based on the information provided within this document and our discussions, the following account investment strategy recommendation(s) is/are made (some investment strategy recommendations may require additional paperwork):

(If applicable, select all that apply)

☐ Asset Allocation

☐ Diversification

☐ Value Investing

☐ Income Oriented

☐ Passive/Indexing Strategy

☐ Tax Management

☐ Dollar Cost Averaging

☐ Socially Responsible Investing

☐ Other (briefly describe): _____

FINANCIAL PROFESSIONAL SIGNATURE

I am introducing this application for approval. I have provided all required information, including a prospectus (if applicable).

Printed Name of Financial Professional

Signature of Financial Professional

Date

Account #: _____

DEFINITIONS**ACCOUNT OBJECTIVE**

Capital Preservation: An objective seeking to produce a return that is at least equal to inflation while avoiding extreme volatility and the risk of significant loss. Investments are not likely to increase significantly in value.

Income: An objective seeking to generate interest and dividends for current income. While not as risk averse as "capital preservation," there is no expectation of long-term capital appreciation in the value of the portfolio.

Total Return: An objective seeking portfolio returns through the combination of current income vehicles as well as investments with a capital appreciation goal. The value of the portfolio may vary and the value of certain investments within the portfolio may be more volatile than others.

Growth: An objective seeking appreciation in the value of the portfolio. Both the value of individual investments within the portfolio and the value of the overall portfolio are likely to fluctuate from time to time. While certain investments within the portfolio may generate current income, income is not the primary investment objective.

Aggressive Growth: An objective seeking maximum returns in the portfolio by selecting investments with the greatest perceived opportunities for growth and price appreciation. The value of individual investments within the portfolio, as well as the portfolio as a whole, will likely experience significant fluctuation in value.

RISK TOLERANCE (presented from lowest to highest risk)

Conservative: Describes an investor who seeks to preserve the portfolio's value by investing in lower risk investments and is willing to forgo greater upside potential to protect the portfolio value.

Moderately Conservative: Describes an investor who seeks to preserve a large portion of the portfolio's total value and minimize volatility, but is willing to take on modest risk to outpace inflation.

Moderate: Describes an investor who seeks modest growth and is willing to accept more risk and investment fluctuation.

Moderately Aggressive: Describes an investor who seeks to outperform broad market indices when the market is up and, conversely, accepts lower returns than those same market indices when the market is down.

Significant Risk: Describes an investor who aggressively seeks maximum return and accepts being exposed to the risk of significant volatility and decreases in the value of the portfolio.

OTHER DEFINITIONS

Government ID: Driver's license, passport, state issued ID card, or military ID.

Politically Exposed Person: A person who has been entrusted with a prominent public function as defined by the Financial Action Task Force.

Net Worth: Assets minus liabilities.

Adjusted Net Worth: Net Worth minus primary residence.

Liquid Net Worth: Adjusted Net Worth minus assets not readily convertible to cash.

Account Liquidity Needs: The amount of money from this account that is needed in cash or readily convertible to cash over the next three (3) years.

Account Time Horizon: The expected number of months, years or decades a customer plans to invest to achieve a particular financial goal.

Other Relevant Financial Information: Any financial-related information provided by the client that is not otherwise recorded in previous sections of this document.

IMPORTANT DISCLOSURES

I understand, acknowledge and agree as follows:

1. Cetera Investment Services' services may be made available on the premises of the Contact Location (as defined in the Customer Agreement). However, Cetera Investment Services is an independent broker-dealer and is not a depository institution.
2. I may pay commissions or other fees to obtain the products and services made available by Cetera Investment Services. I may incur one or more of the following costs on certain insurance products: sales charges, administration costs, mortality costs, and surrender charges. I may also be required to pay a sales, deferred sales, early withdrawal, or surrender charge on some investments and insurance products. For these reasons, most investments and insurance should be held for the long term.
3. I am in receipt of Cetera Investment Services' fee schedule and I am aware of the commissions or fees I must pay to receive the products and services made available by Cetera Investment Services.

4. Dividends and interest paid by, and the market value of, the investments or insurance I purchase may fluctuate and, when redeemed or sold, may be worth more or less than when purchased. The death benefit or surrender value of any variable life insurance product may increase or decrease, depending on the performance of the variable subaccounts.
5. If I purchase an annuity, or if my life insurance policy is or becomes a modified endowment contract, I may incur tax penalties if I withdraw funds before age 59 1/2. I will consult my tax advisor before purchasing annuities or withdrawing funds from life insurance policies.
6. If I purchase life insurance or an annuity, I acknowledge receiving an illustration of projected values concerning a life insurance policy or a prospectus concerning a variable annuity or a variable life insurance product, and that applicable costs have been fully explained. I understand that the person through whom I am buying any insurance product is acting as an appointed agent for the issuing insurance company with regard to this purchase. The provider of the insurance product is the insurance company that issued it, not the Contact Location or Cetera Investment Services. The primary purpose of life insurance is to provide a death benefit. Life insurance should not be purchased solely for investment purposes.
7. Cetera Investment Services does not require that I purchase an investment or insurance product or service as a condition to receive a loan or other product or service from the Contact Location or any other depository institution.
8. Cetera Investment Services is a member of the Securities Investor Protection Corporation (SIPC). SIPC protects securities customers of its members up to \$500,000 (including up to \$250,000 for claims for cash). SIPC protection applies if the brokerage firm fails, and does not protect my account against declines in value such as those that may result from changes in market conditions. A supplemental policy purchased by Cetera Investment Services provides additional coverage per customer, subject to an overall aggregate. As with SIPC, this supplemental policy does not protect against a decline in the market value of my securities. I may obtain information about SIPC, including the SIPC brochure, by contacting SIPC at 202.371.8300 or by visiting www.sipc.org.
9. If I purchase precious metals, SIPC does not provide protection for precious metals in my account; precious metals are not marginable; investments in precious metals can involve substantial risk due to rapid and abrupt changes in prices; advantageous purchase or liquidation prices are not guaranteed; and if I take delivery of precious metals, I may be required to pay delivery charges and applicable sales and use taxes.
10. If I use Cetera Investment Services' online service to access my accounts over the Internet, the online services agreement supplements the Customer Agreement.
11. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions, including broker-dealers, to obtain, verify and record information that identifies each person who opens an account. When I open an account, I understand that you will ask for my name, address, date of birth and other information that will allow you to identify me. You may also ask to see my driver's license or other identifying documents.
12. Cetera Investment Services makes available materials regarding the risks and costs associated with investing in the "Important Information About Investing" guide available through my Financial Professional, or on the Cetera Investment Services website at www.ceterafinancialinstitutions.com. I understand that in addition to product and investment descriptions, I should review the information regarding my rights and responsibilities as an investor.
13. In the event that the sweep option I selected becomes no longer available, for any reason, I understand and request that Cetera Investment Services has the right, in its sole discretion, but without any obligation, to select and establish an alternative sweep vehicle for me. I expressly authorize Cetera Investment Services to transfer funds from the unavailable sweep option and move other available free cash into the newly designated sweep option. I understand that I may select a different available sweep option at any time.
14. By opening an account with Cetera Investment Services, I acknowledge that I am establishing an ongoing relationship with Cetera Investment Services. This relationship entitles me to receive a variety of services, including but not limited to, investment services, education, information and

reports. I understand and agree that by requesting that Cetera Investment Services provide me with such services, that I may receive email communications that confirm my trades, provide me with account statements, describe investment opportunities, make inquiries and offer me other important information, and opportunities and ideas related to my account or financial affairs. I agree that communication is a required element of the provision of these services and expressly authorize Cetera Investment Services to contact me electronically or otherwise to deliver these services in connection with our investment relationship.

CUSTOMER AGREEMENT

PART I - GENERAL PROVISIONS

1. **Meaning of words in this Agreement.** The words "I, me, my, we, our" and "us" refer to each customer who signs this Agreement. The words "you" and "your" refer to Cetera Investment Services LLC (Cetera Investment Services) or, if applicable, any insurance agency affiliated with or controlled by Cetera Investment Services. The phrase "Contact Location" refers to the financial institution where I obtained services. This Agreement remains in full force and effect subsequent to any name change by me, Cetera Investment Services, or the Contact Location.
2. **Part I Applicability.** Part I of this Agreement applies to all securities, investment, insurance, and other Cetera Investment Services accounts. I agree as follows:
3. **Authority.** I have the legal capacity and am authorized to enter into this Agreement. I have obtained and will provide all documents of authority that you deem appropriate or necessary to establish my account. You may freeze or refuse to activate my account until necessary or appropriate documents are provided.
4. **Joint accounts.** If this is a joint account, each of us has the authority to act individually without the consent of any other joint account holder to: (A) buy, sell, sell short, and otherwise deal in securities or other investments on margin or otherwise; (B) receive demands, notices, confirmations, reports, account statements, and any other communications on behalf of the other joint account holders; (C) receive and dispose of money, securities, or property of every kind on behalf of the other joint account holders; (D) make agreements and terminate, modify, or waive the provisions of this Agreement on behalf of the other joint account holders; and (E) deal with and provide account instructions to you as fully and completely, and without notice to the other joint account holders, as if I alone were interested in this account. You may rely upon my individual authorization, and I hold you harmless from any costs, expenses, losses, or liabilities I incur as the result of your reliance upon this authorization.

Each of us are jointly and severally liable for all obligations and liabilities arising out of this account and you may enforce this Agreement against any or all joint account holders. You are under no obligation to inquire as to the purpose or propriety of any instructions delivered to you by any joint account holder.

I will provide written notice to you of the death of a joint account holder. Until that notice is provided, you may comply with any account instruction, and any actions taken in compliance with this Agreement will be binding upon the surviving joint account holders and the estate of the deceased joint account holders. After notice is provided, you may take any action or impose any restriction upon the account that you deem necessary or proper to protect your interests. Each joint account holder and the estate of each deceased joint account holder remains jointly and severally liable for any account obligations after notice of death is provided.
5. **Freezing/closing accounts.** You may, at any time without cause, close my account and require that I liquidate or transfer my account positions. You may, in your discretion and without cause, refuse to execute any transaction I order ("freeze" my account). I hold you harmless from any costs, expenses, losses, or liabilities I incur as the result of your exercise of your right to close or freeze my account.
6. **Extraordinary events.** You are not liable to me for any loss caused directly or indirectly by war, natural disasters, government restrictions, exchange or market rulings, acts of terrorism, or other conditions beyond your control.
7. **Recording conversations.** Any telephone conversation between you and anyone acting on your behalf, the Contact Location and anyone acting on its behalf, and/or me and anyone acting on my behalf may be recorded.

8. **Exchange of information.** Except as stated otherwise in the applicable Privacy Policy, information about my account is confidential and will be provided only to me and any person to whom I have given authorization to receive that information. Any personal, financial, credit, or other confidential information about me may be exchanged between and among you and the Contact Location. You may provide confidential information concerning my account to appropriately authorized regulatory or law enforcement officials and to any other person or entity who or which presents to you a subpoena or other court order.
9. **Fees/debit balances.** I will pay any fees or commissions due you for any service provided to me. You may amend your fee and commission schedules at any time. I acknowledge that I have received your fee schedule that includes, among other things, a fee to transfer my account to another firm. I am responsible for payment of any debit balance in my account or other obligations owed to you. You may charge interest on unpaid debit balances in my account at a variable rate equal to the published broker call rate plus an amount determined by you. The additional amount will be determined at your discretion, but the rate charged will not exceed applicable usury rates.
10. **Collection costs.** I am responsible for any reasonable costs incurred by you (including reasonable attorney's fees) as a result of my failure to pay when due any account debit balance or other obligations owed to you.
11. **Communications.** Communications sent to the last known address provided by me will be presumed delivered when sent. My last known address will be the address I provided on my New Account Application or the most recent substitute address received by you. Any account statements or transaction confirmations sent to my last known address will be deemed conclusive unless I object in writing within thirty (30) business days after the day the communication is sent.
12. **Householding.** I consent to receiving any statements or notices generated by you regarding my accounts (including account statements and trade confirmations) by mail or any other delivery methods, including electronic delivery. I also consent to you combining in one mailing or delivery my account statements and notices and the account statements and notices of other accounts in which I have an interest, accounts of parties related to me, and/or accounts whose address or delivery destination is shared with me (this is referred to as "Householding"). My consent to Householding will remain valid until I revoke my consent in writing to you. I hold you harmless from any costs, expenses, losses or liabilities I incur as a result of Householding.
13. **Unclaimed funds.** Any funds in my account may be deemed unclaimed if certain circumstances as provided by applicable state laws are met (generally, these laws may deem my account to be unclaimed if I fail to take control of my account or communicate with you for a three-year period). When required by state law, you will pay any unclaimed funds in my account to the appropriate state and may collect a dormant account fee from my account balance.
14. **Tax and legal matters.** Advice provided to me by you is not tax or legal or accounting advice. I will seek the assistance of my tax and legal and accounting advisors when necessary or prudent. I hold you harmless from any costs, expenses, losses, or liabilities I incur by my failure to seek the assistance of a tax or legal or accounting advisor.
15. **Affirmation.** The information I provided on my New Account Application (which is included in this Agreement by this reference) is true, correct, and complete. I will inform you of any changes to that information. I hold you harmless from any costs, expenses, losses, or liability I incur by my failure to provide relevant information to you. I authorize you to verify any information provided on my New Account Application. I agree to provide to you any information you deem necessary to verify my identity, and authorize you to verify that I am not on a government-published list of persons or entities who are prohibited from opening accounts with you.
16. **Applicable rules and regulations.** Transactions in this account are subject to: (A) applicable rules, regulations, constitutions, customs, and usages of the exchanges, markets, or clearing houses where executed; (B) applicable federal and state laws, rules, and regulations; and (C) applicable self regulatory organization rules and regulations.
17. **Revenue sharing.** I acknowledge that you may pay to the Contact Location all or a portion of the commissions and fees you earn from your operations on the Contact Location's premises.

18. **Amendment.** You may amend this Customer Agreement at any time upon notice to me.
19. **Governing law and venue.** The statutory and common laws of the State of Minnesota excluding its conflicts of law provisions govern the interpretation of this Agreement. If any dispute arises between you and me, I agree that the matter will be resolved by arbitration as provided in the following paragraph or, if arbitration is not available, by the courts of the State of Minnesota, County of Stearns.
20. **Arbitration.** THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT THE PARTIES AGREE AS FOLLOWS:
- (A) ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.
- (B) ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.
- (C) THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.
- (D) THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD UNLESS, IN AN ELIGIBLE CASE, A JOINT REQUEST FOR AN EXPLAINED DECISION HAS BEEN SUBMITTED TO ALL PARTIES TO THE PANEL AT LEAST 20 DAYS PRIOR TO THE FIRST SCHEDULED HEARING DATE.
- (E) THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
- (F) THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.
- (G) THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.
- ARBITRATION CLAUSE:** I AGREE THAT ANY DISPUTE BETWEEN ME AND YOU ARISING OUT OF THIS AGREEMENT SHALL BE SUBMITTED TO ARBITRATION CONDUCTED UNDER THE PROVISIONS OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.'S CODE OF ARBITRATION PROCEDURE ADMINISTERED BY FINRA DISPUTE RESOLUTION, INC. ARBITRATION MUST BE COMMENCED WITHIN THE STATUTORY LIMITATION PERIODS APPLICABLE TO THE CLAIMS. I FURTHER AGREE THAT, IF THE FINRA ARBITRATION FORUM IS NOT AVAILABLE FOR THE DISPUTE, THE DISPUTE WILL BE SUBMITTED TO ARBITRATION CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION.
- NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PREDISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION, OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (i) THE CLASS CERTIFICATION IS DENIED; (ii) THE CLASS IS DECERTIFIED; OR (iii) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

PART II - BROKERAGE ACCOUNT PROVISIONS

21. **Part II applicability.** Parts I and II of this Agreement govern any Cetera Investment Services brokerage account (including, but not limited to, variable annuities and variable life insurance transactions). Part II of this Agreement does not apply to or govern any transactions in insurance. If applicable, I agree as follows.
22. **No discretion.** Unless I sign a separate agreement, you will not exercise discretion to choose the investments or the timing or quantity of the

purchase or sale of investments in my account. I will be responsible for making all investment choice, timing and quantity decisions concerning my account and hold you harmless from any costs, expenses, losses, or liabilities I incur as the result of my investment choices.

23. **Operating hours.** If the brokerage services made available to me permit me to transmit securities orders to you through persons located at the Contact Location, I acknowledge that these services may only be available during the business hours maintained by the Contact Location and that the Contact Location may close on days when securities markets are open. I hold you harmless from any costs, expenses, losses, or liabilities I incur as the result of your services being unavailable.
24. **Affiliation/restricted securities.** I will not purchase or sell any securities of issuers with whom I am affiliated or sell restricted securities, except in compliance with applicable law. If applicable, I will notify you before entering a sell order that the securities I wish to sell are restricted. I will provide to you the names of the issuers with whom I am affiliated. If I fail to abide by this pledge, I hold you harmless from any costs, expenses, losses, or liabilities that I incur, and indemnify you from and against any costs, expenses, losses, or liabilities that you incur, as a result of my transaction.
25. **Handling of Funds.** I acknowledge that this firm has a policy of reviewing and approving customer transactions of certain product types, before my application and payment are forwarded to the product issuer. Such reviews may take up to seven business days after the principal reviewer receives my complete and correct application for this transaction. During this supervisory review, the firm will safeguard my payment, but my funds will not be deposited or invested.
26. **Indebtedness to Cetera Investment Services.** In the event I become indebted to you in the operation of this account, I agree that I will repay such indebtedness upon demand. I agree that if, after demand, I fail to pay the indebtedness, you may close my account and/or liquidate any assets in my account, or otherwise held by you, in an amount sufficient to pay my indebtedness.
27. **Sweep Option.** If I have chosen a sweep option for my account, I authorize you to settle any obligations I owe to you by transferring funds from my sweep option balances. I acknowledge that, if I have chosen a sweep option, any transaction proceeds owed to me and any uninvested funds in any account will automatically be invested in the sweep option I have chosen. I acknowledge receipt of a prospectus or FDIC sweep disclosure statement for the sweep option I have chosen.
28. **Transaction settlement.** You hold a lien against my account or any other account at your firm in which I have a controlling or ownership interest for the discharge of any indebtedness I have to you. If I fail to settle a purchase (by failing to pay money) or sale (by failing to deliver securities in good form) transaction in the time designated for settlement by you (or, if not designated by you, the time required for settlement by law or regulations), I authorize you to protect and enforce your lien by transferring cash from my account or by selling, assigning, or transferring any securities in my accounts. You have the sole discretion to determine whether securities will be sold, assigned or transferred, and which securities will be involved in and the timing and method of the sale, assignment, or transfer.
29. **Joint tenants with rights of survivorship.** If I have chosen to create a joint tenants with rights of survivorship account, the ownership of this account will, upon the death of any of us, be automatically vested in the surviving joint account holders on the same terms and conditions as described in this Agreement. The estate of any deceased joint account holder will continue to be liable to you for all liability arising from the operation of this account prior to the death.
29. **Tenants in common.** If I have chosen to create a tenants in common account, the ownership of this account will, upon the death of any of us, be vested in the estates of the deceased joint account holders and the surviving joint account holders in the proportions indicated on the New Account Application. If proportions are not provided, the ownership after death will be distributed equally among each survivor and deceased joint account holder's estate.

EXHIBIT C



REGIONS

Fiduciary Account Maintenance and Signature Form

State: 060

Account #: 0227023680

☐ Checking ☒ Savings
☐ Safebox ☐ CD

☐ ADD ☐ DELETE ☒ CHANGE

Existing	New
Ar	tion
Steven A Lovelace Conservator	Richard A Cooler Custodian

NEW ACCOUNT OWNERSHIP (All remaining owner information and signature(s) required to add or delete owner or authorized signer.)

CUSTOMER NAME: Richard A Cooler DATE OF BIRTH: 11/03/2009
 SSN/IDN: 6 RELATIONSHIP (Sole Owner, Authorized Signer, ETC.): Minor
 PRIMARY ID: State/Country: ID Type, ID#, Issue & Exp. Date: _____
 SECONDARY IDENTIFICATION: _____
 CUSTOMER PHYSICAL STREET ADDRESS: 11 Chesterfield Dr Beaufort SC 29906
 CUSTOMER SIGNATURE: _____ DATE: 01/30/2025
 *Relationship designation explanation on reverse

CUSTOMER NAME: Richard A Cooler DATE OF BIRTH: 03/03/1948
 SSN/IDN: 250-80-4061 RELATIONSHIP (Sole Owner, Authorized Signer, ETC.): Conservator
 DL SC: 001484057 03/02/2019 04/03/2027
 PRIMARY ID: State/Country: ID Type, ID#, Issue & Exp. Date: _____
 SECONDARY IDENTIFICATION: _____
 CUSTOMER PHYSICAL STREET ADDRESS: 11 Chesterfield Dr Beaufort SC 29906
 CUSTOMER SIGNATURE: _____ DATE: _____
 *Relationship designation explanation on reverse

CUSTOMER NAME: _____ DATE OF BIRTH: _____
 SSN/IDN: _____ RELATIONSHIP (Sole Owner, Authorized Signer, ETC.): _____
 PRIMARY ID: State/Country: ID Type, ID#, Issue & Exp. Date: _____
 SECONDARY IDENTIFICATION: _____
 CUSTOMER PHYSICAL STREET ADDRESS: _____
 CUSTOMER SIGNATURE: _____ DATE: _____
 *Relationship designation explanation on reverse

CUSTOMER NAME: _____ DATE OF BIRTH: _____
 SSN/IDN: _____ RELATIONSHIP (Sole Owner, Authorized Signer, ETC.): _____
 PRIMARY ID: State/Country: ID Type, ID#, Issue & Exp. Date: _____
 SECONDARY IDENTIFICATION: _____
 CUSTOMER PHYSICAL STREET ADDRESS: _____
 CUSTOMER SIGNATURE: _____ DATE: _____
 *Relationship designation explanation on reverse

DELETE OWNERSHIP

CUSTOMER NAME: Steven A Lovelace
 In case of death: Date of Death: _____ Death Certificate Verified by Associate: H2MK8
 (Customer Signature - Not required in case of death)
 SIGNATURE: _____

CUSTOMER NAME: _____
 In case of death: Date of Death: _____ Death Certificate Verified by Associate: _____
 (Customer Signature - Not required in case of death)
 SIGNATURE: _____

CUSTOMER NAME: _____
 In case of death: Date of Death: _____ Death Certificate Verified by Associate: _____
 (Customer Signature - Not required in case of death)
 SIGNATURE: _____

CUSTOMER NAME: _____
 In case of death: Date of Death: _____ Death Certificate Verified by Associate: _____
 (Customer Signature - Not required in case of death)
 SIGNATURE: _____

NAME CHANGE Document verified: _____ Marriage Certificate; _____ Divorce Certificate; _____ Other (Legal Documentation)

EXISTING CUSTOMER NAME	ROF THE APPEASER	SSN/IDN	ADDITIONAL ACCOUNT NUMBER(S) FOR CHANGE
NAME CHANGE REASON	DATE	ADDITIONAL ACCOUNT NUMBER(S) FOR CHANGE	
NEW NAME	SIGNATURE	ADDITIONAL ACCOUNT NUMBER(S) FOR CHANGE	

OWNER AUTHORIZATION

Signature of customer authorizing name addition, name deletion or name change as indicated above.
 Only owners remaining after the change(s) may sign. POAs may not authorize these changes.

By signing, I acknowledge receiving and agree to each and every term, condition, and provision of the Deposit Agreement (including, without limitation, the ARBITRATION AND WAIVER OF JURY TRIAL provisions thereof and the provisions for changing the terms thereof) and related disclosures for this account.

BRANCH ASSOCIATE INFORMATION

NAME: _____ DATE: _____ MAILCODE: _____

FIDUCIARY INFORMATION

FIDUCIARY DOCUMENTATION: _____ DATE SENT TO CMI: _____



EXHIBIT D

DEPOSIT AGREEMENT

ELECTRONICALLY FILED - 2023 Jun 16 2:13 PM - BEAUFORT - COMMON PLEAS - CASE#2023CP0700646



REGIONS

Member FDIC

ELECTRONICALLY FILED - 2023 Jun 16 2:13 PM - BEAUFORT - COMMON PLEAS - CASE#2023CP0700646

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DEPOSIT AGREEMENT

Welcome to Regions Bank. We appreciate your business and we are pleased you are one of our customers. This Agreement contains the following sections:

- Section I: Agreement For Deposit Accounts
- Section II: Time Deposits/Certificates of Deposit
- Section III: Individual Retirement Accounts
- Section IV: Funds Availability Policy
- Section V: Electronic Funds Transfer Disclosure To Our Consumer Customers
- Section VI: Important Information For Our Consumer Customers About Substitute Checks

This Agreement covers any and all deposit accounts you have or have had from time to time with Regions Bank, by whatever name or description, including, but not limited to, checking accounts, savings accounts, money market deposit accounts, time deposit accounts, and certificates of deposit. As used herein, the terms "account," "deposit," and/or "deposit account" shall mean and refer to any such deposit account. Additionally, any **BINDING ARBITRATION** provisions set forth in this Agreement also apply to any account, contract, loan, credit, transaction, business, contact, interaction or relationship you may have or have had with us from time to time. Further, as used in, or in relation to, or in interpreting any provision of this Agreement as it relates or applies to any **BINDING ARBITRATION** provisions set forth in this Agreement, the term "account" shall also include any account, other business relationship, interaction or transaction of any nature whatsoever you may have or have had from time to time with any of us. Notwithstanding the foregoing terms of this paragraph, the **BINDING ARBITRATION** provisions set forth in this Agreement shall not apply to any account, contract, loan, credit, transaction, business, contact, interaction or relationship that constitutes "consumer credit," as defined in the U.S. Department of Defense regulation implementing the Military Lending Act, 32 C.F.R. §§ 232.3(f)(1) and (f)(2), and under which you are a "covered borrower" as defined in 32 C.F.R. § 232.3(g)(1).

You should read this Agreement carefully and keep it with your other account records. The following terms and definitions apply when used in this Agreement:

Agreement – this Deposit Agreement.

Item – includes, without limitation, a check, draft, negotiable order of withdrawal, note, withdrawal slip, oral payment, transfer or withdrawal order made by telephone or in person, and/or withdrawal, payment or transfer order initiated through an automated teller machine (ATM) or point of sale (POS) terminal or any other electronic device, means or network, and/or a check or draft you have authorized a third party to charge to your account, whether by any manual or any electronic means.

Signature and sign (and derivations of those terms) – include, as the context may require and subject to applicable law, electronic signatures and signing and authenticating electronically as well as written signatures and signing and authenticating in writing.

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2023 Jun 16 2:18 PM
EAS - CASE#2023-00760-45

You, your, yours, depositor, and customer – as the context may require, any person or entity in whose name the account is maintained according to our records, and/or any person or entity that uses the account or is authorized to transact business on the account, by any means whatsoever, including electronically, whether such authority is evidenced by signature cards, organizational resolutions, or otherwise, and/or any person or entity that has a beneficial interest in the account, and/or any such person's or entity's heirs, assignee or successor in interest to the account, including such person's estate, survivors, and wrongful death beneficiaries.

We, us, our, ours, and Regions – Regions Bank, and with respect to any **BINDING ARBITRATION AND/OR WAIVER OF JURY TRIAL** provisions set forth in this Agreement, such terms also mean and refer to Regions Bank and its current and former parent(s), subsidiaries, affiliates, employees, officers, directors, agents, controlling persons and representatives, as well as any other person or company who provides any services in connection with an account, as may exist from time to time.

Other definitions may appear within the remaining text of this Agreement.

► **ARBITRATION AND WAIVER OF JURY TRIAL. THIS AGREEMENT CONTAINS PROVISIONS FOR BINDING ARBITRATION AND WAIVER OF JURY TRIAL. YOUR ACCEPTANCE OF THIS AGREEMENT INCLUDES YOUR ACCEPTANCE OF AND AGREEMENT TO SUCH PROVISIONS. WHEN ARBITRATION IS INVOKED FOR CLAIMS SUBJECT TO ARBITRATION, YOU AND REGIONS WILL NOT HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM AND YOU WILL NOT HAVE THE RIGHT TO BRING OR PARTICIPATE IN ANY CLASS ACTION OR SIMILAR PROCEEDING IN COURT OR IN ARBITRATION.**

SECTION I: AGREEMENT FOR DEPOSIT ACCOUNTS

1. Acceptance Of This Agreement. By signing a signature card when you open an account, by signing any signature maintenance card or other account document for an account, by opening or modifying an account electronically, by depositing funds into, or withdrawing funds from, any account, by being named as a beneficiary or joint owner by an existing owner of an account, by using an account with us, or permitting anyone else to get access to your account through any of our electronic banking services, or by maintaining an account after our sending or providing to you by any reasonable means (including but not limited to: by mail to the mailing address we have for you on our records; by e-mail to the e-mail address we have for you on our records; by making available or publishing on or with the periodic statement of an account; by publishing on our official Web site at <http://www.regions.com> or any subsequent official Regions Bank website; or by making publicly available at any of our locations at the time you open or modify an account) this Agreement or any amendment(s) to this Agreement or by your receipt of the same by any means, you agree to the terms of this Agreement, as amended. Our agreement with you includes this Agreement, our pricing schedule, funds availability policy as posted, and any supplemental provisions we print concerning your account, which are applicable. All these documents together are a contract between you and us.

We may also provide you with agreements and disclosure statements ("Disclosure Statements") governing certain services associated with your account, including, but not limited to, ATM or debit card services, telephone or online banking services, preauthorized funds transfer services, and wire transfer services. Both this Agreement and the Disclosure Statements govern those services. If, however, any provision of this Agreement conflicts with any provision of a Disclosure Statement, then the conflicting provision of the Disclosure Statement shall prevail with respect to the corresponding service. To the fullest extent permitted by law, we may provide you notices and disclosures by electronic means. You agree that, unless otherwise expressly agreed by us in writing, the deposits in your account are general deposits. You further agree that the relationship between us and you with respect to any account covered by this Agreement, including one titled as a "trust account" or similar designation, is solely that of debtor and creditor and that we are not acting as your fiduciary.

2. ARBITRATION AND WAIVER OF JURY TRIAL. Except as expressly provided herein, you and we agree that either party may elect to resolve by **BINDING ARBITRATION** any controversy, claim, counterclaim, dispute or disagreement between you and us, whether asserted or brought in a direct, derivative, assignee, survivor, successor, beneficiary or personal capacity and whether arising before or after the effective date of this Agreement (any "Claim"). Claim has the broadest possible meaning and includes, but is not limited to, any controversy, claim, counterclaim, dispute or disagreement arising out of, in connection with or relating to any one or more of the following: (1) the interpretation, execution, administration, amendment or modification of the Agreement or any agreement; (2) any account; (3) any charge or cost incurred pursuant to the Agreement or any agreement; (4) the collection of any amounts due under the Agreement, any agreement or any account; (5) any alleged contract or tort arising out of or relating in any way to the Agreement, any account, any agreement, any transaction, any advertisement or solicitation, or your business, interaction or relationship with us; (6) any breach of any provision of the Agreement; (7) any statements or representations made to you with respect to the Agreement, any agreement, any account, any transaction, any advertisement or solicitation, or your business, interaction or relationship with us; (8) any property loss, damage or personal injury; (9) any claim, demand or request for compensation or damages from or against us; (10) any damages incurred on or about our premises or property; or (11) any of the foregoing arising

out of, in connection with or relating to any agreement which relates to the Agreement, any account, any credit, any transaction or your business, interaction or relationship with us. If either party elects to arbitrate, the Claim shall be settled by BINDING ARBITRATION under the Federal Arbitration Act ("FAA"). This agreement to arbitrate shall include any Claim involving our current and former officers, directors, employees, agents, representatives, contractors, subcontractors, parent, subsidiaries, affiliates, successors, assigns, any third party that assigned any agreements to us and any of the respective current and former employees, officers, agents or directors of such affiliates or third parties, and any such Claim against any of those parties may be joined or consolidated with any related Claim against us in a single arbitration proceeding. In addition, if we become a party in any lawsuit that you have with any third party, whether through intervention by us or by motion or pleading made by you or any third party, we may elect to have all claims in that lawsuit between you and such third party to be resolved by BINDING ARBITRATION under this Agreement. Notwithstanding the foregoing terms of this paragraph, this agreement to arbitrate shall not apply to any account, contract, loan, credit, transaction, business, contact, interaction or relationship that constitutes "consumer credit," as defined in the U.S. Department of Defense regulation implementing the Military Lending Act, 32 C.F.R. §§ 232.3(f)(1) and (f)(2), and under which you are a "covered borrower," as defined in 32 C.F.R. § 232.3(g)(1).

The arbitration shall be administered by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules or the Consumer Arbitration Rules, as applicable (collectively "Arbitration Rules") in effect at the time the demand for arbitration is filed. In all instances, the arbitrator(s) shall be selected in accordance with Commercial Arbitration Rule R-12, using the procedure for Appointment from the National Roster, unless you and we agree on the arbitrator(s). The AAA will not administratively appoint the arbitrator(s) from the National Roster under any circumstances and regardless of the number of parties or amount of your Claim. We will tell you how to contact the AAA and how to get a copy of the Arbitration Rules without cost if you ask us in writing to do so. Or, you may contact the AAA directly at 1-800-778-7879 (toll free) or at www.adr.org.

If the AAA's Consumer Arbitration Rules apply to your Claim, you shall be responsible for paying one-half of the arbitrator's fees up to a maximum of \$125. If your Claim for actual damages exceeds \$15,000 but does not exceed \$75,000, you shall be responsible for paying one-half of the arbitrator's fees up to a maximum of \$375. For any Claim that does not exceed \$75,000, we will pay all other arbitrator's fees and costs imposed by the administrator of the arbitration.

If your Claim is a consumer-related claim for actual damages that exceeds \$75,000, or if it is a non-monetary consumer-related Claim, or if it is not a consumer-related Claim, you shall be responsible for paying the administrative costs and arbitrator's fees as provided in the applicable Arbitration Rules. Except as otherwise provided in this Agreement or in the applicable Arbitration Rules, the final award by the arbitrator(s) may apportion the administrative fees, expenses and arbitrator's fees between you and us as part of the award, as the arbitrator(s) determines is appropriate.

The fees and cost stated in this Agreement are subject to any amendments to the Arbitration Rules and fee and cost schedules of the AAA. The fee and cost schedule in effect at the time you submit your Claim shall apply. The Arbitration Rules permit you to request a deferral or reduction of the administrative fees of arbitration if paying them would cause you extreme hardship.

Each party also has the option of filing an action in small claims court or your state's equivalent court, for any Claim or disputes within the scope of the small claims court's jurisdiction. But if a Claim is transferred, removed or appealed to a different court, we then have the right to demand arbitration of the Claim.

The arbitration of any Claim of \$150,000 or greater shall be

conducted by a panel of three arbitrators, unless you and we agree otherwise. The arbitration of any Claim of a lesser amount shall be conducted by one arbitrator.

Except as expressly provided in this agreement to arbitrate, no Claim may be joined with another dispute or lawsuit, consolidated with the arbitration of another Claim, or resolved on behalf of similarly situated persons, or brought as private attorney general or on another similar representative basis. For any Claim subject to arbitration, you may not participate in a class action in court or in a class-wide arbitration, either as a plaintiff or claimant, class representative or class member.

All statutes of limitation, defenses, and attorney-client and other privileges that would apply in a court proceeding shall apply in and to the arbitration. Any in-person arbitration hearing will be held at a location that is reasonably convenient to all parties in either your state of residence or the state of your statement address with Regions, with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, that determination shall be made by the arbitrator(s).

Any dispute regarding whether a particular controversy is subject to arbitration, including any claim of unconscionability and any dispute over the enforceability, scope, reach or validity of this agreement to arbitrate disputes or of this entire Agreement, shall be decided by the arbitrator(s).

The arbitrator(s) shall establish such reasonable procedures as may be necessary for the reasonable exchange of information and materials between the parties prior to such arbitration. In rendering an award, the arbitrator(s) shall apply applicable contract terms, statutes and legal precedent and shall follow the Federal Rules of Evidence, enforce applicable privileges, and employ applicable burdens of proof. The arbitrator(s) shall award only such relief as a court of competent jurisdiction could properly award under applicable law (and which shall be governed by the constitutional standards employed by the courts). The arbitrator(s) shall have the authority to award attorneys' fees, costs and expenses, in whole or in part, in instances where such is authorized by applicable law.

The arbitrator's findings, reasoning, decision, and award shall be set forth in writing and shall be based upon and be consistent with the law of the jurisdiction that applies to the Claim. Judgment on the arbitration award may be entered in any court having jurisdiction. All awards shall be reasoned awards.

In the event that the arbitration results in an award which imposes an injunction on you or on us or contains a monetary award in excess of \$250,000, the award shall be reviewable on appeal initiated within 30 days of the award by a panel of three new arbitrators selected to hear the appeal under the procedure for appointment from the national roster as provided by Appellate Rule A-5, except that the AAA shall not unilaterally appoint the arbitrators for the appeal, unless you and we so agree. The appeal shall be governed by the AAA Optional Appellate Arbitration Rules; to the extent they are not inconsistent with this agreement. Any award which imposes an injunction on you or on us or contains a monetary award in excess of \$250,000 shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of the Underlying award, as defined by Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office. The decision of the panel shall be by majority vote. Such review shall reconsider anew any aspect of the initial award requested by the appealing party. Following the appeal process, the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof. If the award does not impose an injunction on you or on us or contain a money award in

excess of \$250,000, then the award shall not be appealable and shall only be subject to such challenges as would otherwise be permissible under the FAA.

This agreement to arbitrate does not limit the right of you or us, whether before, during or after the pendency of any arbitration proceeding, to exercise self-help remedies such as set-off, recoupment, repossession, trustee's sales and the like. This agreement to arbitrate does not limit the right of you or us, whether before or during the pendency of any arbitration proceeding to bring an action (individually, and not on behalf of a class) to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief, upon application by you or us. The taking by either you or us of any of the self-help remedies or by filing any action in court, including but not limited to the actions described in the preceding sentence, shall not be deemed to be a waiver of the right to elect BINDING ARBITRATION of any Claim upon the filing of a counterclaim, crossclaim, third party claim or the like by either you or us in response to any such action.

You and we specifically acknowledge and agree that this Agreement evidences a "transaction involving commerce" under the FAA, and hereby waive and relinquish any right to claim otherwise. You and we hereby acknowledge, agree and stipulate that Regions Bank is a multi-state banking organization engaging in interstate banking and commerce; Regions Bank's deposits are federally insured; the funds deposited in any account flow through interstate commerce; and we regularly use the services of businesses located in other states in opening and administering accounts.

Should the AAA be unavailable, unable or unwilling to accept and administer the arbitration of any Claim, or any appellate proceeding, as applicable, or otherwise refuse or decline to accept and administer the arbitration of any Claim, or any appellate proceeding, as applicable – in whole or in part and for any reason whatsoever or for no reason – this agreement to arbitrate shall not fail or be invalidated as a result. Rather, in that instance, any party to the Claim may then petition a court of competent jurisdiction under 9 U.S.C. § 5 to appoint the arbitrator(s). Upon consideration of such a 9 U.S.C. § 5 petition, should the court decline or refuse to appoint the arbitrator(s), then and only then and within 30 days of a final and non-appealable decision on the matter from such court, you and we shall each respectively pick one arbitrator, and those two arbitrators shall then, by mutual agreement and within 30 days of the selection of the second of them, select a third arbitrator. The third arbitrator so selected shall then arbitrate the Claim as the sole arbitrator, except with respect to a Claim for \$150,000 or greater, in which case all three arbitrators so selected shall arbitrate the claim together, with the award and all pre-award decisions made by majority vote. In the case of any arbitration not administered by the AAA, the arbitrator(s) shall still be bound by all applicable provisions of this agreement to arbitrate and the Federal Arbitration Act. They further shall administer and conduct the arbitration under the applicable AAA Arbitration Rules, to the extent such rules may be practicably applied to an arbitration not administered by the AAA.

If any term or provision of this agreement to arbitrate disputes and waiver of jury trial is held to be invalid or unenforceable, the remaining provisions shall be enforced without regard to the invalid or unenforceable term or provision; provided, that if you or we seek to bring a joined, consolidated, or class action for arbitration, and if the foregoing prohibition against the arbitration of joined, consolidated or class actions is finally held by an authority of competent jurisdiction to be invalid or unenforceable, the arbitration agreement between you and us shall then be deemed inapplicable to such joined, consolidated or class action, to the effect that any permitted and lawful joined, consolidated or class action shall be adjudicated in accordance with the provisions of applicable law and shall not be resolved through arbitration (provided further, that the

jury trial waiver shall, in any event, remain in full force and effect to the fullest extent permitted by law). This agreement to arbitrate disputes and waiver of jury trial shall survive your death, the closing of your account and the termination of any of your business or transaction(s) with us, any bankruptcy to the extent consistent with applicable bankruptcy law and shall also survive as to any Claim covered within the scope of this Agreement.

Whether any controversy is arbitrated or settled by a court, you and we voluntarily and knowingly waive any right to a jury trial with respect to such controversy to the fullest extent allowed by law.

3. Deposits; Deposit Of Substitute Checks. You can make deposits by mail, in person at our banking offices, using our Convenience Depository Services (as defined below), or otherwise at or through any of our facilities or services that allow you to make deposits. Subject to our right of setoff and other rights afforded to us in this Agreement and by applicable law, each deposit you make with us will become available for withdrawal in accordance with our Funds Availability Policy, as the same may be amended from time to time, and the terms of the deposit facility or service you use, as applicable. If we discover an error or discrepancy in any deposit, we may make correcting entries and notify you of the correction. However, if any errors or discrepancies with respect to a deposit total less than \$1 in the aggregate (a "De Minimis Discrepancy"), you acknowledge and agree that we may elect, in our sole and absolute discretion, not to correct such De Minimis Discrepancy, regardless of whether such De Minimis Discrepancy is in our favor or in your favor. You and we waive any and all claims and demands against each other with respect to any De Minimis Discrepancy that we elect not to correct. We also have the right to limit, refuse or return any deposit.

Preprinted deposit slips help us process deposits more quickly and minimize errors. We will not be liable for any errors resulting from the use of a counter deposit slip, whether completed by you or by one of our employees. You are responsible for reconstruction and proof of loss of any items, including checks and other negotiable instruments included in deposits that are lost or stolen in transit before we have received and accepted the deposit. Further, you agree to fully cooperate and assist in the reconstruction of any items, including checks and other negotiable instruments included in the deposits that are lost or stolen after we have received and accepted the deposit. If a deposit contains foreign currency or items that are denominated in a foreign currency, the final credit for the deposit will be based on our exchange rate in effect at the time of conversion to United States Currency pursuant to our policies and procedures. Funds from an item denominated in foreign currency will be made available upon final payment of the item by the drawee. Exchange rates may fluctuate significantly in a short period of time. You bear all exchange risk related to deposits of foreign currency and items denominated in foreign currency.

You acknowledge that any ATM we operate that accepts deposits, our night depositories, our deposit by mail service and any post-verification deposit service (e.g., daytime deposit drop) that we offer ("Convenience Depository Services") are for your convenience. We are not accountable for deposits made through any Convenience Depository Service until the deposit is actually verified and accepted by our authorized employees. Our records are conclusive proof of what deposits we received from you through any Convenience Depository Service. You expressly understand and agree that each delivery or attempted delivery by you of any deposit or deposit bags shall be at your sole risk at all times, and until we have actually verified and accepted any deposit, the bank-customer relationship of us as debtor and you as creditor shall not arise for such deposit. Instead and prior to our verification and acceptance of such deposit, the relationship shall be deemed that of us as a gratuitous bailee and you as bailor. We shall not be liable for any loss by you in your attempts to use Convenience Depository Services. Any initial or interim credit that you receive with respect to a deposit made through any Convenience Depository Service is subject to verification by us, and we may make adjustments to your account

at any time to ensure proper crediting to your account. You agree to comply with our rules in effect from time to time for making deposits using Convenience Depository Services and you agree to use equipment and supplies (e.g., bags and envelopes) that conform to our specifications. You agree to exercise due care in using any Convenience Depository Service (e.g., by properly sealing depository bags, securing night deposit boxes, etc.), and you agree that we are not responsible for any loss or damage you may incur in connection with the use of any Convenience Depository Service unless the loss or damage is the result of our gross negligence or deliberate malfeasance. We may discontinue or suspend any Convenience Depository Service at any time in our discretion without notice to you, except such notice as may be required by applicable law.

You agree that you will not deposit, without our prior written consent, "substitute checks," as defined by federal law, or Image Replacement Documents that purport to be substitute checks and have not been previously endorsed by a bank. If you deposit such an item, you agree to reimburse us for losses, costs and expenses we may incur associated with warranty or indemnity claims. If you provide us with an electronic representation of a substitute check for deposit into your account instead of an original check, you agree to reimburse us for losses, costs and expenses we incur because the substitute check resulting from the electronic representation does not meet applicable substitute check standards and/or causes duplicate payments.

Unless otherwise expressly provided in this Agreement, and in addition to warranties provided elsewhere in this Agreement or provided by law, you acknowledge and agree that you make all applicable Uniform Commercial Code warranties with respect to each item you deposit to your account, and you agree that you do not and will not disclaim any of such warranties. You expressly guarantee and warrant with respect to each item you deposit that such item, whether paper or electronic, is properly payable. If you deposit a "remotely created check," as that term is defined in regulations and/or issuances of the Board of Governors of the Federal Reserve System, as amended, you warrant that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. If you deposit an "electronically-created item," as that term is defined in regulations and/or issuances of the Board of Governors of the Federal Reserve System, as amended, you agree to indemnify us against any and all losses (including, without limitation, losses related to our indemnification obligations to other banks) that result from the fact that (i) the electronic image or electronic information is not derived from a paper check, (ii) the person on whose account the electronically-created item is drawn did not authorize the issuance of the item in the amount stated on the item or to the payee stated on the item, or (iii) a person receives a transfer, presentment, or return of, or otherwise is charged for an electronically-created item such that the person is asked to make payment based on an item or check it has already paid.

You further expressly guarantee and warrant with respect to each item you deposit that all endorsements are valid and that all necessary endorsements are included. You agree to reimburse us for any loss or expense (including reasonable attorneys' fees as permitted by law) that we incur because you fail to endorse an item exactly as it is drawn. In any event if you fail to endorse an item that you cash or submit for deposit, we have the right, but are not obligated, to supply the missing endorsement. We may require that certain government, insurance company and other special types of items be personally endorsed by each of the payees.

If we have reason to believe that any item you have deposited is irregular, unauthorized, or fraudulent in any way, or has any missing or forged signature or endorsement, or should not have been paid or may not be paid by the drawee (any such condition, an "Item Irregularity"), you agree promptly to cooperate with us and to take such action as we may require to correct or resolve to our satisfaction any such Item Irregularity. Such action may include (without limitation) presentation of such evidence that we may request or that otherwise is acceptable to us that all payees or

transferees with respect to the item have, in fact, endorsed or authorized the endorsement of the item. Your failure to cooperate with us promptly and as we request shall constitute a breach of this Agreement, and in such event, or in the event another financial institution notifies us of or makes a claim with respect to an Item Irregularity or otherwise indicates that an item you have deposited will not be paid due to any Item Irregularity, we shall have an immediate claim against you and a right (without limitation or preclusion of any other rights or remedies available to us) to place a hold on or charge your account for the amount of any item in question without notice to you. You agree that we may release or remit such amount as we deem appropriate or as required by law for the resolution of the Item Irregularity without notice to you.

We may exercise our rights with respect to the correction or resolution of Item Irregularities notwithstanding the pendency or expiration of any funds availability hold notice we may have provided to you, and we may, in any event, assert our claim against the proceeds of any collected item with respect to which there is an Item Irregularity immediately upon or at any time after the expiration of any funds availability hold period. You agree that we will not be liable to you for any overdrafts or other nonsufficient funds items or transactions on your account in the event we exercise any of our rights with respect to Item Irregularities.

A direct deposit is an electronic transfer of funds made by a payor, such as an employer or a government agency, to a payee's bank account through a payment system known as the automated clearing house (ACH). Regions Early Pay is a service whereby we may make funds from direct deposits available to you up to two business days prior to our receipt of the funds for regularly recurring direct deposits made directly to your Regions checking, savings, or money market account, subject to the terms and conditions governing your account. All Regions checking, savings, and money market accounts that meet our criteria for Early Pay are automatically enrolled for the Early Pay service, and there is no fee for the service. You may opt out of the Early Pay service at any time by contacting a Regions banking office or calling 1-800-REGIONS. It may take up to 60 days to process your opt-out request, and we may continue to provide the Early Pay service during that time. We may determine which direct deposits and which deposit accounts qualify for the Early Pay service in our discretion and according to criteria we establish from time to time, and whether a direct deposit qualifies for the service may depend on other factors, such as the time of receipt or terms or coding of a payor's ACH file, fraud prevention restrictions (including restrictions related to the amount of a direct deposit), and other confidential risk considerations. These factors may change from time to time without notice to you. Once a regularly recurring direct deposit starts, it may take up to 60 days for us to determine whether the direct deposit qualifies for the Early Pay service, and our determination may change over time. We do not guarantee that any direct deposit will qualify for the Early Pay service. Any direct deposit that does not qualify for the service will be made available as provided in our funds availability policy. If we make funds from a direct deposit available to you prior to the time we receive the funds from the payor through the ACH, but we are unable to collect part or all of the funds, you will be liable to repay us the funds we made available to you. In this situation, you agree that we may debit your account to recover the funds without prior notice to you, even if the debit transaction overdraws your account. In the event of an overdraft, you agree to pay the applicable overdraft fee as then disclosed in our pricing or fee schedule. We provide the Early Pay service as a courtesy in our sole and absolute discretion, and we may terminate, suspend, or modify the service at any time without notice to you.

4. Collection Of Items. In receiving items for deposit or collection, we act as your collection agent and assume no responsibility beyond the exercise of ordinary care. Special instructions for handling an item are effective only if made in a separate writing and given to us along with the

item. Any special instructions are subject to acceptance by us in our sole and absolute discretion, and in any event, you must give us reasonable notice and opportunity to act on any special instructions that you give us. We will not be liable for default or negligence of our correspondents or for loss in transit, and each correspondent will be responsible for its own negligence. Items and their proceeds may be handled in accordance with applicable Federal Reserve rules, clearinghouse rules, funds transfer system rules, and contractual agreements with other financial institutions. All items are credited subject to final payment and our receipt of cash or its equivalent. Without prior notice to you, we may charge back any dishonored item at any time, whether before or after final payment by the drawer's bank, even if doing so results in an overdraft in the account. We may exercise charge-back whether the item is returned or not, and whether it is returned by electronic or other means. You will be liable for any overdraft created by the charge-back, including applicable overdraft fees. We are authorized to pursue collection of previously dishonored items and, in doing so, we may permit the payor bank to hold an item beyond any applicable deadline.

We may from time to time offer a service whereby we immediately cash checks or other items that we receive from you for collection without regard to insufficient collected or available funds in your account to cover the checks or items at that time. In the event that you use such service, you agree to pay our applicable fees and charges. We reserve all rights of chargeback and other rights and remedies as provided in this Agreement, or as provided by law, in the event such checks or items are dishonored or returned unpaid, or in the event that you breach any warranty or other term of this Agreement with respect to such checks or items, and our immediate cashing of such checks or items in exchange for a fee shall in no way be construed as a waiver of such rights and remedies.

As your agent for collecting your checks, we may "truncate" your paper checks (i.e., convert them into electronic information or images) and present and return them electronically. We may also truncate paper checks that are dishonored by the drawer's bank when we re-present them. Under authority of federal law (commonly called "Check 21"), we may reconvert a truncated check into a paper "substitute check" which is the legal equivalent of the original. For further details, see Section VI – Important Information For Our Consumer Customers About Substitute Checks below.

5. Authorized Signers; Remotely Created Drafts; Facsimile Signatures. You agree that each signer on your account is authorized individually to conduct any and all business with respect to the account and to perform any and all account transactions, subject to this Agreement. Also, you appoint as your attorney-in-fact and/or duly authorized agent each person whose name is recorded as a signer on the signature card for an account to conduct all business with respect to the account (except as restricted herein) including, but not limited to, issuing stop payment orders, depositing funds to the account, closing the account and receiving the balance of funds on deposit, endorsing any item payable to a depositor (or payable jointly to a depositor and any other person) for deposit to the account, and withdrawing funds from the account. You authorize us to honor instructions received by us from any such person, whether such instructions are written or oral (including by telephone) or electronic. Where applicable law requires your concurrence in any transaction or business regarding or affecting your account, you expressly authorize any other signatory on your account to concur on your behalf as your attorney-in-fact or agent, and the authorization of any such transaction or business by any other signatory constitutes your concurrence without any further action or expression on the part of such signatory or on your part. Because our automated check processing precludes us from identifying items that require multiple signatures, you agree that any multiple signature requirement is for your internal purposes only, and you authorize us to debit your account even though the item contains less than the required number of signatures. We may, if we elect to do so, honor items signed in a different form from that set forth on the signature card, or we may

refuse to pay any item where the account to be charged is not accurately described or encoded, or the signer's name is in a form different from that on our records of persons authorized to sign. Subject to any other provisions of this Agreement relating to our procedures, conditions, requirements, and discretion as to powers of attorney, and without limitation on the foregoing provisions as to the attorney-in-fact and/or agency status of the other signatories on your account, an authorized signer may appoint one or more attorneys-in-fact to execute items on his or her behalf. An attorney-in-fact may sign his or her own name or the name of the authorized signer for whom he or she is acting. All authorized signers are bound by and subject to the terms and conditions of this Agreement.

Subject to the provisions of applicable law, the authority of any person who has no beneficial ownership interest in the account and who is authorized as a signer on the account and has the designation in the account signature card of additional authorized signatory, convenience signer or personal agent, or a similar designation of representative authority, will survive the disability, incompetency and incapacity of the account owner(s), and we may rely on the authority of any such person until actually notified in writing, in form and substance acceptable to us, of the revocation of such person's authority and given a reasonable opportunity to act upon such notification.

If we pay an item that you have not signed, but you have provided information identifying your account to a seller of property or services who created an item purportedly authorized by you, payment of the item is deemed to be authorized.

If you use a facsimile signature or other form of signature for signing or authenticating items drawn on your account, you assume the entire risk that such facsimile signature or device will be used improperly or by an unauthorized person. We will have no liability to you for paying items signed or authenticated by any person who is not authorized to affix such facsimile signature or use such device or by any person who exceeds his or her authority to do so.

If you have opened your account electronically or have signed or authenticated an account signature card electronically, you agree that any written signature that you apply or cause or direct to be applied to any item drawn on your account is an authorized signature and that we, in paying items drawn on your account, may refer to and rely on such written signatures on authorized items previously drawn against your account for signature verification purposes.

6. Fraud Detection And Deterrence; Identity Theft. Check fraud and identity theft are big problems for banks and their customers. There are several precautions you can and should take to decrease the risk of unauthorized debits to your account. Such precautions include, but are not limited to:

- Safeguarding critical identity information such as your deposit account number.
- Safeguarding checkbooks, unused checks, electronic access devices, ATM and debit card PIN numbers, and facsimile signature machines.
- Reviewing checkbooks, unused checks and online statements for unauthorized activity upon any suspicion that checks may have been stolen.
- Closing your account immediately upon discovery of any known or suspected unauthorized debits.
- Using services that help detect and deter fraud (such as "positive pay"). If we offer you such a product or service you agree that if you fail to accept and implement it you will be precluded from asserting claims against us for paying any unauthorized debit that could have been avoided by use of the product or service.

You agree to call us immediately at **1-800-REGIONS (734-4667)** if you suspect or detect any fraudulent activity or unauthorized transactions in your account, and you agree to cooperate with us to mitigate the effect of any fraudulent or criminal activity affecting your account and

to recover any losses you or we may incur as a result of fraudulent or criminal activity affecting your account.

7. Keeping Track Of Your Transactions; Posting And Payment Of Transactions; Limits On Withdrawal; Cashing Checks For Third Parties.

For purposes of this Agreement, "available balance," "available funds" and words of similar import mean the balance in your account that is immediately available for the posting, payment, or authorization of payment, withdrawal, or other debit transactions. Funds subject to holds (e.g., funds availability holds or delays, or transaction authorization holds) will not be available for the posting, payment, or authorization of payment, withdrawal, or other debit transactions. The balance available throughout the day for the authorization of payment and withdrawal transactions may increase or decrease as our deposit systems receive or recognize transactions on your account. You acknowledge and agree that you are responsible for keeping track of your available balance and all transactions made on your account to ensure your available balance is sufficient to cover all transactions. If you wish to avoid overdrafts and the return of items due to insufficient funds and associated fees, you should not execute debit transactions that may be presented for payment when your account's available balance is insufficient to cover the transactions. Overdraft and nonsufficient funds fees are determined when transactions are presented for payment. We offer tools and services that can help you monitor your account balance and activity, including the balance of funds currently available for debit or withdrawal debit transactions, and we recommend that you use them. For example, you may keep track of transactions and balances by using Regions Online and Mobile Banking, by calling us at 1-800-REGIONS (734-4667), by using our ATMs, video teller machines and branch facilities, or by enrolling for email and mobile alerts (Regions Online and Mobile Banking services are subject to enrollment requirements and separate terms and conditions).

You agree that we may post transactions to your account and pay items presented for payment in any order and using any methodology or protocol that we choose, and you acknowledge and agree that we may change the posting and payment order, methodology or protocol that we use at any time and from time to time without notice to you. In the event you do not have sufficient available funds in your account to pay all items or withdrawal requests presented to us on a given day, we may pay such items or honor such requests in any order we choose, and we may return items or refuse payment requests in any order we choose. You will be responsible for the payment of any fees that are imposed as a result of our decision-making process, and you agree that we will in no way be liable to you in the event the method and order that we choose to post transactions and pay items result in higher aggregate fees being charged against your account than other methods and ordering protocols that may have been used.

Without limiting our discretion in the choice of transaction processing methods and protocols, and without limiting our right to change such methods and protocols without notice to you, you acknowledge that we may use the following general processing methodology to post transactions to your account:

ACCOUNTS CLASSIFIED AS PERSONAL DEPOSIT PRODUCTS ON OUR DEPOSIT SYSTEM

1. We start with the available balance in your account at the end of our business day.
2. We add available deposits and credits in the following order:
 - (i) Closing credits.
 - (ii) General deposit and credit transactions (e.g., wire transfers, deposits, ACH credits, etc.).
3. We subtract debits, payments, and withdrawals in the following order:
 - (i) Returned deposited items.
 - (ii) General debit/withdrawal transactions (e.g., wire transfers,

ACH debits, Zelle® payments, checks, etc.) in time order according to time stamps applied to the transactions by our processing systems. Different processing systems may use different logic for setting and applying time stamps, but time stamps generally are based on the time when the processing system receives or recognizes a transaction and may not correspond to the time when you initiate, execute, deliver, submit, or authorize a transaction. If our processing system for some reason does not apply a time stamp to a transaction, the transaction will be assigned a default end-of-day time stamp and will post after all other general debit/withdrawal transactions. In the event multiple debit/withdrawal transactions have the same time stamp (including multiple transactions with the default end-of-day time stamp), electronic items will post before paper items, electronic items with the same time stamp will post in low to high transaction amount, and checks with the same time stamp will post in ascending check number order.

- (iii) Fees generated from our deposit systems.
- (iv) Closing withdrawal.

NON-PERSONAL ACCOUNTS (INCLUDING BUSINESS, COMMERCIAL, PUBLIC FUNDS, NOT-FOR-PROFIT, AND IOTA/IOTA DEPOSIT PRODUCTS)

1. We start with the available balance in your account at the end of our business day.
2. We add available deposits and credits in the following order:
 - (i) Closing credits.
 - (ii) General deposit and credit transactions (e.g., wire transfers, deposits, ACH credits, etc.).
 - (iii) Non-personal credits generated from our commercial deposit systems.
3. We subtract debits, payments, and withdrawals in the following order:
 - (i) ACH settlement.
 - (ii) Returned deposited items.
 - (iii) Non-personal debits generated from our commercial deposit systems.
 - (iv) General debit/withdrawal transactions (e.g., wire transfers, ACH debits, checks, etc.) in time order according to time stamps applied to the transactions by our processing systems. Different processing systems may use different logic for setting and applying time stamps, but time stamps generally are based on the time when the processing system receives or recognizes a transaction and may not correspond to the time when you initiate, execute, deliver, submit, or authorize a transaction. However, all checks will ordinarily receive a time stamp of 11 p.m. Central Time. If our processing system for some reason does not apply a time stamp to a transaction, the transaction will be assigned a default end-of-day time stamp and will post after all other general debit/withdrawal transactions. In the event multiple debit/withdrawal transactions have the same time stamp (including multiple transactions with the default end-of-day time stamp), electronic items will post before paper items, electronic items with the same time stamp will post in low to high transaction amount, and checks with the same time stamp will post in ascending check number order.
 - (v) Closing withdrawal.
 - (vi) Fees generated from our commercial deposit systems.

With respect to any account, whether a transaction is posted on any given business day may depend on our receipt of the transaction before applicable cutoff times.

Modern bank payment processing systems and operations are complex. You acknowledge that the description of the foregoing processing methodology is general in nature and does not describe in detail or limit in any way all possible processing decisions or protocols

that we may make or use within the context of the general methodology. You release us from any and all liability and claims based on the omission of any such possible decision or protocol in particular from the general methodology description. If you have questions about particular transaction processing and posting order matters, please call us at 1-800-REGIONS (734-4667).

If we pay any item that results in an overdraft in your account, you agree to pay us for the amount of the overdraft and to pay our standard overdraft or nonsufficient funds fee then in effect. If we return any item that would have overdrawn your account if the item had been paid, you agree to pay our standard nonsufficient funds or returned item fee then in effect. An overdraft, nonsufficient funds or returned item fee may result from any item presented for payment against insufficient available funds in your account, including a check, in-person withdrawal, ATM withdrawal, debit card transaction or withdrawal by any other manual or electronic means whatsoever. We may charge the amount of any overdraft and/or any overdraft, nonsufficient funds or returned item fee to any account you have with us. All fees are set forth in our pricing schedule. Other provisions of this Agreement may provide additional information regarding overdrafts and overdraft protection.

As you use your account, you should bear in mind that modern payments systems may be more likely to process transactions in real time or near real time. In such a processing environment, if you do not wish to incur overdraft, nonsufficient funds or returned item fees when you write a check or initiate a debit, you should make sure your account contains sufficient available funds at that time (and, in the event of a delay in processing or presentment, at the time the item is presented against your account for payment) to cover the transaction. If you initiate transactions when your account does not contain sufficient available funds and then later make a deposit to cover those transactions, it is likely that those transactions could overdraw your account or be returned for insufficient funds.

We reserve the right to limit the amount of funds that may be withdrawn from your account in cash for various reasons including, without limit, the amount of currency that is available at a particular branch or ATM terminal. This limit is in addition to those set forth in other sections of this Agreement.

We process items with high-speed automated equipment. In order for that equipment to function properly and efficiently, all items drawn against an account or used to withdraw funds from an account must meet certain formatting and other technical specifications. Information concerning these specifications is available upon request. If an item that does not meet these specifications is presented to us, we reserve the right to reject the item, impose a special fee for processing the item, or both. We also reserve the right to refuse a withdrawal or transfer request which is attempted by any manner not specifically authorized for the account in question, which is greater in frequency or number than that specifically permitted for the account in question, or which is for an amount less than any minimum withdrawal or transfer denomination required for the account in question.

Some checks that you originate as paper checks may be truncated (i.e., converted into electronic information or images). The truncated items may be reconverted to substitute paper checks. In either case, we may debit your account for these items, regardless of the form they take. Moreover, we may debit your account for other items that do not qualify under federal law as "substitute checks," including electronic information and Image Replacement Documents, if they are replacements for properly payable items.

Because cashing a check for a person who does not maintain a deposit relationship with us exposes us to additional fraud risks and imposes additional administrative burdens on us, you agree that we may charge a fee for cashing a check for any such person when the check is drawn on your account, deduct the fee from the cash remitted to such person, and/or require a thumbprint or other physical and/or documentary

requirements from such persons. We also may provide certain ATM or electronic kiosk check cashing services to persons who maintain deposit or other financial services relationships with us, or we may offer such persons expedited funds availability options with respect to certain check transactions. When these customers use any such service with regard to any check drawn on your account, you agree that we may charge a fee for the service and deduct the fee from the check proceeds. You release us from any and all claims and liability for charging any person a check cashing fee or other fee related to the handling or processing of a check, and/or for refusing to handle, process or pay a check for which the fee is not paid or with respect to which physical or documentary requirements are not satisfied, including (but not limited to) any claims for wrongful dishonor.

8. Interest-Bearing Accounts.

Account Limitations. We reserve the right to ask for seven days' written notice before you may withdraw money from savings and money market deposit accounts and from interest-bearing checking accounts that we designate as, or that are classified in our books and records as, negotiable order of withdrawal (NOW) accounts, as such accounts are defined and described in 12 U.S.C. § 1832, 12 C.F.R. Part 204, and/or other applicable regulations, as amended. You must satisfy any and all eligibility requirements established by federal regulations or us in order to maintain these accounts. Please refer to our pricing schedule for transaction and other fees related to these accounts. There may be other limitations that apply to these accounts.

Payment Of Interest. We have no obligation to pay interest on any deposit, except as required by law or otherwise agreed by us or disclosed to you in writing. For interest-bearing accounts, interest will be paid at the rate and on the interest payment dates we establish from time to time for that type of account. We use the daily balance method to calculate the interest earned on your account. This method applies a daily periodic rate to the collected balance in your account each day. Interest begins to accrue on cash, electronic payments and on deposits of checks drawn on us on the business day the cash or such check is deposited into your account. Interest begins to accrue on your account no later than the business day we receive credit for the deposit of items such as a check you deposited to your account. We will receive credit for checks drawn on other financial institutions based on the general availability schedule established either by the Federal Reserve Bank or its appropriate branch for the district in which we are located. We may not pay interest on funds represented by an item that is returned unpaid. If your account is converted for any reason from an interest-bearing to a non-interest bearing account before interest is credited, you will not receive the accrued interest. To receive interest (or certain rates of interest) on your type of account, you may be required to maintain a minimum balance of collected funds established by us from time to time. The interest rate paid on your interest-bearing account is determined by us, in our sole judgment and discretion. The Interest Rate and Annual Percentage Yield (APY) may vary depending on the type of account, the balance in the account, and other factors. For certain types of accounts, the interest rate and APY may vary as often as every day. The details of these conditions are contained in the pricing schedule.

9. Sub-Accounts. Accounts, whether interest-bearing or non-interest-bearing, may be divided into two sub-accounts: a transaction sub-account to which all financial transactions are posted; and a money-market holding sub-account into which available balances above a preset level are transferred daily. Funds will be retransferred to the transaction sub-account to meet transactional needs. For non-interest bearing accounts, both sub-accounts are non-interest bearing. For interest bearing accounts, both sub-accounts pay the same interest rate. Transfers can occur on any business day. Transfers to the holding sub-account will be made whenever available balances in the transaction sub-account exceed a preset level. Transfers from the holding sub-account to the transaction sub-account will be made

whenever transaction sub-account balances fall below a preset level. If banking regulations limit the number of transfers between these types of sub-accounts, all balances in the holding sub-account will be transferred to the transaction sub-account when the limit for any particular period is reached. Both sub-accounts are treated as a single account for purposes of deposits and withdrawals, access and information, tax reporting, fees, etc., except that we reserve the right to require seven days' advance notice before permitting a withdrawal from the holding sub-account. We are required by law to reserve this right.

10. Review Of Statements. You are responsible for exercising reasonable promptness in examining your account statement each statement period, or if provided, originals or imaged copies of cancelled checks, or your account activity through the internet if we provide such access, to determine whether any payment or debit was not authorized because of an alteration of an item or because a signature or endorsement on the item was unauthorized, or for any other discrepancy or reason for which you believe that the debit is not correct. If you discover an unauthorized payment or other discrepancy, you must promptly notify us in writing of the relevant facts. Your report must identify the specific items or debits that you are challenging.

If you fail to comply with your duty to examine your statements and account activity and report errors, discrepancies and unauthorized transactions, in addition to any and all other rights and remedies available to us, we shall have the defenses contained in § 4-406 of the Uniform Commercial Code (UCC), as amended, as adopted in the state in which your account was established. In addition, if your claim involves a series of items containing unauthorized signatures or alterations by the same wrongdoer, or conspiracy of wrongdoers, you shall be precluded from asserting against us any unauthorized signature or alteration by the same wrongdoer or conspiracy of wrongdoers on any item paid in good faith on or after 10 calendar days after the first statement describing the first altered or unauthorized item was sent or made available to you. By this provision, you and we intend to define a reasonable time period for the examination of bank statements for purposes of the "Repeater Rule," or the "Same Wrongdoer" rule as provided in § 4-406(d) of the UCC.

Without regard to the care or lack of care of either you or us, if you fail within 30 calendar days after the statement or item is sent or made available to discover and report with respect to an item (i) your unauthorized signature, (ii) any unauthorized or missing endorsement, or (iii) any alteration on an item, you shall be precluded from asserting against us the unauthorized signature, the unauthorized or missing endorsement or alteration on that item. This absolute preclusion applies (i) to each item that you fail to report within 30 calendar days and (ii) regardless of the legal theory you assert. By this provision, you and we intend to shorten the absolute statutory preclusion period for unauthorized signatures and alterations specified in § 4-406(f) of the UCC and to establish a contractual condition precedent for reporting claims involving unauthorized or missing endorsements.

Except for transactions covered by the Electronic Funds Transfer Act or unauthorized debits involving Substitute Checks, you must report any other problems with your account within 30 calendar days of the date we send or make available the statement or items, failing which you will be precluded from asserting the problem against us, even if we fail to exercise ordinary care in the transaction.

If we provide you with access to your account via the internet, then for purposes of your duty to examine your statements and account activity and report errors, discrepancies and unauthorized transactions, account statements and items will be deemed to be "made available" on the day the subject debit occurred, whether you accessed your account through the internet or not.

If you do not timely receive any account statement, you shall notify us as soon as possible but in no event later than 10 calendar days after such account statement would ordinarily be received by you.

You agree to complete such affidavits and documents we deem

necessary to process any claim you make regarding your account. You also agree that you will provide all reasonable cooperation to us in the civil or criminal prosecution of (i) any party responsible for any unauthorized withdrawals from your account or (ii) any party who has made an unauthorized endorsement on any item payable to you if such item was deposited or negotiated by us. Your failure to comply with these procedures may result in a denial of your claim.

We will mail the statement to the address for the account in our records, unless you and we have agreed to a different means for the delivery of statements. You agree to notify us immediately of any change in your mailing address for the delivery of statements. If any statement is returned to us because of an incorrect address, we may suspend sending statements to you until you notify us of your correct mailing address, or we may, at our sole discretion and without obligation, use any source available to us to update and/or validate the accuracy of your mailing address and begin sending statements to such updated and/or validated address. If you have requested us to hold, rather than mail, your statements, you must call for them promptly. You will be responsible for the same care in reviewing the statements and related items as if they were mailed.

11. Check Retention Accounts. If you select an account in which checks are truncated or imaged, you authorize us to retain a copy at our expense of all checks, drafts, and/or debit or credit advices for the account. The original documents will be destroyed after they have been copied. The copies will be available for seven (7) years from the date the checks are paid. All copies produced are subject to a copy fee. To produce a copy, we need the account number, the check number, the exact amount of the check, and the date the check was paid. If we can't provide a check copy and you lose money as a result, our liability is limited to any direct loss you sustain up to the amount of the check. You agree to provide any information we require concerning the missing check prior to our payment of your claim, and if you fail to substantiate your claim, we may decline to pay it. You agree that our retention of checks and other items does not alter or waive your responsibility to examine your statements or change the time limits for providing notice to us of forged or altered items, or other errors.

12. Service Charges. You agree to pay all service charges and fees that apply to your account or transactions within or affecting your account. The amounts of charges and fees are subject to change from time to time, and new types of charges and fees may be added and apply to your account from time to time. We will notify you of changes and additions to fees and charges as required by applicable law; otherwise, such changes and additions may be made without notice to you. You acknowledge receipt of our pricing schedule listing current service charges, fees and balance requirements. You further acknowledge that the pricing schedule you have received does not necessarily reflect all possible fees and charges that may apply to your account from time to time. A current pricing schedule is available at our branch offices, and you may request information about any fees and charges applicable to your account from any of our customer service representatives. You agree that we may debit all applicable fees and charges, as well as charges for the purchase of checks, drafts, and other items purchased by you from or through us, to your account when due without further notice. You also agree that we will not be liable for returning items because of insufficient funds that result from debiting your account for these charges. In addition, you agree to pay all expenses, including reasonable attorneys' fees, involved in the collection of fees, charges, overdrafts, or the enforcement of any other of our rights or remedies in relation to your account.

13. Endorsing Items. If you sign, stamp or affix an endorsement to an item that extends into the space reserved for bank endorsements or otherwise cause our endorsement to be obscured, and the return of an item is delayed because of the obscured bank endorsement, you agree to reimburse and hold us harmless against any loss, expense and cost we may incur because of your endorsement. You authorize us to debit

any such amount against your account without further notice to you.

14. Information-Sharing. If you are a consumer who has obtained a financial product or service from us that is used primarily for personal, family or household purposes, you should refer to our privacy notice for a description of our information sharing policies and practices. You may request a copy of our privacy notice from any of our customer service representatives. Provisions regarding the sharing of consumer account information are also set forth in Section V – Electronic Funds Transfer Disclosure to Our Consumer Customers. Otherwise, you agree that we may disclose information as necessary or convenient to perform our obligations and responsibilities in relation to your account, or to the extent not prohibited by law. If you authorize or direct a third party to request information from us about your account or your other banking relationships with us, you acknowledge and agree that we may charge a fee for furnishing the information to such party.

15. Verification. You authorize us to investigate or reinvestigate at any time any information provided by you in connection with your application for or use of any account, and to request reports from credit bureaus and consumer reporting agencies for such purposes and for any other purpose permissible under applicable law. In order for us to verify that you continue to qualify and meet eligibility requirements for your account, or to fulfill our policies and procedures with respect to the monitoring of accounts, or to comply with the requirements of applicable law or regulation, we may from time to time request you to confirm information you have provided to us or to provide us with additional information. You agree to confirm information or to provide additional information as we may request and within 30 days after our request. Pending your compliance with our request, you agree that we may, in our discretion and without closing your account, limit or suspend your access to your account, refuse to permit withdrawals or transfers from or deposits to your account, or take such other action as we deem appropriate or legally required, all in our judgment and discretion and without limiting or waiving any other rights or remedies available to us, and without any liability to you (including, without limitation, any liability for any claim for wrongful dishonor of any item).

16. Automated Clearinghouse. From time to time, you may be a party to an Automated Clearinghouse (ACH) entry that may be credited or charged to your account. You agree to be bound by applicable automated or other clearinghouse rules and regulations then in effect. Some checks that you give to a merchant may be converted by the merchant into ACH debit entries, in which case they will be collected electronically and charged against your account much more quickly than a paper check. This means that (a) you will have a reduced right to stop payment, (b) you need to make sure that your account has sufficient collected funds to cover the debit, and (c) you will not receive any copy of a cancelled check with your monthly statement. If a merchant uses a blank check to initiate a debit entry at the point of sale, the merchant should return the voided check to you. You should treat the voided check with care because someone else who obtains possession of it could use the information to initiate additional debits against your account. A merchant who receives your check by mail should give you notice of the conversion but will destroy the original check. Whether your check is converted at the point of sale or at the merchant's lockbox, a description of the transaction will appear on your monthly statement from us. For further information on ACH transfers, see Section V – Electronic Funds Transfer Disclosure to Our Consumer Customers.

17. Wire Transfers. We have established rules and security procedures for initiating and receiving funds transfers to the extent they are not subject to the Electronic Fund Transfer Act or Regulation E. These include a requirement that you sign a Funds Transfer Agreement before we initiate certain funds transfers. In the event you do not execute our Funds Transfer Agreement and in consideration of our handling your funds transfers, you agree to abide by our established rules and security procedures for funds transfers which include, without limitation,

the following:

Governing Rules. You agree to be bound by any rules then in effect governing the use of any system through which the funds may be transmitted including, but not limited to, Federal Reserve Board Regulation J with regard to FEDWIRE.

Notice. We will not give telephonic notice to you of incoming credits unless you make a written request for the service in advance. If so requested, we will use reasonable efforts to provide such notification, but shall have no liability for failure to notify or for incorrect or untimely notification. You will receive confirmation of executed funds transfer payment orders in the periodic statements provided by us to you. If you believe we have failed to properly credit or debit a transfer to you, you agree to promptly notify your account officer or banking representative at the branch where you do your principal business of all of the relevant facts. If you fail to notify us within 30 days of the mailing of the statement reflecting the debit caused by a wire transfer, the debit is deemed to be authorized.

Final Payments. Except for FEDWIRE funds transfers, any credit we give you is provisional until we receive final payment. If we do not receive final payment, you agree that we may reverse the credit to your account or that you will otherwise reimburse us if funds in your account are not sufficient.

Compensation. In the event we shall be liable to you for the delay or improper completion of funds transfer as a result of our error, our liability shall be limited to payment for loss of interest on the use of the funds. Interest shall be calculated on the basis of the average Federal Funds rate for the period involved. Any such compensation will be paid, in our option, by either (a) a lump sum payment of cash, or (b) a credit to your account with us.

Use of Account Numbers. You are notified and agree that if your payment order in a funds transfer identifies any bank or the beneficiary by both a name and an identifying (or bank account) number and the name and number identify different persons, execution of the payment order, payment to the beneficiary, or cancellation of the payment order may be made solely on the basis of the identifying number. We shall have no liability for failing to detect any error contained in any payment order sent by you to us.

By using any of our funds transfer services, you acknowledge and agree that our methods and procedures for the authorization and authentication of funds transfers constitute commercially reasonable security procedures under applicable law.

Unless we have otherwise expressly agreed with you in writing, if we receive a funds transfer denominated in foreign currency for credit to your account, we may, in our discretion, prior to or upon acceptance of the transaction, convert the transaction to the U.S. dollar equivalent at our exchange rate in effect at the time of conversion pursuant to our policies and procedures. Exchange rates may differ depending on the amount of the transaction. Exchange rates may fluctuate significantly in a short period of time. You bear all exchange risk related to funds transfers denominated in foreign currency.

18. Assignment. Accounts are transferable only on our records, and except as expressly provided in this Agreement, you may not assign or transfer your account (whether as security for a debt or otherwise) or this Agreement, or any of your rights therein or thereunder, without our written acknowledgement and consent, which may be granted or withheld in our absolute discretion. In the event we acknowledge and consent to the transfer or assignment of any account, such account will remain subject to our right of setoff and our other rights and remedies hereunder with respect to obligations incurred and defaults, events, and/or circumstances occurring or existing both before and/or after the

transfer or assignment. We may assign this Agreement and/or any or all of our rights hereunder, or delegate any or all of our responsibilities hereunder, to any third party or parties in our discretion and without notice to you, subject to the requirements of applicable law. Subject to the foregoing, this Agreement shall be binding on the parties hereto and their respective successors and assigns.

19. Insufficient Funds And Overdrafts. If an item is presented for payment on your account at a time when there is an insufficient balance of available funds in your account to pay the item in full, you agree to pay us our charge then in effect for items drawn against insufficient or unavailable funds, whether or not we pay the item. Overdraft and nonsufficient funds fees are determined when transactions are presented for payment. If any item is presented again after having previously been returned unpaid by us, you agree to pay this charge for each time the item is presented for payment and the balance of available funds in your account is insufficient to pay the item. You waive notice of the return of any item unpaid and notice of the imposition of any insufficient or unavailable funds charge. At our election, we may pay any item drawn against your account even though the item causes an overdraft to the account. You agree to pay the overdraft amount and applicable fee. If the account is a multi-party account, you agree that all depositors will be personally liable, jointly and severally (and solidarily if applicable), for payment to us of all overdrafts on the account, regardless of which depositor created the overdraft and whether the other depositors knew of the overdraft, participated in activity on the account, or benefited from the overdraft. We are under no obligation to let you overdraw your account. The honoring of past overdrafts will not obligate us to honor overdrafts in the future. You understand that any overdraft in your account may be subject to a security interest that you have granted in the past or will grant in the future to support another debt you owe us.

20. Automated Item Processing. We have adopted collection and payment procedures that allow us to process all items at a lower cost to our customers. These automated procedures involve high-speed automated check processing machines that read information encoded onto each item in magnetic ink. In recognizing this fact, you agree that we may disregard any information on an item drawn on your account other than the signature of the authorized signer, the identification of the drawer, bank and payee, the amount of the item, and any other information that appears in magnetic ink at the bottom of the item. We are not bound by any other information on the item, including terms such as "Payee's endorsement required," "Not good for more than \$(amount)," "Void if not paid in (number) days," and similar language. You also agree that we do not fail to exercise ordinary care in paying an item solely because our procedures do not provide for the sight examination of any items, or do not provide for sight examination of items below a threshold amount we determine from time to time. We will not be liable for processing errors or delays due to printing inaccuracies or faulty magnetic ink encoding of critical data that result from your use of checks or other items in a form not approved by us in advance. Checks you write may be converted into electronic information or images (truncated) during the check collection and return process. If you elect to have your checks printed by a vendor that has not been approved by us, or you use check stock or features (e.g., security features) that cause critical data to disappear or be obscured upon truncation, or you make your check out in a way (e.g., using a lightly colored ink) that causes critical data to disappear upon truncation, you agree to bear the risk of loss. You also agree to bear the risk of loss if you use check stock that contains printing inaccuracies, faulty magnetic ink, faulty encoding, or duplicate serial numbers.

21. Postdated, Stale And Expiration Date Items. If an item presented for payment against your account is postdated or contains an expiration date, we may pay the item when presented or return it, at our option, and we shall have no liability to you for taking either such action. If a check, instrument, or other draft you have drawn on your account is postdated or contains an expiration date (a "Dated Check") and you do

not wish us to pay such Dated Check prior to its date or after its expiration date, as applicable, you may submit a stop-payment order as provided in this Agreement and the handling of such Dated Check shall be governed by the stop-payment order provisions of this Agreement. You are solely responsible for timely cancelling a stop-payment order on any Dated Check that is postdated if you wish for us to pay such Dated Check on or after its date and prior to the expiration date of the stop-payment order. We shall have the right, at our option and without notice to you, to pay or return any item that is presented for payment against your account more than six months after its date, and we shall have no liability to you for taking either such action.

22. Stopping Payment; No Stopping Payment Of Bank Instruments. If a check, instrument, or other draft you have drawn on your account (a "Check") has not already been paid or verified for payment to the payee, you may ask us to stop payment. You must tell us the exact amount of the Check, the Check number, the date of the Check, the name of the payee, and the full account number on which the Check is drawn. If you produce a Check by computer or in any other manner that does not contain a magnetic-encoded check number, we may not be able to honor the stop-payment order. We must receive your stop-payment order in time to permit us a reasonable opportunity to act on it in the ordinary course of business. If the information you give us is not correct, or if you do not give us other reasonable information we request about the Check, we will not be responsible if we are unable to effect the stop-payment order. Your stop-payment order, whether oral or written, is effective for six (6) months from the original date of the order. After processing your stop-payment order, we will send to you a written STOP PAYMENT REQUEST/SPECIAL PAYING CONFIRMATION indicating the date the stop-payment order was applied and the date of expiration. You may request us to renew any stop-payment order. You must make your renewal request, orally or in writing, prior to the expiration date of the stop-payment order, and you must provide complete information concerning the Check for which the stop-payment order is to be renewed. A renewal of your stop-payment order will be effective for six (6) months from the date we process the renewal request.

Stop-payment requests and renewal requests are subject to the service charges for such items as set out in our pricing schedule at the time of your request. If we refuse to pay any Check pursuant to your stop-payment order, you agree to hold us harmless from all costs and expenses incurred by us, including our attorney's fees, resulting from our refusal to pay the Check. If we recredit your paying account after paying an item over a valid stop-payment order, you agree to transfer to us in writing all of your rights against the payee or other holder of the item and to assist us in legal action against that person. If we fail to honor a timely and accurate stop-order, we reserve the right not to recredit your account unless you can demonstrate the fact and amount of your loss.

You may request us to cancel any stop-payment order prior to the expiration of the order. You must provide such information as we may reasonably require to cancel the stop-payment order, and we may require you to make your request in writing and acknowledge and attest to your written request before a notary public.

You do not have the right to stop payment on an official check, a cashier's check, a teller's check, a certified check, a money order or a traveler's check you have purchased from us. These are instruments on which the bank itself is or may be obligated. However, if a bank instrument you purchased is lost or stolen, you may obtain a replacement instrument, provided that we have not already paid the lost instrument. To obtain a replacement instrument or get your money back, you must execute such affidavits and indemnification agreements and/or furnish such bonds as we may require in our discretion. In general, your claim will become enforceable in 90 days. Once it becomes enforceable, we will issue a replacement instrument or refund your money if we have not already paid the lost instrument.

We may permit you to attempt to stop payment on items other

than Checks. You agree to be bound by and to comply with our rules and procedures, the rules and procedures of participating payment networks, processing systems, and clearinghouses, and applicable law and regulation in the event we permit you to attempt to stop payment on such other items. Checks and other items that are subject to stop payment orders may reduce your available balance when they are presented against your account pending our return of such Checks and other items.

23. Multi-Party Accounts. If your account is a personal account and has more than one owner name on it, we will treat it as a joint tenant account with right of survivorship (to the extent such accounts are recognized under applicable law) unless otherwise expressly designated on the signature card or other account records maintained by us. We may require you to sign additional forms to establish the account. Each depositor of a multi-party account hereby appoints the other(s) as his or her attorney-in-fact and/or duly authorized agent to conduct all business with respect to the account including, but not limited to, issuing stop payment orders, depositing funds to the account, withdrawing funds from the account, entering into any agreement, terms or conditions for the use of other products or services in connection with the account, closing the account and receiving the balance of funds on deposit, and endorsing any item payable to any other depositor (or payable jointly to any other depositor and any other person) and either depositing the item in the account or receiving all or any part of the item in cash. The authority granted herein to each depositor shall extend to any conservator, guardian, or other fiduciary or personal representative of such depositor. Where applicable law requires your concurrence in any transaction or business regarding or affecting your account, you expressly authorize each other depositor on your account to individually concur on your behalf as your attorney-in-fact or agent, and the authorization of any such transaction or business by any such other depositor constitutes your concurrence without any further action or expression on the part of such other depositor or on your part. Subject to any other provisions of this Agreement relating to our procedures, conditions, requirements, and discretion as to powers of attorney, each depositor also may appoint one or more attorneys-in-fact without notice to or consent of any other depositor, and no other depositor will have the authority to revoke or limit the power of attorney made by another depositor. To the extent not prohibited by applicable law, we may, at our discretion, require that all depositors sign the power of attorney before we will recognize it. We are not required to remove a depositor from the title to a multi-party account without the written consent of the other depositor(s). The liability of each depositor on a multi-party account is joint and several (and solidarily if applicable).

24. Formal Trust Account. A formal trust account is an account held by one or more trustees for the benefit of one or more beneficiaries according to a written trust agreement or a will provided to us at the time the account is opened. If the trustee(s) die or are replaced, then we will not release any funds until we are satisfied that all required legal documents have been delivered to us and that all other legal requirements have been met. At our option, as a condition to opening or continuing to maintain a trust account, or to disbursing funds from a trust account, we may require the trustee(s) and/or each beneficiary to execute certain certificates, affidavits, and/or instruments attesting to the terms of the trust, their respective rights therein, and/or such other facts or information as we may require in our discretion. We may accept such certificates, affidavits, and/or instruments in lieu of accepting and/or reviewing a copy of the trust instrument, and in such event we may rely on the information set forth in such certificates, affidavits, and/or instruments (which information shall control in the event of any conflict with the terms of the trust instrument) and we shall not be charged with knowledge of any of the provisions of the trust instrument.

25. "In Trust For" / Payable On Death (POD) Accounts. If an account is opened without a written trust agreement and the account is in the name of one or more depositors for the benefit of one or more

beneficiaries, or names one or more POD beneficiaries, all funds in the account will be paid, upon the death of the depositor or surviving depositors, in equal shares to the person or persons then living who are named as beneficiary or beneficiaries (whether an adult or minor) and, unless applicable law expressly provides otherwise, the money in the account will not be inherited by the heirs of the depositor(s) or controlled by the will of the depositor(s). Payment of the account funds to such beneficiary or beneficiaries shall fully release us from all liability. During the lifetime of the depositor(s), any interest of the beneficiary or beneficiaries in such an account shall be deemed for all purposes to be revocable and only the depositor(s) may withdraw funds therefrom. Certain state law restrictions and provisions also may apply.

26. Accounts Established On Behalf Of Others. If you have established an account as a custodian for a minor beneficiary under the applicable state version of the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act, your rights and duties are governed by the Act. You will not be allowed to pledge the account as collateral for any loan to you. In the event an account is established by a party (i) for or on behalf of a minor (and such account is not established under the Uniform Transfer to Minors Act) or (ii) for or on behalf of another individual who is not the subject of a guardianship or conservatorship as ordered by the Court, we may in our sole discretion pay the funds on deposit in such account to the party establishing the account or, upon request, to the party for whose benefit the account was established. We will not, however, be responsible for our refusal for any reason to pay funds on deposit to a party for whom the account was established. This provision does not apply to accounts established pursuant to a written escrow agreement, accounts established by court-appointed guardians or conservators, or accounts established by a fiduciary under a written agreement.

27. Business/Organization Accounts And Authorized Representatives. We may rely on the classification and form of ownership for a business account, as set forth on the signature card for all purposes relating to the account. You represent and agree that (a) you have taken all actions necessary to open and maintain the account, (b) all resolutions or other authorizations given by you to us are true, accurate and complete in all respects, (c) all assumed or fictitious names have been registered or filed with the appropriate governmental authorities, and (d) each person whose name is written or printed on the signature card, any resolution or other separate written authorization concerning the account has complete authority involving the account.

The definition of an authorized representative is a representative(s) of the business or organization who has been identified to us as being authorized to sign checks on, make withdrawals from, or otherwise give instructions with respect to your account and has (have) signed a signature card for the account. An authorized representative may also be a person who has been authorized to obtain account information but may not sign checks. An authorized representative also may be any person reasonably believed by us otherwise to be authorized by the business or organization to act on its behalf or any person who may have capacity to act on behalf of the business or organization under the law of agency.

You agree that each authorized representative, except for those who have not been given signing authority by the business or organization but have the authority to obtain information, shall have full authority, subject to the provisions of any signature card or supporting documents, for all actions relating to your account, including, but not limited to, making deposits, making withdrawals, endorsing checks, closing the account, stopping payment, assigning the account, overdrawing the account, and entering into agreements on your behalf for any other products and services we offer that may be used in connection with your account, and each authorized representative may take such actions alone and without participation by any other authorized representative. Any one of the authorized representatives may write checks and/or withdraw money from your account. We may rely on any resolution and/or certification submitted

by a party purporting to be an officer, director, member or partner of an organization and may act upon such document and instructions therein. You will be liable for any deficiency in your account regardless of which authorized representative is responsible for its occurrence.

If there is a dispute between any authorized representative(s), or if one of the authorized representative(s) demands that we not allow any other authorized representative to withdraw money from the account, or if there is a dispute about who is authorized to make withdrawals from or give instructions with respect to an account, or if the bank receives a notice from a party who purports to be an officer, director, incorporator, shareholder, member, or partner of a business or organization disputing the rights of any existing authorized representatives to make withdrawals or handle account transactions, we may (but do not have to) refuse to allow any withdrawals or other action by anyone until we are satisfied that the dispute is resolved or the demand or notice is withdrawn. We will not be responsible for any damages you may suffer as a result of our refusal to allow you to withdraw money due to the dispute, demand or notice.

We reserve the right, in our sole and absolute discretion, to require that any in-person cash withdrawal from a business or organization account be made by means of a check that is machine printed with the name of the business or organization, the account number, and our routing/transit number and not to permit such withdrawals by means of a blank countercheck or counter withdrawal slip completed with handwriting. You agree that we shall have no liability to you if we do not permit such a withdrawal by means of a blank countercheck or counter withdrawal slip, nor shall we have any liability to you if we do permit such a withdrawal by means of a blank countercheck or counter withdrawal slip, provided the item otherwise is properly payable according to the terms of this Agreement.

28. Special State Provisions And Disclosures. The following provisions apply to accounts in the states indicated and supplement the other terms and conditions of this Agreement. In the event the following provisions conflict with the other terms and conditions of this Agreement, the following provisions shall control with respect to accounts in the states indicated.

Texas Account Disclosures. The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts. You may choose to designate one or more convenience signers on an account, even if the account is not a convenience account. A designated convenience signer may make transactions on your behalf during your lifetime, but does not own the account during your lifetime. The designated convenience signer owns the account on your death only if the convenience signer is also designated as a POD (Payable on Death) payee or trust account beneficiary. Single-Party Account Without POD (Payable on Death) Designation: The party to the account owns the account. On the death of the party, ownership of the account passes as part of the party's estate under the party's will or by intestacy. Single Party Account with POD (Payable on Death) Designation: The party to the account owns the account. On the death of the party, ownership of the account passes to the POD beneficiary of the account. The account is not a part of the party's estate. Multiple-Party Account Without Right of Survivorship: The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy. Multiple-Party Account With Right of Survivorship: The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes to the surviving parties. Multiple Party Account With Right of Survivorship and POD (Payable on Death) Designation: The parties to the account own the account in proportion to the parties' net contributions to the account.

The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the POD beneficiaries. Convenience Account: The parties to the account own the account. One or more convenience signers to the account may make account transactions for a party. A convenience signer does not own the account. On the death of the last surviving party, ownership of the account passes as a part of the last surviving party's estate under the last surviving party's will or by intestacy. The financial institution may pay funds in the account to a convenience signer before the financial institution receives notice of the death of the last surviving party. The payment to a convenience signer does not affect the parties' ownership of the account. Trust Account: The parties named as trustees to the account own the account in proportion to the parties' net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee's estate and does not pass under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

We make no representation as to the appropriateness or effect of the ownership and beneficiary designations. Community property laws in your state may affect account ownership designations and the disposition of the account upon the death of a party.

Missouri Account Disclosures. If your account is in Missouri and is a personal account that has more than one name on it, we will treat it as a joint tenant account with right of survivorship (to the extent such accounts are recognized under applicable law) *and not as an account of tenants by the entirety*, unless otherwise expressly designated on the signature card or other account records.

Florida Account Disclosures. If your account is in Florida and is in your name and your spouse's name, we will treat it as a joint tenant account with right of survivorship (to the extent that such accounts are recognized under applicable law) *and not as an account of tenants by the entireties*, unless otherwise expressly designated on the signature card or other account records.

Tennessee Account Disclosures. With respect only to accounts established at our Tennessee branches, all joint accounts are owned by the parties as they have indicated upon the signature card for such account. Upon the death of any joint owner, the ownership of the joint account shall be vested in accordance with the form of ownership so chosen by the parties. In regards to public funds accounts, any qualified public entity of the State of Tennessee that opens a public funds deposit account shall have its deposits secured with the State of Tennessee Bank Collateral Pool established under The Collateral Pool For Public Deposits Act of 1990. A "public entity" is defined as the State of Tennessee, or any of its agencies, or any Tennessee county, Tennessee incorporated municipality and their political subdivisions, or any utility district organized under the laws of the state or interstate compact to which the state is a party. A "public funds deposit account" is defined as any Deposit Account, Time Deposit or Certificate of Deposit a public entity opens with us.

The designation "joint tenants with right of survivorship" on an account means that the deposit account or certificate of deposit shall become the property of each owner as joint tenants, and that the survivor is entitled to all moneys in the account or represented by the certificate even if the first person to die had a will specifically directing disposition to someone else. We may release all moneys in the account or represented by the certificate to, or honor checks or orders drawn by, or withdrawal requests from, the survivor upon the death of any joint tenant.

The designation "additional authorized signatory" on an account means that the person named as additional authorized signatory shall have authority during the lifetime of one (1) or more owners to withdraw moneys from the deposit account or represented by the certificate of deposit. Moneys remaining in the account or represented by the instrument upon the owner's death shall become part of the deceased

owner's estate, subject to the deceased person's will or applicable law if the deceased person left no will. We may release all moneys in the account or represented by the certificate to, or honor checks or orders drawn by, or withdrawal requests from, the authorized signatory until notified of revocation of the authority.

Louisiana Account Disclosures. With respect to joint accounts established at our Louisiana branches, we can pay to any one of the joint depositors, or their legal representative(s) (including the legal representative of the estate or succession of a deceased joint depositor), the entire balance of the joint account or any part of the balance of the joint account at any time, including after the death of any joint depositor. Each joint depositor, and his/her legal representative(s), is authorized at any time, including after the death of any joint depositor, to deposit or withdraw money from the joint account by check or item or otherwise, to close the joint account, to order electronic funds transferred to and from the joint account, to stop payment on any check or item drawn on the joint account and to enter into special agreements concerning the joint account. Upon the death of any joint depositor, we have the specific right to pay any or all of the funds on deposit in the joint account to the surviving joint depositor(s) or any one of them and we shall not incur liability to the heirs, successors, legatees or devisees of any deceased joint depositor or to any surviving joint depositor for such payment.

You hereby state, acknowledge and agree, that (a) we have not offered or rendered any legal, tax or other advice whatsoever to you, including, without limitation, any advice regarding this account, the opening or maintenance thereof, the distribution of funds therefrom, or the purpose thereof, or any advice regarding successions, inheritance or estate planning; (b) we have fully and completely disclosed to you that we do not offer any such advice; (c) we have advised you to consult with a third-party attorney or other qualified expert should you have any questions regarding your account, the legal consequences thereof, or any other questions related thereto; and (d) you have consulted with such attorneys, accountants and other experts as you deem necessary or appropriate.

IN TRUST FOR/PAYABLE ON DEATH/POD ACCOUNTS. You understand the need, and hereby agree, to execute and deliver to us an affidavit or an act under private signature conforming to the requirements of LSA R.S. 6:314. Failure to properly complete, and execute, such an affidavit or private act and return the properly completed, and executed, affidavit or private act to us may result in your account being deemed to be an account solely in your name(s), irrespective of any "Payable on Death," "POD," "in Trust for" or similar language following the name(s) in the account styling. You hereby agree that, if all the requirements for establishing this account are fulfilled, after the death of the account owner(s) and our receipt of such documentation as we, in our sole discretion, deem necessary or advisable, we will close this account, and disburse all funds in the account to the beneficiary(ies) named in the affidavit or private act referred to above, either by check made payable jointly to all beneficiaries or in equal (or as near thereto as is possible given the amount to be disbursed and the number of beneficiaries) by an individual check to each beneficiary, in our sole discretion. You, on your own behalf and on behalf of your estate, heirs, legatees and representatives, hereby release us from, indemnify us for, and hold us harmless from and against, any and all actions, causes of action, claims and damages arising out of, or in any way related to, our opening of this account, our acceptance (whether initially or at one or more later times) of funds for deposit therein, and our acting in accordance with the instructions contained herein.

29. Power Of Attorney Accounts. Subject to the requirements of applicable law, we have no obligation to accept or recognize a power of attorney. If we elect to recognize and accept a power of attorney, we may require that the power of attorney be executed on a form and/or pursuant to procedures that are acceptable to us and that comply with applicable law. We may require such other evidence of authority, as well as affidavits and indemnifications, as we may deem appropriate. If

we accept a power of attorney, any action taken by us shall be binding upon you if we take such action before we receive and have a reasonable opportunity to act upon (a) written revocation of the power of attorney; (b) written notice of death of the principal of the power of attorney; (c) the event the power of attorney does not survive the disability, incompetency or incapacitation of the principal under applicable law, written notice that the principal has been declared disabled, incompetent or incapacitated; or (d) written notice that a guardian of the principal's person or property has been appointed. Unless otherwise provided in applicable state law, we will not be liable to you for our refusal to allow a transaction requested by an agent or attorney in fact and you agree to indemnify and hold us harmless should any agent or attorney in fact make any claim against us for our refusal to conduct a transaction on your behalf.

30. Fiduciary Accounts. To the maximum extent permissible under applicable law, we have no responsibility or obligation to supervise or monitor the transactions within fiduciary accounts (including, but not limited to, estate accounts, guardianship accounts and trust accounts), or to inquire as to the powers or duties of the depositor(s). The depositor(s), in their individual capacity and jointly and severally (and solidarily if applicable), agree to indemnify and hold us harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, we may suffer or incur arising out of any action or claim by any beneficiary or other party with respect to the authority or actions taken by the depositor(s) in handling or dealing with a fiduciary account.

31. Closing Your Account. We may close your account at any time and for any reason or for no reason, with or without advance notice. If we close your account, we will notify you by mail or telephone that we have closed your account; provided that if we allow you to open an account without an initial deposit and you do not fund the account within 10 days, or if we suspect any illegal or fraudulent activity relating to your account, we may close the account without any notice to you. We may (but do not have to) mail you a check for the balance of collected funds in your account, or you may pick up a check for the collected balance at our office. Written notice and a check, if any, will be sent to any address shown on our records for you, or if the account is a multi-party account, any depositor to whom we elect to send it. We may deliver the remaining balance in any business or organization account to any authorized representative listed on our records for the business or organization. Alternatively, at our option and in our discretion, when we close your account we may transfer the balance of collected funds to another account of any owner of the closed account notwithstanding that the ownership of the closed account may not be identical to the ownership of such other account. If you would like to close your account, you must visit one of our banking offices or call our customer service number and ask us to complete a closing withdrawal. If you do not close your account in this way, the account will remain open on our systems and remain subject to the assessment of fees, including any applicable monthly account fee. If your account is subject to a monthly account fee that is charged in advance each statement period, as disclosed in the account disclosures for your particular account, the fee is deemed earned in full at the time it is charged and is not subject to refund or proration in the event you should close your account. Before closing your checking or money market account, be sure that all the checks you have written have cleared. We suggest you not write checks for at least fifteen (15) days before you close your account. Once we have closed your account we can, without any liability to you or any other party, refuse to (a) honor any items you have written or authorized that are presented to us for payment after we have closed your account, or (b) collect any item you have deposited in the account. We may, however, accept deposits to an account after it is closed in order to pay any service charges due and any amounts outstanding and unpaid. Acceptance of any deposit does not require us to reactivate the account. We reserve the right to charge an early-account-closing fee when applicable. Any terms regarding any

minimum period of time during which your account must remain open will be disclosed to you separately. When an interest-bearing account is closed during a statement period, we may not pay interest on the account for the period between the end of the last statement period and the account closing date. If you call our customer service number to close your account by telephone, and if your account balance is less than \$2 (a "Low Dollar Balance") at the time you ask us to close your account, we will transfer the Low Dollar Balance to another account you maintain with us. If you do not maintain another account with us, you agree that we may close your account without paying the Low Dollar Balance to you. In such event, you hereby assign and transfer the Low Dollar Balance to us, and you authorize us to debit the Low Dollar Balance from your account. If you do not maintain another account with us and you want us to pay a Low Dollar Balance to you when you close your account, you must visit one of our banking offices and close your account in person. If, after your account has been closed to further transactions, we determine that a credit is due to the account for any reason (e.g., the refund of a fee charged in error), and the net credit due is less than \$1, you hereby waive your claim to such amount and assign and transfer such amount to us. If your account has a balance of \$0.00, or if your account remains overdrawn for a certain period of time, our deposit system may place the account into an administrative closed or no-post status. Certain account services and functionality may be unavailable while an account is in an administrative closed or no-post status.

32. Abandoned Or Dormant Accounts. If you do not use your account or notify us in writing of your current mailing address, or if statements or notices we send to you are returned undelivered, your account and deposits may be presumed abandoned after a specified period of time, as provided by applicable law, or may be considered dormant or inactive according to our internal policies and procedures. To the extent not prohibited under applicable law, abandoned or dormant accounts are subject to a reasonable service charge in addition to any usual service charges applicable to the accounts. You may request current information about our abandoned and dormant account charges from any of our customer service representatives. If we consider your account to be inactive or dormant under our policies and procedures, we also may (to the extent not prohibited by applicable law) refuse to pay items drawn on or payable out of the account, stop sending account statements, and/or stop paying interest on the account. Accounts that are presumed to be abandoned will be escheated to the state in which the account is maintained in accordance with applicable law.

33. Adverse Claims To An Account. If there is a dispute between those of you who have signed a signature card or who have been named as a joint owner by an existing account holder for a joint account, or between the authorized representatives who have signed a signature card for a nonpersonal account, or if one of you demands that we not allow other(s) to withdraw money from the account, or if there is a dispute or if a claim is made by any person or entity about who is authorized to make withdrawals from an account or about who owns or is entitled to any funds on deposit in an account, we may (but do not have to) refuse to allow any withdrawals by anyone until we are satisfied that the dispute is resolved or the claim or demand is withdrawn. At our option, however, we may place a "hold" on funds until resolution of the controversy, or we may accept an indemnity satisfactory to us, or we may deposit the funds with a court until a court order directs us to do otherwise. If we incur attorneys' fees, costs or expenses to resolve the issues specified in this paragraph, you agree to reimburse us for those sums we incur. No interest will be paid by us on funds deposited with a court. We will not be responsible for any damages you may suffer as a result of our refusal to allow you to withdraw money or our refusal to pay checks drawn on your account due to the dispute, demand or claim.

34. Legal Process Affecting Your Account. Should we receive by any means, in any jurisdiction, any legal process or other legal notice that purports to have been issued by or pursuant to the authority of any court or governmental agency for the restriction of account access, or

for the withholding, seizure or turnover of account funds, or otherwise affecting your account or records ("Legal Process"), you hereby instruct us to, and acknowledge and agree that we may comply with, such Legal Process. You further acknowledge and agree that, in complying with Legal Process, we may limit or suspend your access to your account, refuse to permit withdrawals or transfers from or deposits to your account, and/or take such other action as we deem appropriate or legally required in our judgment and discretion, without regard to the ownership or original source of the funds on deposit and without requirement that the Legal Process name all or any of the account owners or signers. We will not contest any Legal Process on your behalf. All Legal Process is subject to our right of setoff and security interest. You waive all interest that may otherwise accrue or have accrued on any balance withheld pursuant to or otherwise affected by Legal Process, and you consent to the assessment of an early withdrawal penalty, if applicable. We may assess a fee against your account if we are served with Legal Process affecting your account, and you agree that, if allowed by applicable law, we may deduct such fee from your account funds before remitting any funds pursuant to any Legal Process. You also agree to pay any research and copy services fees, in addition to administrative and attorney's expenses we incur in responding to Legal Process affecting your account. You authorize us to deduct fees and expenses associated with the Legal Process affecting your account from any of your accounts without notice to you, even if such deductions result in overdrafts in any of your accounts. You may request current information about the fees we may charge in connection with Legal Process from any of our customer service representatives. We will not be responsible for any damages you may suffer as a result of our refusal to allow you to withdraw money or our refusal to pay checks drawn on your account due to any Legal Process affecting your account, or as a result of any other act or omission on our part in connection with any Legal Process.

35. Indemnification; Waiver Of Consequential Damages; Correction of Errors. To the extent allowed by law, you waive the right to recover consequential damages for our action or inaction in handling your deposit account. If we take any action with respect to your account in accordance with your instructions or orders, or in accordance with this Agreement, or if you breach any warranty provided in this Agreement or by law, and we incur any loss, liability, damage, cost or expense (including reasonable attorney's fees) as a result of any claim, demand, action, suit or proceeding brought or made by any party, you agree to indemnify and hold us harmless from and against such loss, liability, damage, cost or expense and to reimburse us for the amount thereof. You further agree that we may at any time, without prior notice to you, adjust, correct or reverse, by debit or credit to your account, any transaction in your account that we believe was made or posted in error.

36. Right Of Setoff; Grant Of Security Interest. You agree that we shall have the right to setoff against any and all funds in your account with us (including any multi-party accounts), and to apply such funds to satisfy any and/or all indebtedness that you owe us and/or any of our affiliates (excluding debt created by a consumer credit transaction under a credit card plan) without any further notice to or demand on you (unless otherwise required by applicable law) and whether the indebtedness to us is now existing or hereafter arising. Unless prohibited by applicable law, we may set off against a multi-party account the full amount of any claim that we have against any one or more of the depositors without regard to the joint or several ownership of the funds on deposit to the account or the original source of those funds and without requirement that the claim be owed to us by all of the depositors rather than only some of them. If your account receives a direct deposit of Social Security or Supplemental Security Income, or any other federal or state benefits exempt from legal process, you consent to our right to exercise setoff against such deposits to satisfy any overdraft and associated fees, or to satisfy any other debt that you owe the bank. If you desire to prevent our exercise of setoff against such deposits, you should arrange not to

have them directly deposited into your account.

In addition to our right of setoff, you hereby grant to us a security interest in the account to cover any debt you owe us, of whatever type, whether you are borrower, guarantor or otherwise. This security interest may not apply to your account if (a) it is an IRA or tax-deferred Keogh Retirement Account, (b) the debt is created by a consumer credit transaction under a credit card plan, or (c) your right of withdrawal arises only in a representative capacity.

37. Communication Consent. You agree that Regions and any of its current and former parent(s), subsidiaries, affiliates, employees, officers, directors, agents, controlling persons and representatives, as well as any other person or company who provides any services in connection with an account (each a "Communicator") may monitor and record telephone calls regarding your account to assure the quality of service or for other reasons. You agree that any Communicator may call you, using an automatic telephone dialing system or otherwise, leave you a voice, prerecorded, or artificial voice message, or send you a text, e-mail, or other electronic message to service your account, to collect any amounts you may owe under your account or for other informational purposes related to your account (each a "Communication"). You agree that any Communicator may call or text you at any telephone number that you provide in connection with your account, including cellular telephone numbers, and may send an e-mail to any email address that you provide in connection with your account. You also agree that any Communicator may include your personal information in a Communication. You agree that Regions will not charge you for a Communication, but your service provider may. In addition, you understand and agree that any Communicator may always communicate with you in any manner permissible by law that does not require your prior consent.

You expressly acknowledge and agree that you are providing the foregoing consent to receive Communications from any Communicator as consideration and as a bargained-for term in a legally binding agreement; further, this consent is irrevocable by you to the maximum extent allowed by law. If you wish to revoke your consent to be contacted at any cellular telephone number using an automatic telephone dialing system and/or an artificial or prerecorded message, Regions will consider your request in its sole and absolute discretion, subject to the requirements of applicable law, but you must make your request by calling Regions at 1-888-19-9227, whereby you will identify your name, the account(s) affected by your notice and your cellular telephone number(s). You further agree that if you no longer own a cellular telephone number or if you change a residential telephone number to a cellular telephone number, you will notify Regions immediately by calling the number above.

38. Changing This Agreement. We have the right to change the terms of this Agreement (including the separate sections hereof), and the fees, charges, features, operational elements (including, without limitation, account numbers), and other terms and conditions applicable to your account and services linked to your account. We also have the right to discontinue certain kinds of accounts, in which case we may transfer your funds to another type of account. In addition, we reserve the right to change your account from one account type to another if (i) transactions being conducted in your account are not appropriate for your type of account or (ii) we are required by law or regulation to convert your account to another account type based upon your account activity. We will notify you should your account type be changed. With respect to disclosures required by federal regulations, we will provide prior written notice to you of any change that is not in your favor in accordance with such federal regulations. Except as otherwise required by applicable law, and/or except as otherwise provided in any notice we may furnish, any other changes to this Agreement will be effective on that date which is 10 days after the date notice is given by either posting the notice in our manned offices where deposits are received or including the notice with or on your statement or in a separate mailing, or by any other means or method described in this Agreement. You agree that a summary of the

change in terms is sufficient notice. If you do not agree to any change or amendment relating to terms and conditions of this Agreement or your account, you must terminate your account within 10 days after the date notice is given to you of the change or amendment. By using your account after any such change or amendment, you agree to that change or amendment. Subject to any notice requirements provided by applicable law, you agree that we may from time to time in our discretion add to, modify, and/or delete administrative and operational features and elements applicable to your account and/or make any changes that are in your favor without notice to you. This Agreement may not be altered, modified or amended by you in any way without our express written agreement signed by our authorized officer. Any attempt by you to alter, modify or amend this Agreement without our express written agreement signed by our authorized officer shall be void and shall have no legal effect. You acknowledge and agree that no practice or course of dealing between you and us, nor any oral representations or communications by you and/or any of our agents, employees or representatives, which vary the terms and conditions of this Agreement shall constitute a modification or amendment of the terms and conditions of this Agreement. If we elect to send a notice of change by mail or other transmission directed to you and there is more than one person on the signature card or receipt for your account we will only send the notice of change to one of you. You acknowledge and are aware that our current customer agreement, pricing schedule and funds availability policy are available to you upon request at our offices.

39. Effect Of Waiver. We reserve the right to waive the enforcement of any of the terms of this Agreement with respect to any transaction or series of transactions and/or with respect to any of our customers. Any such waiver will not affect our right to enforce any of our rights with respect to other customers, or to enforce any of our rights with respect to other or later transactions. Otherwise, no failure by us to exercise, and no delay by us in exercising, any right or remedy shall operate as a waiver thereof or constitute an amendment of the terms of this Agreement. Where this Agreement or applicable law permits us to take action, or not to take action, in our discretion on any matter, any action, or inaction, on our part with respect to such matter shall not obligate us to repeat such action, or inaction, with respect to similar matters that may subsequently arise.

40. Waiver Of Notice. You waive and agree that we may waive certain legal requirements called presentment, demand for payment, protest, notice of protest and notice of dishonor with respect to any and all items cashed by us or credited to or charged against your account.

41. Notices; Updating Contact Information. Any notice we send you will be considered effective when it is deposited in the U.S. Mail to the address for the account in our records or, at our option, when it is transmitted or made available to you pursuant to any other method to which you have agreed in connection with your account, including with respect to changes or amendments to this Agreement, any means or method described in this Agreement. You agree to notify us immediately of any change in your name, your residence or mailing address or phone number. We may use any source available to us to update and validate the accuracy of this information, but we have no obligation to do so. If you provide us with an email address, you agree that we may send notices and communications to you electronically at that email address, subject to the requirements of applicable law, and you agree promptly to notify us of any change in the email address. Except to the extent otherwise required by applicable law or regulation, you agree that we are under no obligation to re-send, re-transmit, or otherwise deliver to you any notices or communications that we have transmitted to the email address you have provided and that have been returned "undeliverable" or otherwise rejected for delivery. Unless otherwise provided in this Agreement, notice from you must be in writing. Written notice from you will not be deemed given to us until it has been received by one of our representatives who is authorized by us to consider and act on your notice. If we are required

by law or agreement with you to act on any notice you have given to us, you agree that we will have a reasonable opportunity to act. Our failure to act or delay in acting on any notice from you does not constitute our acquiescence in, acceptance or acknowledgement of, or agreement or consent to the terms or substance of your notice. If your account is a multi-party account, we can notify any one of you and the notice will be effective for all of you. Any one of you can notify us, and we will consider it to be notice from all of you.

42. Account Disclosures. Additional terms and conditions are contained in any disclosures provided to you.

43. Force Majeure. You agree that we will not be liable for any loss or damage due to delays or failure to perform resulting from circumstances beyond our reasonable control (such as telecommunication or electrical outages and malfunctions, postal strikes or delays, computer system failures or natural disasters). The time, if any, required for such performance under this Agreement shall be automatically extended during the period of such delay or interruption.

44. Applicable Law. This Agreement and your deposit relationship with us will be governed by the substantive laws (excluding laws of conflict) and regulations of the United States and the state in which your account is established, except that Alabama law will govern the maximum interest rate that may be payable to us. We reserve all of our rights with respect to the preemptive effect of any applicable federal laws and/or regulations. Our rights under this Agreement and applicable law are cumulative and not exclusive.

45. Conflicts With Applicable Law And Disclosures. To the extent this Agreement conflicts with any applicable provision of the Uniform Commercial Code, this Agreement shall control; otherwise, this Agreement supplements but does not displace the Uniform Commercial Code. If any provision of this Agreement conflicts with any applicable disclosure statement we have given you pursuant to the requirements of any law, such as the federal Electronic Fund Transfer Act, the federal Truth-in-Savings Act, the federal Expedited Funds Availability Act, or the Check 21 Act, the provisions of such disclosure statement shall control.

46. Entire Agreement; Other Programs And Services. You agree to be bound by any and all operating rules, circulars and regulations imposed by any networks, funds transfer systems (including, without limitation, the Federal Reserve) and/or clearinghouses in which we participate and/or which process transactions that affect your account. You further agree to be bound by any agreements we have with other financial institutions with respect to the processing or handling of transactions that affect your account. This Agreement constitutes the current and entire general deposit agreement between you and us with respect to the account(s) for which this Agreement has been delivered, and any and all prior general deposit agreements with respect to such account(s) are superseded by this Agreement. Additional and/or specific rules, regulations, disclosures and/or agreements may be applicable to certain or particular accounts or specialized account programs and/or to bank services linked to an account, such as electronic or online banking. You agree that the terms and conditions set forth in such rules, regulations, disclosures and other agreements continue in effect and are intended to be in addition to and not in substitution of the terms and conditions set forth in this Agreement. To the extent there is a conflict, the terms and conditions set forth in such rules, regulations, disclosures and other agreements shall govern unless otherwise required by applicable law, subject, however, to the provisions of the immediately following paragraph.

In the event we provide any operational service to you in connection with any deposit account you maintain with us, and to the extent you have a right to terminate the agreement that governs the provision and use of such operational service (the "Operational Service Agreement"), you may not terminate the Operational Service Agreement without first giving us written notice of termination (i) at least 30 calendar days in advance of the effective date of such termination or (ii) according to the applicable notice interval provided in the Operational Service Agreement (if any), whichever

of (i) or (ii) shall result in greater advance notice to us. The terms of this paragraph do not grant you a right of termination with respect to any Operational Service Agreement, but only govern the timing of notification of termination to the extent necessary to qualify the related deposit account as an operational deposit for purposes of liquidity coverage laws or regulations to which we are subject. Whether you have any such right of termination shall be governed by the terms of the Operational Service Agreement or applicable law. In the event of a conflict between the terms of this paragraph and the terms of any Operational Service Agreement, the terms of this paragraph shall govern and control to the extent necessary to qualify your deposit account as an operational deposit. For purposes of this paragraph, the terms "operational deposit" and "operational service" shall have the meanings respectively ascribed to them by 12 CFR Part 249, as amended or as replaced by any successor law, regulation or rule binding on us.

47. Construction Of Agreement. The captions and headings used in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders where the context so requires. The use of the singular form shall include the plural and the use of the plural shall include the singular where the context so requires. No termination of any account will affect your liability or obligations under this Agreement accruing prior to the date of termination or any provisions of this Agreement which, by their terms or nature, are intended to survive account termination.

48. Severability. If any provision of this Agreement or the application thereof to any persons or circumstances shall irreconcilably conflict with or be invalid or unenforceable under applicable law, such provision shall be deemed automatically reformed and amended to the extent, and only to the extent, necessary to render it valid and enforceable under such applicable law as of the effective date thereof, and such reformed or amended provision shall be binding without necessitating the formal amendment of this Agreement by the procedures specified herein; provided, however, that if such automatic reformation and amendment of such provision shall be unreasonable or impracticable in the context of this Agreement, or shall significantly conflict with the purpose, intent, and/or any other material terms or provisions of this Agreement, then such provision shall be deemed severed from this Agreement with respect to the persons or circumstances as to which such provision shall be invalid or unenforceable. The invalidity or unenforceability of any one or more of the provisions of this Agreement, or the severance of any provision from this Agreement pursuant to the terms of this Agreement, shall not affect the validity or enforceability of the remaining provisions, and such remaining provisions shall continue in full force and effect to the fullest extent permitted by law.

49. Illegal Purposes; Offensive Conduct; Cryptocurrency. You agree not to use your account for any illegal or fraudulent purpose or in breach of any contract or agreement by which you are bound, and you agree to comply with all applicable laws, rules, and regulations concerning your account and/or the use of your account. You agree not to use your account to engage in any internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction. We reserve the right to decline any transaction that we believe is an internet or online gambling transaction or a high-risk transaction. If at any time we suspect any irregular, unauthorized, fraudulent or illegal activity in connection with your account, we may, in our discretion and without limiting or waiving any other rights or remedies available to us, freeze the funds in the account and in other accounts you maintain with us, without any liability to you and without notice to you (except such notice as may be required by applicable law), pending resolution of the matters, transactions or activity in question. We reserve the right in our sole and absolute discretion to return or to decline to pay any item presented against your account that we reasonably believe is related to the purchase, sale or exchange of

any decentralized, non-fiat virtual currency, cryptocurrency, or any other digital currency or money that relies on distributed ledger or blockchain technology, and you agree that we shall have no liability to you whether we decline to pay or whether we pay any such item. You certify that you have legal capacity under applicable law to enter into this Agreement. You further agree not to use your account in any way that may, in our judgment, impute to us or make us appear to endorse conduct or activity that could in any way be considered offensive, harassing, defamatory, privacy invading, abusive, threatening, inflammatory, scandalous, harmful, vulgar, obscene, or otherwise objectionable (e.g., by printing offensive messages or symbols on your checks).

50. Customer Identification.

- (a) **Customer Identification Program.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. What this means to you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.
- (b) **Beneficial Ownership.** To help the government fight financial crime, you understand and agree that federal regulation requires us to obtain, verify and record information about the Beneficial Owners of Legal Entity Customers. If you are a Legal Entity Customer, you agree to provide us immediately with information and documentation that we request about both your Beneficial Owners and any other person(s) or entity(ies) having any direct or indirect equity interest in you. Further, you certify and confirm that you will notify us immediately – and in no event no later than at the renewal of any Time Deposit or Certificate (as defined in Section II: Time Deposits/Certificates of Deposit) or any other account – should you have any changes to your Beneficial Owners or any other person(s) or entity(ies) having any direct or indirect equity interest in you. Should you fail to notify us of any such change, you confirm and certify to us that the Beneficial Owner and other ownership information previously provided is complete, accurate and up-to-date. Nothing in this paragraph shall be construed to obligate us to renew any Time Deposit or Certificate.

“Beneficial Owner” has its meaning set forth in 31 C.F.R. § 1010.230(d) and includes each individual, if any, who owns, directly or indirectly, 25% or more of the equity interests of a Legal Entity Customer, as well as a single individual with significant responsibility to control, manage or direct a Legal Entity Customer.

“Legal Entity Customer” has its meaning set forth in 31 C.F.R. § 1010.230(e) and includes a corporation, limited liability company, or other entity that is created by acting of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed under the laws of a foreign jurisdiction that opens an account.

51. Telephone Transactions.

VRU Service. Our automated telephone transaction service (“VRU Service”) allows you to check account balances, place stop payment requests, order checks, transfer funds among eligible accounts, and access other account information using your touchtone telephone and a personal identification number (PIN). You may activate the VRU Service by visiting one of our branches or by calling us at our customer service number **1-800-REGIONS (734-4667)**. By requesting

us to activate the VRU Service, you authorize and request the creation and issuance of the PIN, and you agree that the use of the PIN for the authorization and authentication of transactions through the VRU Service constitutes a commercially reasonable security procedure under applicable law. You agree to be bound by and to follow any rules, regulations, and instructional materials or guides we impose or provide from time to time in connection with the VRU Service (whether imposed or provided in writing or orally through the VRU Service). Transactions entered through the VRU Service may not result in an immediate transfer of funds or immediate funds availability because of the time required to process the transaction. Any transaction entered through the VRU Service after 6 p.m. Central Time (or such other times as may be disclosed), or on Saturdays, Sundays, or holidays, may not post to your account until we process the transaction the next business day. To the fullest extent permitted by law, and subject to the provisions of Section V – Electronic Funds Transfer Disclosure to Our Consumer Customers, you agree to be bound by all transactions entered through the VRU Service with your PIN. You agree (a) not to provide your PIN to any person or entity not authorized to use the PIN; (b) not to write your PIN on anything likely to fall into the wrong hands, and not to do anything else that would cause or increase the risk of unauthorized or fraudulent use of the PIN; and (c) to keep the PIN in a safe place and to otherwise protect the PIN from fraudulent or unauthorized use. You also agree to notify us at once if you believe that your PIN has been lost, stolen, obtained by an unauthorized person or used fraudulently, or if you believe that any transaction on your account is in error, or if you believe your account has been or may be subject to any fraudulent or unauthorized use whatsoever. The fastest way to notify us is by calling us toll-free at **1-800-REGIONS (734-4667)**. Subject to notice requirements provided by applicable law, we may cancel, discontinue, suspend, or change the terms of the VRU Service, or expand or reduce the functions thereof, at any time without notice to you.

Other. We have no obligation to effect account transactions requested by telephone and without the use of a PIN or other security procedures we require, and you acknowledge and agree that we have no plan or agreement for such transactions. To the extent we allow such transactions, you acknowledge and agree that such transactions are performed solely as an occasional courtesy and accommodation to you, and such transactions are in any event subject to the terms of this Agreement and our operational rules and policies (including, without limitation, our Funds Availability Policy). If you make a telephone request to one of our customer service representatives to effect an account transaction, you agree to provide such verification information as we may require in our discretion. To fullest extent allowed by law, and subject to the other express provisions of this Agreement, you release us from, and agree to indemnify and hold us harmless as to, any and all claims, liability, damages (including, without limitation, incidental and consequential damages), losses, expenses (including without limitation reasonable attorneys' fees), and/or causes of action relating to or arising out of the performance, nonperformance, or erroneous performance of any account transaction request made to any customer service representative by telephone, whether authorized or unauthorized, and whether or not caused, in whole or in part, by our negligence.

52. Overdraft Protection. With our consent, certain savings and money market accounts, credit card or line of credit accounts, or other accounts as we may designate or permit from time to time (collectively hereinafter the "designated funding account") may be established for use in covering overdrafts on most of our checking accounts and/or on other deposit accounts as we may designate from time to time (collectively hereinafter the "protected account"). You authorize us to transfer funds from or make charges to your designated funding account to cover overdrafts as provided in this section. Subject to the terms, conditions and limitations of this section, if we allow you to use a designated funding account for Overdraft Protection, we will pay any item which

constitutes and creates an overdraft in your protected account and we will automatically transfer sufficient funds from your designated funding account (in multiples of the amount designated by us from time to time as transfer increments) to cover the overdraft. If the available credit or balance in your designated funding account is insufficient to cover any overdraft item(s) in your protected account, you accept the risk that we may transfer the maximum amount available in your designated funding account and also return your item(s) unpaid due to insufficient funds or pay the item(s) and create an overdraft in your protected account, and you also accept the risk that we may, in our sole discretion, overdraw your designated funding account in order to provide sufficient funds to cover the overdraft item(s) in your protected account. If (i) more than one item is presented for payment at the same time and (ii) the sum of the items so presented would create an overdraft in your protected account if all of the items were paid and (iii) the available credit or balance in your designated funding account is insufficient to cover the overdraft which would be created by payment of all the items, you agree that we may pay any of the items we choose in any order we choose. We will not be responsible for any loss you may incur due to the transfer of funds, the method used to pay items, the failure to transfer funds, or a mistake in the transfer of funds in connection with an overdraft. You further understand and agree that we are not obligated to link more than one protected account to a designated funding account for the purpose of Overdraft Protection, nor are we obligated to link more than one designated funding account to any protected account. Should you request the linkage of your protected account to a designated funding account, you agree not to use the service until you receive our notice confirming the relationship between the two accounts for the purpose of Overdraft Protection. The notice will contain the account numbers (or truncated account numbers) of the two accounts and will be generated each time you change related accounts or upon termination of the Overdraft Protection service. We may in our discretion, and without obligation, initiate a transfer of funds from your funding account to your protected account (in multiples of the amount designated by us from time to time as transfer increments) to pay any fees that have been assessed against and overdrawn your protected account.

You agree to pay our standard transfer fee for Overdraft Protection then in effect for each transfer of funds from a designated funding account to your protected account in connection with any overdraft item presented against your protected account. In the event we decline or are unable for any reason whatsoever, to make a transfer from your designated funding account and (i) we return an item unpaid due to insufficient funds in your protected account or (ii) in our sole discretion, we pay the item, thereby creating an overdraft in your protected account, you agree to pay our standard overdraft, nonsufficient funds, and/or returned item fee then in effect, subject to the requirements of applicable law. In the event any transfer from your designated funding account is insufficient to cover overdraft items presented against your protected account (including, but not limited to, a transfer of all remaining available funds from your designated funding account) and (i) we return any item(s) unpaid due to insufficient funds or (ii) in our sole discretion, we pay any item(s), thereby creating an overdraft in your protected account, you agree to pay both our standard transfer fee and overdraft, nonsufficient funds, or returned item fee then in effect, as applicable, subject to the requirements of applicable law. In the event we overdraw your designated funding account in order to provide funds to cover any overdraft item(s) in your protected account, you agree to pay both our standard transfer fee and any fees then in effect for an overdraft in your designated funding account.

If your designated funding account is a deposit account, our funds availability policies govern when funds deposited to your designated funding account will be available for covering overdrafts in your protected account. If your designated funding account is a deposit account and all remaining funds are transferred from your designated funding account, you must promptly deposit additional funds in the designated funding

account in order to maintain the Overdraft Protection link with your protected account. Otherwise, the Overdraft Protection link between your protected account and your designated funding account will be terminated and you will no longer have Overdraft Protection from that designated funding account. In that event, you must contact us if you wish to reestablish the link between your protected account and your designated funding account. If your designated funding account is a deposit account, we may withhold a nominal amount of funds from any transfer in order to prevent the termination of the link between your protected account and designated funding account, but we have no obligation to do so. Without limiting the other terms and conditions of this section, in the event your Overdraft Protection is cancelled or terminated for any reason, you agree that you will thereafter pay our standard overdraft, nonsufficient funds, or returned item fee, as applicable, in effect for each item presented for payment against your protected account which we, in our sole discretion, (i) return unpaid due to insufficient funds or (ii) pay, thereby creating an overdraft in your protected account, subject to the requirements of applicable law.

Your designated funding account may be subject to separate terms and conditions which govern such account, including the transfer of funds out of such account. The terms of this section do not supersede or replace such separate terms and conditions. Credit accounts that may serve as designated funding accounts are subject to credit approval. We reserve the right to terminate the Overdraft Protection service for your protected account at any time in our discretion, with or without notice to you.

53. Tax Issues. We make no representation as to the tax consequences relating to any deposit or account covered by this Agreement (including, but not limited to, individual retirement accounts). If you have questions concerning the federal or state tax consequences resulting from your purchase, ownership, use, liquidation, withdrawal, or permitted assignment of your account, you should contact your tax advisor.

54. Backup Withholding. Under the federal income tax law, you are subject to certain penalties as well as withholding of tax if: (1) You fail to furnish your certified taxpayer identification number to us each time an account is opened; (2) The Internal Revenue Service notifies us that you furnished an incorrect taxpayer identification number; or (3) We are notified that you are subject to backup withholding under applicable provisions of the Internal Revenue Code.

55. Special Terms Regarding Electronic Funds Transfers For Non-Consumer Accounts. If your account is not established primarily for personal, family, or household purposes, you acknowledge and agree that Section V – Electronic Funds Transfer Disclosure to Our Consumer Customers does not apply to your account or to any electronic funds transfers to or from your account. To the fullest extent permitted by law, you agree that in no event will we be liable to you under this Agreement, or in performing or failing to perform, or in erroneously performing any electronic transactions, for special, indirect or consequential damages, including, without limitation, lost profits or attorneys' fees, even if we are advised in advance of the possibility of such damages, or for any other damages whatsoever, notwithstanding any other provisions of this Agreement to the contrary. You acknowledge and agree that this Agreement and any other related agreements with us set forth security procedures for electronic banking transactions that are commercially reasonable. You agree to be bound by any and all electronic fund transactions to or from your account, whether authorized or unauthorized, and we shall have no liability to you for any unauthorized electronic fund transaction or inquiry, except as otherwise expressly provided in a written agreement between you and us, or as required by applicable law. You agree that we, in our discretion, may from time to time impose limitations and restrictions on the number, frequency, and dollar amount of electronic transactions, as well as restrictions on the types of available transactions, with or without notice to you. In addition, you agree to comply with any

limitations or restrictions that otherwise apply to your account(s) and may affect electronic funds transfers or inquiries.

56. Special Terms For Pass-Through Deposit Insurance Coverage.

If you have opened a deposit account on behalf of the beneficial owner(s) of the funds in the account (for example as a trustee, agent, nominee, guardian, executor, custodian or funds held in some other capacity for the benefit of others), those beneficial owners may be eligible for "pass-through" insurance from the FDIC. This means the account could qualify for more than the standard maximum deposit insurance amount (currently \$250,000 per depositor in the same ownership capacity). If the account has transactional features, you as the account holder must be able to provide a record of the interests of the beneficial owner(s) in accordance with the FDIC's requirements as specified below.

The FDIC has published a guide that describes the process to follow and the information you will need to provide in the event we fail. That information can be accessed on the FDIC's website at www.fdic.gov/deposit/deposits/brokers/part-370-appendix.html. In addition, the FDIC published an Addendum to the guide, section VIII, which is a good resource to understand the FDIC's alternative recordkeeping requirements for pass-through insurance. The Addendum sets forth the expectations of the FDIC for pass-through insurance coverage of any deposit accounts, including those with transactional features. The Addendum will provide information regarding the records you keep on the beneficial owners of the funds, identifying information for those owners, and the format in which to provide the records to the FDIC upon bank failure. You must be able to provide this information in a timely manner in order to receive payment for the insured amount of pass-through deposit insurance coverage as soon as possible. You will have an opportunity to validate the capability to deliver the required information in the appropriate format so that a timely calculation of deposit insurance coverage can be made; further instructions relating to this opportunity will be communicated at a later time.

You agree to cooperate fully with us and the FDIC in connection with determining the insured status of funds in such accounts at any time. In the event of a bank failure, you agree to provide the FDIC with the information described above in the required format within 24 hours of a bank failure. As soon as a receiver is appointed, a hold will be placed on your account and that hold will not be released until the FDIC determines that you have provided the necessary data to enable the FDIC to calculate the deposit insurance. You understand and agree that your failure to provide the necessary data to the FDIC may result in a delay in receipt of insured funds and may result in legal claims against you from the beneficial owners of the funds in the account. If you do not provide the required data, your account may be held or frozen until the information is received, which will cause a delay when the beneficial owners could receive funds. Despite other provisions in this Agreement, this section survives after a receiver is appointed for us, and the FDIC is considered a third-party beneficiary of this section.

SECTION II: TIME DEPOSITS/CERTIFICATES OF DEPOSIT

The terms and conditions contained in this Section II supplement the other terms and provisions of this Agreement and apply to any time deposit accounts ("Time Deposits") and certificates of deposit ("Certificates") that you have with us, including, as applicable, Time Deposits or Certificates purchased for an Individual Retirement Account. Time Deposits and Certificates are further subject to terms and provisions that may be printed on your Time Deposit receipt or Certificate, and you acknowledge and agree that such terms and provisions are part of this Agreement. In the event of a conflict between the terms set forth herein and the terms and provisions printed on your Time Deposit receipt or Certificate, the terms and provisions printed on your Time Deposit receipt or Certificate will govern and control.

INTEREST ACCRUAL INFORMATION

Interest will begin to accrue on the business day we receive your deposit. We use the daily balance method to calculate the interest on Time Deposits and Certificates. This method applies a daily periodic rate to the principal in the account each day. Interest is compounded daily for all Time Deposits and Certificates.

INTEREST PAYMENT METHOD AND FREQUENCY

You may elect to have your interest deposited into your Regions checking, savings or money market account, sent to you by check, or credited to your Time Deposit or Certificate monthly, quarterly, semiannually, annually or – if the term is 365 days or less – at maturity. Interest on personal Time Deposits or Certificates with terms of 366 days or longer must be paid or credited at least annually. Your interest payment method and frequency are designated on your Time Deposit receipt or Certificate, as applicable, as well as on your Pre-Maturity and Renewal Confirmation Notices.

ANNUAL PERCENTAGE YIELD (APY)

The APY is a percentage rate reflecting the total amount of interest that would be earned on the account based on the interest rate and the frequency of compounding. The APY assumes interest will remain on deposit until maturity. Any withdrawal will reduce earnings. You must maintain a daily balance equal to the amount of your initial deposit or renewal amount to earn the stated interest rate and APY.

AUTOMATIC RENEWAL

For any renewable Time Deposit or Certificate, your deposit will be automatically renewed for the same term as indicated on your Time Deposit receipt or Certificate, as applicable, and at the interest rate established by us for your type of deposit at the time of each renewal, provided that your type of deposit is still a part of our service offering at the time of renewal. If you allow your Time Deposit or Certificate to automatically renew, it will renew on the date your prior deposit matured. Should you wish to prevent the deposit from being renewed, you must contact us in writing at any time before the maturity date, but not later than the grace period defined below. If your type of deposit is not a part of our service offering at the time of renewal, we will notify you accordingly, and the funds will be paid to you or deposited into a different type of account pursuant to this Agreement and our disbursement procedures in effect at that time, and/or pursuant to any option we have given you in our notification to you which you have elected.

PRE-MATURITY NOTICE

For Time Deposits or Certificates with terms greater than thirteen (13) days, a notice will be sent prior to maturity indicating the date on which your deposit will mature. If the term of your deposit is thirteen (13) days or less, you will not receive a notice.

RENEWAL CONFIRMATION NOTICE

For Time Deposits or Certificates with terms greater than thirteen (13) days, a notice will be sent after the grace period on your matured deposit has expired, indicating your new interest rate and maturity date. If the term of your deposit is thirteen (13) days or less, you will not receive a notice.

GRACE PERIOD

For seven to thirty-one (7-31) day Time Deposits and Certificates, you may withdraw all or any part of your deposit without penalty not more than one (1) business day after a maturity date, however, no interest from the date of maturity will be paid on any funds withdrawn in this manner. For Time Deposits and Certificates with terms greater than thirty-one (31) days, you may withdraw all or any part of your deposit without penalty not more than ten (10) calendar days after a maturity date. However, no interest from the date of maturity will be paid on

any funds withdrawn in this manner. Any person named on the Time Deposit receipt or Certificate may make withdrawals during a grace period.

NON-AUTOMATICALLY RENEWABLE; FINAL MATURITY NOTICE

A notice will be sent prior to maturity indicating the date on which your deposit will mature. On that date, the principal and any unpaid interest will be disbursed as indicated on your Time Deposit receipt or Certificate.

EARLY WITHDRAWAL

Early withdrawal is withdrawing all or part of the principal of any deposit, prior to maturity, except withdrawals during a grace period as defined above. Early withdrawal is also defined as amending the terms of your Time Deposit or Certificate to reduce the maturity period designated on the Time Deposit receipt or Certificate as the "Term." To the fullest extent allowed by law, we reserve the right not to permit any early withdrawal, and we shall have no obligation to agree to an amendment of the terms of your Time Deposit or Certificate. Whether we permit any early withdrawal or agree to amend the terms of your Time Deposit or Certificate shall be within our sole and absolute discretion.

MULTIPLE OWNERSHIP;

AVAILABILITY OF FUNDS FOR WITHDRAWAL

In the event that any Time Deposit or Certificate is owned by two or more depositors, as indicated in our records, we may allow any depositor, acting alone, to withdraw all or any of the Time Deposit or Certificate funds. Our payment of Time Deposit or Certificate funds to any such depositor is a full discharge of our liability to all depositors in the amount of the payment. However, we reserve the right to require, in our sole and absolute discretion, the signature, assent or acknowledgement of all depositors in connection with any withdrawal of funds from a Time Deposit or Certificate that is not made during the grace period. We reserve the right to refuse your request to withdraw the funds in your Time Deposit or Certificate until such time as the funds used to purchase the Time Deposit or Certificate have become collected funds.

EARLY WITHDRAWAL PENALTY

In the event of any early withdrawal, you must pay the applicable early withdrawal penalty described below, provided that we reserve the right to charge a minimum early withdrawal penalty on any early withdrawal equal to seven days' simple interest on the amount withdrawn at the interest rate being paid on your deposit at the time of withdrawal. Withdrawals made during a grace period are not subject to an early withdrawal penalty, and an early withdrawal penalty may not apply to withdrawals made at certain times during the term of your deposit, as provided below. Also, the early withdrawal penalty may be waived in the event of death of any depositor on the Time Deposit or Certificate, or if any depositor is determined to be legally incompetent by a court or other administrative body of competent jurisdiction. With regard to IRA Time Deposits and Certificates, early withdrawal penalties do not apply if the withdrawal reason was due to: death, total and permanent disability, substantially equal periodic payments, seven day revocation (provided that seven day revocation may result in forfeiture of interest earned), excess contribution, divorce or you are aged 59½ or older. Note that early withdrawal of IRA funds may also be subject to other penalties and tax consequences as provided by applicable law.

As applicable, if you receive periodic distributions of interest or if you have not earned enough interest to pay the required early withdrawal penalty, some or all of the penalty may be deducted from the principal amount of your Time Deposit or Certificate. Any early withdrawal penalty will be payable immediately upon withdrawal.

The following early withdrawal penalties apply to Time Deposits and Certificates opened before April 18, 2014, and also apply during renewal terms for such Time Deposits and Certificates that commenced before April 18, 2014:

1. If the term of your deposit is 31 days or less, you must pay an early withdrawal penalty equal to the total amount of interest that would have been earned on the amount withdrawn had such amount remained on deposit for the entire term of the deposit until maturity. The penalty shall be calculated at the interest rate being paid on your deposit at the time of withdrawal.

2. If the term of your deposit is 32 days to and including 181 days, you must pay an early withdrawal penalty on the amount withdrawn equal to 31 days' simple interest at the interest rate being paid on your deposit at the time of withdrawal.

3. If the term of your deposit is 182 days to and including 364 days, you must pay an early withdrawal penalty on the amount withdrawn equal to 90 days' simple interest at the interest rate being paid on your deposit at the time of withdrawal.

4. If the term of your deposit is 365 days or more, you must pay an early withdrawal penalty on the amount withdrawn equal to 182 days' simple interest at the interest rate being paid on your deposit at the time of withdrawal.

5. For IRA Time Deposits and Certificates, a minimum penalty of \$25 will apply.

The following early withdrawal penalties apply to Time Deposits and Certificates opened on or after April 18, 2014, and also apply during any renewal term for any Time Deposit or Certificate that commenced on or after April 18, 2014:

1. If the term of your deposit is 31 days or less, you must pay an early withdrawal penalty equal to the total amount of interest that would have been earned on the amount withdrawn had such amount remained on deposit for the entire term of the deposit until maturity. The penalty shall be calculated at the interest rate being paid on your deposit at the time of withdrawal.

2. If the term of your deposit is 32 days to and including 364 days, you must pay an early withdrawal penalty equal to (i) all interest earned on the amount withdrawn as of the date of withdrawal or (ii) 1% of the amount withdrawn, whichever is less. However, we may collect a minimum penalty of seven days' simple interest on the amount withdrawn at the interest rate being paid on your deposit at the time of withdrawal.

3. If the term of your deposit is 365 days or more, you must pay an early withdrawal penalty equal to (i) all interest earned on the amount withdrawn as of the date of withdrawal or (ii) 2% of the amount withdrawn, whichever is less. However, we may collect a minimum penalty of seven days' simple interest on the amount withdrawn at the interest rate being paid on your deposit at the time of withdrawal. If the original maturity of your deposit is 730 days or more, no early withdrawal penalty will apply to any withdrawals made during the last 31 calendar days of your deposit term, except for withdrawals made within six days after the date of deposit (if we allow additional deposits during such period) and withdrawals made within six days after any previous partial early withdrawal, which withdrawals will be subject to an early withdrawal penalty equal to seven days' simple interest on the amount withdrawn at the interest rate being paid on your deposit at the time of withdrawal.

TRANSFERABILITY

Time Deposits and non-negotiable Certificates are not transferable. This means that you may not transfer the ownership of your Time Deposit or non-negotiable Certificate to anyone without our written consent, which may be granted or withheld in our sole and absolute discretion. Any transfer is not effective until we have given you written consent and note the transfer in our records. Certificates that are negotiable instruments under applicable law are transferable only upon proper endorsement and registration at the Regions location which initially issued the Certificate.

NEGOTIABILITY

Time Deposits are not negotiable. Certificates may be negotiable,

subject to the requirements of applicable law, and the balance will be paid to you or any transferee of a negotiable Certificate only upon proper presentment of the Certificate, with all necessary endorsements, to us. Seven to thirty-one (7-31) day Certificates are not negotiable.

REPORTING INTEREST EARNED

The Internal Revenue Service requires us to report interest, on which you may owe income tax, for the calendar year in which it is paid to you. For Time Deposits or Certificates with terms greater than one (1) year with interest paid at maturity (grandfathered accounts only), we will report the interest your deposit has earned, whether or not it is paid. Each year we will furnish you a statement that reflects the interest paid to you during the preceding year. All interest will be reported as having been earned by the person named first on the account.

ADDITIONAL DEPOSITS

For automatically renewable Time Deposits with maturities greater than thirty-one (31) days, you may make additional deposits only during the grace period defined above, with the exception of the 18 Month Variable Rate IRA as described in this Section II. Additional deposits are not allowed on any Certificate or on automatically renewable Time Deposits with maturities of seven to thirty-one (7-31) days. If you have established an 18 Month Variable Rate IRA Time Deposit, additional deposits of not less than \$50 will be accepted. Additional deposits will not extend the maturity date of this deposit.

TERMINATION

If you fail to comply with any terms or conditions of this Agreement, you agree that we may terminate your Time Deposit or Certificate at our discretion, in addition to exercising any other rights or remedies we may have, which we may exercise in our sole and absolute discretion. In this event, we will remit to you any funds held by us, including any interest earned, less any applicable early withdrawal penalties, and we will have no further obligation to you.

ADDITIONAL CONDITIONS SPECIFIC TO CERTIFICATES

Payment of principal and any unpaid interest will be made to you only upon proper presentment of your Certificate.

SECTION III: INDIVIDUAL RETIREMENT ACCOUNTS

The terms and provisions of this Section III supplement the other terms and provisions of this Agreement and apply to any Regions IRA you may have with us. This includes: Traditional IRA, Roth IRA, SEP IRA and Coverdell Education Savings Account. This Section III also applies to deposits covered by this Agreement that are held in qualified retirement plans.

Regions IRAs are further subject to the information and provisions in your Individual Retirement Account and Disclosure Statement, your Roth IRA and Disclosure Statement, your Coverdell Education Savings Account and Disclosure Statement, or your 5305-SA, and on your IRA Deposit Receipt(s) ("Receipt(s)"), and you acknowledge and agree that such information and provisions are part of this Agreement. In the event of a conflict between the terms set forth herein and the terms and provisions of such IRA disclosures statements and/or Receipts, the terms and provisions of such disclosures, statements, and Receipts will govern and control.

INTEREST RATE

The interest rate stated on your Receipt is guaranteed until its original maturity, subject to the exceptions outlined in this Section III.

18-MONTH VARIABLE IRA

The interest rate on this deposit is equal to the discount rate of the

new 6-month Treasury bill plus 1/4%. The discount rate of the 6-month Treasury bill is determined by the weekly auction of the Federal Reserve. To this extent, the interest rate and APY earned on this deposit are subject to change weekly and may be deemed variable rates. Fluctuations in the discount rate of the 6-month Treasury bill could cause an interest rate and APY in a subsequent week to be less than the interest rate and APY in an earlier week. This deposit is not available for Roth IRA or Coverdell Education Savings Accounts.

MONEY MARKET IRA

The interest rate on this deposit is set by Regions management in its sole discretion. To this extent, the interest rate and APY earned on this deposit are subject to change daily and may be deemed variable rates.

AUTOMATIC RENEWAL OF DEPOSIT

See Section II of this Agreement for details regarding automatic renewal of your IRA Time Deposit or Certificate. If your deposit is not a part of our service offering at the time of renewal, the funds will be deposited into the Money Market IRA unless we have received different instructions from you in writing.

ADDITIONAL DEPOSITS

You may make additional deposits to your account only during the grace period for Time Deposits or Certificates as defined in Section II except as noted in this Section III.

18-MONTH VARIABLE IRA

Additional deposits of not less than \$50 will be accepted. Additional deposits will not extend the maturity date of the deposit.

MONEY MARKET IRA

Additional deposits of not less than \$25 will be accepted.

AUTOMATED DEPOSITS

Deposits made to your IRA through payroll deduction or telephone banking will be made as "current year" contributions only.

INTEREST PAYMENT FREQUENCY

Unless otherwise requested, interest will be credited to your IRA account quarterly.

INTEREST AND PRINCIPAL DISBURSEMENTS/WITHDRAWALS

All requests to withdraw funds from the IRA must be done in writing. Please refer to the applicable disclosure statement governing your type of account (Traditional, Roth, or Coverdell Education Savings Account) for possible IRS penalties.

Should you elect to receive interest or principal distributions, your payment method and frequency are designated on your IRA Request for Distribution as well as on your Pre-Maturity and Renewal Confirmation notices.

PAYMENT METHOD

Your interest or principal can be deposited directly into your Regions checking or savings account, or paid by cashier's check. You may be charged a cashier's check fee.

PAYMENT FREQUENCY

You may receive your interest or principal monthly, quarterly, semi-annually or annually.

EARLY WITHDRAWAL PENALTY

You should refer to Section II of this Agreement for applicable terms relating to early withdrawal penalties for IRA Time Deposits or Certificates.

TERMINATION

You may elect to close your account at any time and withdraw your funds less any applicable withdrawal penalties. Notification to close your account must be done in writing. Furthermore, if you fail to comply with any of the terms and conditions of this Agreement, we may terminate your account and resign as custodian of your IRA (refer to your applicable Disclosure Statement or Receipt). In addition to exercising any other rights or remedies we may have, which we may exercise in our sole and absolute discretion. In this event, we will remit to you or your designated successor custodian any funds held by us, including any interest earned, less any applicable early withdrawal penalties. We will have no further obligation to you.

TAX CONSEQUENCES

We make no representation as to the tax consequences relating to any individual retirement account covered by this Agreement. If you have questions concerning the federal or state tax consequences resulting from your purchase, ownership, use, liquidation, or withdrawal of your IRA deposit, you should contact your tax advisor.

SECTION IV: FUNDS AVAILABILITY POLICY

1. Your Ability To Withdraw Funds. Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available no later than the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays and federal holidays. If you make a deposit on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit on a day that is not a business day or on a day we are not open, we will consider that the deposit was made on the next business day we are open. Our self-service deposit-taking facilities (e.g., ATMs and night depositories) will display any applicable cutoff times for determining when a deposit is received. If you make a deposit at one of these facilities before the displayed cutoff time on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit at one of these facilities on a day that is not a business day, or on a day we are not open, or after the displayed cutoff time on a business day we are open, we will consider that the deposit was made on the next business day we are open. This Funds Availability Policy does not apply to mobile and remote deposit capture services. Funds availability terms for such services are set forth in applicable service agreements. This Funds Availability Policy also does not apply to savings accounts or to money market accounts, and we may delay the availability of funds from deposits made to such accounts.

2. Longer Delays May Apply. In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second (2nd) business day after the day of your deposit. However, the first \$225 of your deposits will be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available.

If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,525 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh (7th) business day after the day of your deposit.

3. Special Rules For New Accounts. If you are a new customer, the following special rules may apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,525 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you. The excess of the above stated checks over \$5,525 will be available on the ninth (9th) business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury Check) is not made in person to one of our employees, the first \$5,525 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the eleventh (11th) business day after the day of your deposit.

4. Holds On Other Funds (Check Cashing). If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it. We have no responsibility for fees assessed by third-parties or for any other amounts claimed due to our delaying the availability of funds in the account.

5. Holds On Other Funds (Other Accounts). If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately, but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited. We have no responsibility for fees assessed by third-parties or for any other amounts claimed due to our delaying the availability of funds in the other account.

6. Real-Time Electronic Payments. We may participate in certain electronic payment networks that facilitate instantaneous or real-time settlement of funds transfers. Such funds transfers into your account are immediately available for ATM withdrawal and electronic transaction authorization, and if made to your account before 8 p.m. Central Time on a business day will be available in processing that night to cover items presented against your account during that same business day. Such funds transfers made to your account on a day that is not a business day or after 8 p.m. Central Time on a business day will not be available to cover items in nightly processing until the next business day. You should ask us if you need additional information about funds transfers made through these payment networks.

SECTION V: ELECTRONIC FUNDS TRANSFER DISCLOSURE TO OUR CONSUMER CUSTOMERS

(THE DISCLOSURES AND TERMS IN THIS SECTION V ARE APPLICABLE ONLY TO THE EXTENT THAT YOUR ACCOUNT HAS BEEN ESTABLISHED PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.)

Certain types of transactions that are handled completely or partially by electronics are subject to the Electronic Fund Transfer Act (EFT Act). The EFT Act, subject to certain exceptions and qualifications, covers funds transfers that are initiated through an electronic terminal, telephone, computer or magnetic tape, including automated clearinghouse (ACH) transactions and preauthorized electronic direct deposits and preauthorized electronic payments to third parties to or from your checking account, other transaction accounts or savings account.

Your rights, protection and liabilities are outlined in the following disclosure in accordance with the EFT Act. Our obligations and liabilities are also summarized for you. Please read and become familiar with all parts of this disclosure. Be sure to retain the telephone numbers and addresses that you may need in order to limit your liability and to resolve problems that you may have concerning electronic transfers. You may contract with us for the provision of a specific electronic funds transfer service (for example, by requesting an ATM or CheckCard, or by enrolling for the use of our online or electronic banking services) and receive separate terms and conditions and EFT Act disclosures pertaining to that service. Such separate terms, conditions and disclosures supplement the terms of this Agreement and the following disclosures.

1. Types Of Available Transfers. Unless you have separately contracted with us for a different or specific electronic funds transfer service or access device for your account(s), the electronic funds transfers described below generally are the only types of transfers that may be available to you.

(a) **ACH; preauthorized electronic funds transfers.** The following are examples of ACH transactions and/or preauthorized electronic funds transfers:

(i) You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to pay for purchases or pay bills. This is known as "electronic check conversion." For instance, assume that you purchase goods from a merchant. You provide the merchant with a voided check which allows the merchant to capture routing, account and serial number information. The transaction is processed electronically through ACH, and your account is debited for the purchase price of the goods.

(ii) You send a check to a merchant who bills you on a periodic basis. The merchant uses the information on the check to process your payment electronically through ACH and your account is debited for the bill.

(iii) You authorize your employer in writing to pay you through direct deposit of your paycheck to your account. You provide your employer with account and routing number information to enable your employer to credit your account. The transfers will take place on a recurring basis, at substantially regular intervals, and will require no further action from you to initiate the transfers. The transfers are processed electronically through ACH and your account is credited for the amount of your paycheck each payday.

(iv) You give advance written authorization to your telephone company to debit your account electronically each month in the amount of your monthly telephone bill. You provide your telephone company with account and routing number information to enable your telephone company to debit your account. The transfers will take place on a recurring basis, at substantially regular intervals, and will require no further action from you to initiate the transfers. The transfers are processed electronically through ACH, and your account is debited for the amount of your telephone bill each month.

(b) **Telephone VRU Service.** You may transfer funds among

your accounts that are accessible through the VRU Service, our automated telephone funds transfer and account information service. More details about the features and functionality of the VRU Service are provided in Section I of this Agreement.

- (c) **Electronic Teller Kiosks and Service Units.** We may from time to time install electronic teller kiosks and service units in our branches and at other various locations. You may use these electronic terminals to get cash from your account, to transfer funds between certain accounts, to check certain account balances and certain transaction histories, to make deposits to your account, to make payments by check or cash to us, and to perform certain other transactions that you might perform in person with the assistance of a teller at one of our branches. Please note that some of these electronic terminals may have limited functionality and may not be able to perform all of the transactions described above. You should verify that the electronic terminal you are using can perform the transaction you require before attempting the transaction.

- (d) **Real-Time Electronic Payments.** We may participate in certain electronic payment networks that facilitate instantaneous or real-time settlement of funds transfers. You may from time to time arrange for third parties to make funds transfers to your account through these payment networks, subject to the rules of the payment networks. In order for you to send funds transfers to third parties through these payment networks, you may need to enroll for a separate electronic funds transfer service with us or with the applicable payment network. You should ask us if you need additional information about funds transfers made through these payment networks.

2. **Limits On Transfers.** There may from time to time be limits on the number and dollar amount of electronic funds transfers that you can make. These limits are for security reasons and may change from time to time. There may be additional limitations elsewhere in this Agreement. Your ability to initiate transactions also may be limited by the terms of other agreements you have with us or as described in other disclosures we have made to you, or by applicable law. You agree to abide by and be bound by all applicable limitations.

3. **Right To Receive Documentation Of Transfers.**

- (a) **Terminal transfers.** You can get a receipt at the time you make any transfer to or from your account using any electronic terminal (You may need to request and enter into a separate agreement for an ATM card, debit card or check card in order to effect transactions at certain electronic terminals).
- (b) **Preauthorized credits.** If you have arranged to have direct deposits made to your account at least once every sixty (60) days from the same person or company, you can call us to find out whether or not the deposit has been made.
- (c) **Periodic statements.** You will get a monthly account statement for each month in which an electronic funds transfer is made to or from your account. In any case, you will get the statement at least quarterly for each account to which or from which an electronic funds transfer may be made.

4. **Your Liability For Unauthorized Transfers; Advisability Of Prompt Reporting.** An unauthorized transfer means a transfer from your account that is initiated by another person without your authority to initiate the transfer and from which you receive no benefit. The term does not include any transfer that is initiated by a person who was furnished by you with the means to access your account, unless you have notified us that transfers by that person are no longer authorized and we have had reasonable opportunity to act on that

notification.

- (a) Tell us AT ONCE if you believe any access device, code, PIN, or other means of electronically accessing your account has been lost or stolen or if you believe that an electronic funds transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all your money in your account (plus your maximum overdraft funding amounts). If you tell us within two (2) business days after you learn of the loss or theft, you can lose no more than \$50 if someone electronically accessed your account without your permission.
- (b) If you do NOT tell us within two (2) business days after you learn of the loss or theft of your access device, code, PIN, or other means of electronically accessing your account, and we can prove we could have stopped someone from electronically accessing your account without your permission if you had told us, you could lose as much as \$500.
- (c) Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within sixty (60) days after the statement was mailed to you, you may not get back any money you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the money if you had told us in time.
- (d) If we determine that extenuating circumstances kept you from telling us, we may extend the time periods.

5. Our Liability For Failure To Make Transfers. If we do not properly complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (a) If, through no fault of ours, your account does not contain enough money to make the transfer.
- (b) If the transfer would go over any existing credit limit on your overdraft line, or other credit account.
- (c) If your funds are being held or frozen or are subject to legal process.
- (d) If the electronic terminal where you are making the transfer does not have enough cash.
- (e) If the electronic terminal (or system) was not working properly and you knew about the breakdown when you started the transfer.
- (f) If circumstances beyond our control (such as telecommunication or electrical outages and malfunctions, postal strikes or delays, computer system failures or natural disasters) prevent the transfer, despite reasonable precautions that we have taken.
- (g) If you have exceeded the limitations on frequency or dollar amount of transfers.
- (h) If your access device, code, PIN, or other means of electronically accessing your account has been reported lost or stolen, or has been damaged, or if we have reason to believe that a transaction has not been properly authorized or authenticated, or is fraudulent, erroneous, or illegal.
- (i) If we do not receive the necessary transfer data from a third party, or if such data is incomplete or erroneous when received by us.
- (j) If making the transfer would cause us to violate any law, rule or regulation to which we are subject.
- (k) If your account is presumed abandoned under applicable law, or if we consider your account to be dormant or inactive under our policies and procedures.
- (l) If any failure on our part was not intentional and resulted from a bona fide error, notwithstanding procedures to avoid such error, except for actual damages (which do not include

indirect, incidental, special or consequential damages).

There may be other exceptions to liability stated in this Agreement or other agreements with you or otherwise provided by applicable law.

6. Disclosure Of Account Information To Third Parties. We will disclose information to third parties about your account or the transfers you make:

- (a) Where it is necessary for completing transfers, or
- (b) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or
- (c) In order to comply with government agency or court orders, or
- (d) If you give us your written permission, or
- (e) Otherwise in accordance with our privacy notice. You may obtain a copy of our privacy notice at any time by visiting any of our branches or by visiting our website.

7. Right To Stop Payment On Preauthorized Transfers And Procedure For Doing So; Right To Receive Notice Of Varying Amounts; And Our Liability For Failure To Stop Payment.

- (a) **Right to stop payment and procedures for doing so.** If you have directed preauthorized electronic funds transfers from your account, you can stop any of these payments. Here's how: Call us at the number shown below or you can write us at the address shown below in time for us to receive your request three (3) business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within fourteen (14) days after you call.
- (b) **Notice of varying amounts.** If these regular payments may vary in amount, the person you are going to pay will tell you, ten (10) days before each payment, when it will be made and how much it will be. You may choose instead to get this notice only when the payment will differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.
- (c) **Liability for failure to stop payments of preauthorized transfer.** If you order us to stop one of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we may be liable for your losses or damages.

8. What Constitutes A Business Day. For purposes of these disclosures, our business days are Monday through Friday. Holidays are not included.

9. In Case Of Billing Errors Or Questions About Your Electronic Transfers. Telephone us at the telephone number shown below or write us at the address shown below as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than sixty (60) days after we sent the FIRST statement on which the problem or error appeared.

- (a) Tell us your name and account number.
- (b) Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe it is an error or why you need more information.
- (c) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) business days. We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account. For errors involving new accounts, point-of-sale,

or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new accounts, we may take up to twenty (20) business days to credit your account for the amount you think is in error. We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

10. Telephone Number And Address To Be Notified In Event Of Lost, Stolen Or Compromised Access Device, Or Unauthorized Transfer. If you believe that your access device, code, PIN, or other means of electronically accessing your account has been lost or stolen, or compromised, or that someone has transferred or may transfer money from your account, without permission, using information from your check or otherwise, you should call the number below or write to the address provided.

Call toll free 1-800-REGIONS (734-4667)

Or write:

Regions Electronic Banking Services

P.O. Box 830843

Birmingham, Alabama 35283-0843

11. Fees. You should refer to our pricing schedule, which is included with other documentation and disclosures we have provided to you in connection with the opening of your account, for information regarding any fees associated with funds transfers covered by the EFT Act. Such fees are subject to change from time to time, and we will provide you with notice of such changes as required by law. The owners/operators of electronic funds transfer systems may charge fees for transactions that are not disclosed in our pricing schedule.

SECTION VI: IMPORTANT INFORMATION FOR OUR CONSUMER CUSTOMERS ABOUT SUBSTITUTE CHECKS

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other laws with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund plus interest if your account earns interest within

10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at **1-800-REGIONS (734-4667)**. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include –

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: the check number, the name of the person to whom you wrote the check, and the amount of the check.

NOTES

ELECTRONICALLY FILED - 2023 Jun 16 2:13 PM - BEAUFORT - COMMON PLEAS - CASE#2023CP0700646

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CS1004 (09/22) PS

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Lovelace v. Regions et al. ROA_000121

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NO. 2023-CP-07-00646
	)	
Amber Leigh Lovelace, by and through her	)	
Conservator Richard Cooler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF RICHARD A. COOLER
	)	
Steven Lovelace, Regions Bank,	)	
Cetera Investment Services LLC	)	
d/b/a Regions Investment Services, and	)	
Christopher Lazurek.	)	
	)	
Defendants.	)	
	)	

1. My name is Richard A. Cooler, and I am the duly appointed Successor Conservator for Amber Leigh Lovelace, a minor. I am the grandfather of Amber Leigh Lovelace.

2. I was appointed as Successor Conservator by the Beaufort County Probate Court in an Order dated January 13, 2023.

3. Prior to my appointment, Amber's father, Steven Lovelace, was her Conservator.

4. As Conservator, Steven Lovelace opened two accounts for Amber: An investment account with Cetera Investment Services LLC d/b/a Regions Investment Services ("Cetera") (account number -5218); and a savings account with Regions Bank ("Regions") (account number -3680).

5. During the time Steven Lovelace was Conservator, he was able to take significant funds from the conservatorship accounts without a prior court order.

6. In 2022, both Cetera and Regions were aware that Steven Lovelace had taken funds from both accounts without authorization from the Probate Court. In fact, my attorney contacted Mark Weeks directly in December 2022, to ask Mr. Weeks to ensure that the Regions account was frozen so that further funds could not be expended by Steven A. Lovelace.

7. Once I was appointed Successor Conservator, I needed to change the name on the two accounts to remove the name of Steven Lovelace and replace it with my name.

8. I called Regions and spoke with Mark Weeks about changing names on the conservatorship accounts (Regions and Cetera).

9. Mr. Weeks was available to meet on January 30, 2023, so Amber and I traveled to the local branch of Regions Bank, located at 146 Sea Island Parkway, Beaufort, South Carolina 29907. [Cetera/Regions Investment Solutions also operates out of this branch.]

10. Amber and I met with Mark Weeks, the Branch Manager for Regions Bank. I provided him with the Order Appointing Successor Conservator, which he copied for the bank's file.

11. While we were in his office, he printed paperwork for both the Cetera account and the Regions account for me to sign.

12. I signed page 6 of the Cetera form called "New Account Application," even though it was not a new account. Once I signed, Mr. Weeks copied pages 1-6 of the form, which I kept. I did not receive pages 7, 8, and 9 of the form, which apparently discuss arbitration, nor do I recall Mr. Weeks printing those out for me to review before I signed. I did not meet with anyone other than Mr. Weeks to complete forms for Cetera.

13. For Regions Bank, I signed a form called "Fiduciary Account Maintenance and Signature Form" to take Steven Lovelace's name off the account and to add me onto the account.

14. I kept a copy of the paperwork I received from Mark Weeks in a folder for the conservatorship.

15. At no point did I ever receive a copy of the 51-page "Deposit Agreement" for Regions.

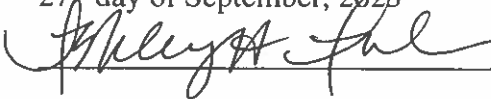
16. At no point did anyone from Regions or Cetera discuss arbitration with me.

FURTHER AFFIANT SAYETH NOT.


Richard A. Cooler

SWORN to and subscribed before me this

27th day of September, 2023



Notary Public for South Carolina

My Commission Expires: 7-1-2028

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NO. 2023-CP-07-00646
COUNTY OF BEAUFORT	)	
AMBER LEIGH LOVELACE, by and	)	
through her CONSERVATOR RICHARD	)	
COOLER,	)	
	)	PLAINTIFF'S BRIEF IN OPPOSITION TO
Plaintiff,	)	DEFENDANTS' MOTION TO COMPEL
vs.	)	ARBITRATION
	)	
STEVEN LOVELACE, REGIONS BANK,	)	
and CETERA INVESTMENT SERVICES	)	
d/b/a REGIONS INVESTMENT	)	
SERVICES, and CHRISTOPHER	)	
LAZURAK,	)	
Defendants,	)	
	)	

Brief Statement of Facts

In September 2015, when Amber was just five (5) years old, her mother died tragically in a motor vehicle accident. As a result, Amber inherited assets including life insurance, and ultimately, proceeds from a settlement for the accident. State law required that Amber have a conservator appointed, and Amber's father Steven A. Lovelace ("Lovelace") petitioned the Probate Court to serve.

The Beaufort County Probate Court appointed Lovelace as Conservator for Amber in an Order dated February 3, 2016. As a condition of his appointment, Lovelace was required to place all conservatorship funds into one or more restricted accounts from which no funds could be expended without a prior court order. Financial institutions holding conservatorship funds were also ordered to execute a Restricted Account Agreement, acknowledging the restricted nature of the account(s). (Restricted Account Agreement attached as Exhibit A).

Lovelace opened two conservatorship accounts: (1) An investment account with Cetera Investment Services LLC d/b/a Regions Investment Services (“Cetera”) (account number -5218); and (2) A savings account with Regions Bank (“Regions”) (account number -3680).

Both Cetera and Regions were aware that the bank accounts were associated with a conservatorship, and both had notice that the accounts were to be restricted. Defendant Christopher Lazurek, a representative of Cetera who worked at the same location as Regions Bank, signed the required Restricted Account Agreement, which set forth that “any and all withdrawal(s) from said account(s) shall be allowed only upon prior written approval of the Beaufort County Probate Court authorizing a specific withdrawal for a specific amount at a specific time or pursuant to a budget which has been pre-approved by the Court...” The Restricted Account also addressed transfers, requiring that if transfers were made, the financial institution to which funds were transferred must also have a new and separate Restricted Account prior to any transfers to that institution. While no separate Restricted Account Agreement for Regions has been produced, Regions received a copy of the Conservator’s Contract and Order of the Probate Court, which set forth that certain transactions require court approval. Prior to establishing the account, Regions should have also reviewed the Court’s Order which set forth the requirement that conservatorship accounts be restricted. Regions established the account as a conservatorship account, but Regions failed to set up proper restrictions. In July 2017, just over a year after Lovelace’s appointment, he began withdrawing funds from the Regions account without prior authorization from the Probate Court. When the balance on the Regions account got low, he began transferring funds from Cetera to Regions and then withdrew the funds from Regions, all without prior Court order. Between the unauthorized withdrawals, wire fees, and bank fees, \$169,044.00 was removed from Amber’s accounts.

In December of 2022, both Cetera and Regions were made aware that Steven Lovelace had taken funds from both accounts without authorization from the Probate Court. Both accounts were frozen at that time so further funds could not be expended by Lovelace.

Shortly after Lovelace's misdeeds were discovered, he left the jurisdiction and Amber was placed in the care and custody of her maternal grandfather, Richard A. Cooler. Because of the improper actions of Lovelace and the Defendants in disbursing funds without permission of the Probate Court, Richard A. Cooler was appointed as Successor Conservator by the Beaufort County Probate Court by Order dated January 13, 2023 (Exhibit B). That Order required Cooler to enter a Restricted Account Agreement with Defendants that prohibited any distributions without permission of the Court and provided that, "[A]ny financial institution entering into a restricted Account Agreement in doing so submits itself to the personal jurisdiction of this Court."

Once appointed Successor Conservator for Amber, Cooler contacted Regions Bank to provide the Order appointing him as Conservator and to have his name substituted on the account as Successor Conservator and removing Lovelace's name. On January 30, 2023, Mr. Cooler and Amber went to the Beaufort branch for Regions Bank and Cetera and met with bank manager Mark Weeks. During that meeting, Weeks was provided with the Probate Court Order Appointing Richard A. Cooler as Successor Conservator. Mr. Cooler signed and retained a Cetera account agreement and was provided pages 1-6 but was not shown or provided pages 7-9 (Defendants' Motion appears to claim pages 7-9 contain arbitration provisions). Mr. Cooler also signed signature forms as an authorized signer on the Regions Account but was not provided with a "Deposit Agreement" that Defendants claim contains arbitration provisions. At no time did anyone from Regions or Cetera ever present any agreement with arbitration clauses nor did they discuss with Amber or Mr. Cooler, arbitration clauses that they now allege to preclude an action at law.

ARGUMENT

Defendants move to compel arbitration, alleging Richard Cooler, as Successor Conservator for Amber Lovelace, is subject to arbitration provisions that were never presented to him nor discussed when he met with the Defendants' to substitute his name on the already existing accounts. Such an argument fails for lack of consideration and is unconscionable.

In Damico v. Lennar Carolinas, LLC, 437 S.C. 596 (2022), our Supreme Court recently decided the issue of unconscionability of arbitration provisions in a construction defect case where the homebuilder moved to compel arbitration, citing the arbitration provisions in a series of contracts signed by the home buyer. In that case, the Plaintiffs bought a pre-owned home built by the Defendant, so there was no direct contract between the Plaintiffs and Defendant. That Court noted, "under South Carolina law, the same principles of unconscionability apply to contract terms and arbitration provisions alike. The touchstone of the analysis begins with the presence or absence of meaningful choice. See Fanning, 322 S.C. at 403, 472 S.E.2d at 245; see also Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004) (explaining that a party seeking to prove an arbitration agreement is unconscionable must allege he lacked a meaningful choice as to the arbitration clause specifically, not merely that he lacked a meaningful choice as to the contract as a whole). "Whether one party lacks a meaningful choice ... typically speaks to the fundamental fairness of the bargaining process." D.R. Horton, 417 S.C. at 49, 790 S.E.2d at 4 (citation omitted). Thus, in determining whether an absence of meaningful choice taints a contract term, such as an arbitration provision, courts must consider, among all facts and circumstances, the relative disparity in the parties' bargaining power, the parties' relative sophistication, and whether the plaintiffs are a substantial business concern of the defendant. Simpson, 373 S.C. at 25, 644 S.E.2d at 669; see generally at 756, 17A Am Jur. 2d Contracts § 272

(listing a number of factors that courts may considering in conducting an unconscionability analysis); 17 C.J.S. Contracts § 10 (same).

Parties frequently claim they lack a meaningful choice when a contract of adhesion is involved. D.R. Horton, 417 S.C. at 49, 790 S.E.2d at 4 (explaining adhesion contracts are “standard form contracts offered on a take-it or leave-it basis with terms that are not negotiable” (internal alteration marks omitted) (citation omitted)). Because contracts of adhesion are non-negotiable, “[a]n offeree faced with such a contract has two choices: complete adherence or outright rejection.” Lackey v. Green Tree Fin. Corp., 330 S.C. 388, 394, 498 S.E.2d 898, 901 (Ct. App. 1998) (citation omitted).

Adhesion contracts are not per se unconscionable. Simpson, 373 S.C. at 27, 644 S.E.2d at 669; 17A Am. Jur. 2d Contracts § 274; 17 C.J.S. Contracts § 9 & n.9 (collecting cases). However, given that one party to an adhesion contract “has virtually no voice in the formulation of the terms and language” used in the contract, Lackey, 330 S.C. at 394, 498 S.E.2d at 901, courts tend to view adhesive arbitration agreements with “considerable skepticism,” as it remains doubtful “any true agreement ever existed to submit disputes to arbitration,” Simpson, 373 S.C. at 26, 644 S.E.2d at 669 (citations omitted). See also 17A Am. Jur. 2d Contracts § 274 (noting that “[c]ontracts of adhesion are enforceable unless they are unconscionable,” but “[n]evertheless, the fact that a contract is one of adhesion is a strong indicator that [there was] an absence of meaningful choice”); 17 C.J.S. Contracts § 9 (“A consumer transaction which is essentially a contract of adhesion may be examined by the courts with special scrutiny to assure that it is not applied in an unfair or unconscionable manner against the party who did not participate in its drafting.”).

The distinction between a contract of adhesion and unconscionability is worth emphasizing: adhesive contracts are not unconscionable in and of themselves so long as the terms

are even-handed. Nevertheless, and regrettably, it is common practice for the sophisticated drafter of contracts to routinely argue that a particular contract is not one of adhesion when that is plainly untrue. Such a specious argument does not advance the party's position and instead detracts from other legitimate arguments the party may have. After all, unconscionability requires a finding of a lack of meaningful choice coupled with unreasonably oppressive terms. Thus, an adhesion contract with fair terms is certainly not unconscionable, and the mere fact a contract is one of adhesion does not doom the contract-drafter's case.” Id. at 612-614.

The Court in Damico determined that the purchase and sale agreement was a contract of adhesion given by Defendant to all the homebuyers in the development, with only a few blank spaces to fill in, including the buyer's name, the relevant property address, and the purchase price. Other than those type of minor blank spaces, the terms of the purchase and sale agreement—particularly those of any consequence to the homebuilder defendant—are non-negotiable, with some terms not even applying to specific homebuyers.

Moreover, the Damico Court found that the sophistication of Petitioners, as individual homebuyers, pales in comparison to Lennar, a large developer/homebuilder. Justice Kittredge writing for the full Court said:

[G]iven that Lennar has sold thousands of homes in the Carolinas, whereas Petitioners will likely only purchase, at best, a handful of homes in their entire lifetime, we find it fair to characterize Lennar as significantly more sophisticated than Petitioners in home buying transactions. These factors combine to highlight the significant disparity in the parties' bargaining power, with Lennar enjoying a much stronger bargaining position than Petitioners. We therefore find Petitioners lacked a meaningful choice in their ability to negotiate the arbitration agreement.

See Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 343, 384 S.E.2d 730, 735–36 (1989) (“We have [] taken judicial cognizance of the fact that a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller.”).” Id. at 615.

In the case at bar, we have Regions Bank, large national bank and Cetera Investment Services, its investment arm, attempting to force arbitration provisions that were never provided or explained to an orphaned minor child and her maternal grandfather that stepped in to take Amber into his home and act as Successor Conservator. In addition, Mr. Cooler did not open new accounts, he was merely substituted in by the Probate Court for Amber’s father. Further, even if the arbitration provisions had been shown, presented, or explained to Mr. Cooler, there was no consideration for arbitration provisions whereas Mr. Cooler was merely substituting as Conservator on the pre-existing account. These factors, as in Damico, combine to highlight the significant disparity in the parties' bargaining power, with Regions and Cetera enjoying a much stronger bargaining position than Amber and her grandfather. There can be no dispute that Richard Cooler on behalf of Amber Leigh Lovelace lacked a meaningful choice in their ability to negotiate arbitration agreements, especially when no arbitration provisions were provided to them. A reading of the documents contains many falsehoods. The Cetera form dated January 30, 2023, is incorrectly titled “New Account Application”. The account is not new, Mr. Cooler was merely substituted as Conservator to the pre-existing accounts. The New Account Form lists Steven Allen Lovelace as Conservator and the owner of the Regions Bank account for wiring funds when the Probate Court’s Order clearly removed Steven Lovelace as Conservator and from access to the accounts. The form falsely lists Richard Ashley Cooler as a “Co-Owner” of the account. Lastly, the form falsely states that, “this agreement contains a predispute clause that is fully set forth in

paragraph 20 on page 9 of this form,” when the Defendants only provided pages 1-6 of that Agreement.

Similarly, Mr. Cooler was advised by the Regions Branch Manager, Mr. Weeks, that the “Regions Fiduciary Account Maintenance and Signature Form” was only needed to make him the authorized signatory on the account. He was not provided with a Deposit Agreement or any terms of mandatory arbitration.

Unconscionability is defined “as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them, and no fair and honest person would accept them.” Unconscionability requires a finding of a lack of meaningful choice coupled with unreasonably oppressive terms. Nothing could be more unconscionable that require a “New Account Application” for Mr. Cooler when he was merely to substitute in as authorized signer of existing accounts in compliance with the Order of the Probate Court and then later try to invoke arbitration clauses that were never provided to him. There is an implied covenant of fair dealing in every contract. The facts of this case are the definition of a contract of adhesion, unconscionability, and unfair dealing.

Defendants are subject to the Jurisdiction of the Court

Steven Lovelace as Conservator for Amber Lovelace and Defendants Cetera and Regions entered a “Restricted Account Agreement” on February 24, 2016, and that agreement was approved by Probate Judge Fulp on March 1, 2016. (Exhibit A). That Agreement provides the terms that restrict the distribution of funds without order of the court. Most notably, the Restricted Account Agreement does not contain any arbitration provisions. In fact, the Restricted Account

Agreement provides, [T]his Restricted Account Agreement shall be read and construed *in pari materia* with pertinent Court Orders, and this Agreement and such Court Orders are hereby mutually incorporated by reference, one with the other”. The Order Appointing Conservator and the subsequent Order Appointing Conservator provide, “Pursuant to S.C. Code. Ann 62-5-409, the Conservator shall enter into a restricted Account Agreement with the approved financial institution located within the State of South Carolina. Proof of such shall be submitted to the Court within thirty (30) days of this Order. In the Order appointing Cooler as Successor Conservator, Judge Galvin also required restricted account agreements be on file, and further clarified that financial institutions signing restricted account agreements are subject to the Court’s jurisdiction.

As described above, there is no arbitration provision existing between the parties, but assuming *arguendo* that arbitration provisions could be imputed by vague language, Defendants waived arbitration by submitting the jurisdiction of the Court. In fact, the Court retained the jurisdiction of Defendants and any alleged provisions to the contrary are void *ab initio*.

For the foregoing reasons, Plaintiff respectfully requests the Court to deny Defendants’ Motion to Compel Arbitration.

Respectfully Submitted,

HARVEY & BATTEY, P. A.

/s/ Ashley Amundson

Ashley Amundson & Thomas A. Holloway
1001 Craven Street
Post Office Box 1107 (29901)
Beaufort, SC 29902
Telephone: (843)524-3109
Facsimile: (843) 524-6973
Attorneys for the Plaintiff

November 13, 2023.

EXHIBIT “A”

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

PROBATE COURT
RESTRICTED ACCOUNT AGREEMENT
CASE NUMBER: 2015GCD700057
PROTECTED PERSON: AMBER LEIGH LOVELACE, a minor

WHEREAS, Steven Allen Lovelace has been appointed as Conservator for Amber Leigh Lovelace by the Beaufort County Probate Court; and

WHEREAS, said Court has imposed certain restrictions on the disbursement of Conservatorship funds; and

WHEREAS, an initial deposit of monies may be made to the within named banking or financial institution, pending appropriate investment decisions by the Conservator;

NOW, THEREFORE, THE PARTIES HERETO AGREE TO THIS RESTRICTED ACCOUNT AGREEMENT AS FOLLOWS:

1. Cetera Regus Investments (financial/investment institution) agrees to establish restricted account(s) in the name of Steven Lovelace, as Conservator for Amber Lovelace (protected person/minor).
2. Cetera Regus Investments (financial/investment institution) and Steven Lovelace, as Conservator, expressly agree that any and all withdrawal(s) from said account(s) shall be allowed only upon prior written approval of the Beaufort County Probate Court authorizing a specific withdrawal for a specific amount at a specific time or pursuant to a budget which has been pre-approved by the Court. This restriction, as further explained in #3 below, does not preclude the Conservator, from time to time and at any appropriate time, from transferring funds, in whole or in part, from one institution, investment vehicle, etc., to another, provided that a new and separate Restricted Account Agreement (the within BCPC Form #G/C-205-RAA) be executed and approved with appropriate signatories, as provided herein, prior to any transfer from the below named institution. The original of such new and separate Restricted Account Agreement shall be filed promptly with this Court.
3. Notwithstanding the restrictions provided for in this Agreement, Steven Lovelace as Conservator, is permitted to transfer, invest and re-invest the Conservatorship funds in accordance with applicable statutory constraints and parameters, so long as the funds remain in account with the within named financial/investment institution, and properly identified as Conservatorship funds, subject to the restrictions noted herein.
4. This Restricted Account Agreement shall be read and construed *in pari materia* with pertinent Court Orders, and this Agreement and such Court Orders are hereby mutually incorporated by reference, one with the other.

Executed this 24th day of February, 2016.

Steven Lovelace
Signature of Conservator as Conservator for:

Amber Lovelace
Name of protected person

Cetera Investments / Regus Investments
Name of financial/investment institution

By: Christopher R. Lawrence
Signature of financial/investment institution qualified representative

Please print the following:

Name: Christopher R. Lawrence

Title: Financial Consultant

Address: 146 Leg Island Pkwy

Beaufort, SC 29907

Telephone: 843-258-8426

NOTE: Institutional Signatory must be Officially authorized to sign such documents

Date Opened: 2/24/2016
Account #: 31113107
Amount of Initial Deposit: 16000

APPROVED: Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court

DATE APPROVED: March 19, 2016



EXHIBIT “B”

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF BEAUFORT)

CASE NO.: 2015-GC-07-00057)

IN THE MATTER OF:)

ORDER APPOINTING
SUCCESSOR CONSERVATOR)AMBER LEIGH LOVELACE,
A minor)RICHARD COOLER,
Petitioner,)

Vs.)

STEVEN A. LOVELACE and AMBER
LEIGH LOVELACE, a minor,
Respondents.)

FILED

JAN 13 2023

PROBATE COURT
BEAUFORT COUNTY, SC

THIS MATTER COMES BEFORE THE COURT pursuant to Article 5, Title 62 of the South Carolina Probate Code (SCPC) upon (1) a Petition for Successor Conservator for Amber Leigh Lovelace, a minor, (hereinafter "the Minor") filed by Richard Cooler ("Petitioner"), grandfather of the Minor; and (2) an Application for Relief filed by Deborah H. Boshaw, Guardian *ad Litem* (GAL) for the Minor, seeking removal or suspension of Steven A. Lovelace as Conservator for alleged failure to file accountings and for the alleged unauthorized withdrawal of significant conservatorship funds.

The Court held a hearing on December 16, 2022 via WebEx. Present for the hearing were the Petitioner, who appeared *pro se*; the Minor; Deborah Boshaw, Esq.; and Ashley H. Amundson, Esq., attorney for the GAL.

After due consideration of the Petition, all pertinent documents, and the testimony provided at the hearing, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This action is brought pursuant to S.C. Code Ann. §62-5-428 and Article 5 of the SCPC.
2. The Court has jurisdiction of this matter, and venue is proper.
3. All persons entitled to receive service of the pleadings and Notice of Hearing were given or waived same in accordance with the pertinent statutory requirements as set forth in SCPC §§62-1-401, 62-1-402, and 62-5-402(C).
4. On February 3, 2016, the Court appointed the Minor's father Steven A. Lovelace as Conservator for the Minor.
5. Following Mr. Lovelace's failure to file conservatorship accountings, on March 14, 2022, the Court appointed Deborah Boshaw, Esquire as GAL for the Minor to investigate the matter.
6. Following an investigation, on June 16, 2022, Boshaw filed a Report of GAL and an Application for Relief, seeking removal or suspension of Lovelace as Conservator, citing, among other things, Lovelace's failure to account and failure to seek court approval prior to withdrawing significant conservatorship funds.
7. On October 13, 2022, Petitioner filed to be appointed as Successor Conservator.
8. On the same day, Lovelace filed an Affidavit, in which he resigned as Conservator and acknowledged that resignation would have no effect on his liability for actions or inactions as Conservator; further, Lovelace stated that he consented to Petitioner being appointed as Successor Conservator.
9. On November 14, 2022 the Petitioner filed a Statement of Value and Income for Purposes of Bond, and on November 28, 2022 the Court issued its order setting bond at \$140,000.00.

10. At this time, the Minor has assets over the statutory threshold of \$15,000.00 that necessitate a conservatorship.
11. It is in the minor's best interest that the Court accept the resignation of Lovelace.
12. Petitioner is qualified to serve as Successor Conservator and his appointment as Successor Conservator is in the Minor's best interest.
13. Petitioner consents to the continuing role of the GAL and her attorney in investigating and pursuing repayment of conservatorship funds from any appropriate source(s).
14. With the appointment of Petitioner as Conservator, much of the requested relief in the Application for Relief is moot.
15. If it is appropriate to seek repayment of funds from the prior Conservator or any other sources, the GAL and her attorney should amend the Application for Relief to file a formal petition.

Now, therefore, **IT IS ORDERED, ADJUDGED, AND DECREED that:**

- A. Petitioner is appointed as Successor Conservator for the Minor.
- B. As required by S.C. Code Ann. § 62-5-418, the Court will file the Fiduciary Letters with the Register of Deeds of Beaufort County, South Carolina, and the Conservator shall file the Fiduciary Letters in any other county where the Minor owns real property, if applicable.
- C. Pursuant to S.C. Code. Ann. § 62-5-409, the Conservator shall enter into a Restricted Account Agreement with an approved financial institution located within the State of South Carolina. Proof of such shall be submitted to the Court within thirty (30) days of the entry of this Order. Any financial institution entering into a Court Restricted Account Agreement in so doing submits itself to the personal jurisdiction of this Court. The

Conservator shall supply a copy of this Court Order to the financial institution for its records.

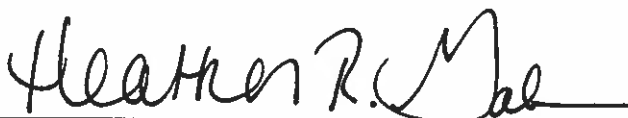
- D. None of the minor's assets, real or personal, may be disbursed, expended, assigned, pledged, distributed or otherwise disposed of or encumbered by the Conservator, without prior written authorization of this Court, following proper written petition therefor. In that regard, and wherever else appropriate, this Order shall be read and construed *in pari materia* with a Restricted Account Agreement, required to be signed subsequent to the entry of this Order, between the Conservator and one or more financial institutions, and any other such Agreement(s), such Agreement(s) being hereby incorporated by reference herein. The Conservator shall ensure that the account is designated as a "Restricted Account."
- E. No funds shall be withdrawn or transferred from this account without written Order of the Probate Court. The Conservator agrees to furnish a copy of this Court Order to the financial institution which established the Restricted Account.
- F. All assets of the minor shall be titled in the name of the Conservator as follows: "Richard Cooler, as Conservator for Amber Leigh Lovelace."
- G. Consistent with this Court's November 28, 2022, the Conservator shall file bond in the amount of \$140,000.00. The Conservator shall be bonded for the full amount of the assets listed on the Inventory and Appraisal, plus any additional amounts required by the Court. Proof of bond, being the bond itself, must be filed with this Court within thirty (30) days of appointment. The Conservator shall maintain the bond for the duration of the conservatorship.

- H. If additional proceeds come into the estate after the initial Inventory and Appraisement is filed, then the Conservator shall file a Supplemental Inventory and Appraisement and the bonded amount shall be modified accordingly and by a bond modification issued by the Court.
- I. The Conservator shall not employ professionals, including but not limited to, attorneys or financial advisors, without prior approval of this Court.
- J. The Conservator shall notify the Court with changes of contact information or residence of either himself as Conservator or the Minor.
- K. Within thirty (30) days of appointment, the Conservator shall file a complete inventory of the Minor's assets.
- L. The Conservator shall file an accounting regarding the administration of the Minor's assets annually and at any other time which the Court shall direct.
- M. The Conservator shall not pay compensation to himself from the Minor's assets without Court approval. Further, the Conservator may not change the character of estate without court approval and shall expend the assets of the Minor pursuant only to court order.
- N. If the Minor is receiving needs-based benefits, the Minor's funds shall not be used for expenses that would disqualify the Minor from receipt of benefits, including but not limited to food and shelter expenses.
- O. The Conservator is bound by all the other duties, responsibilities, and fiduciary obligations contained in the South Carolina Probate Code, and shall be accountable to this Court for any violations of his duties or for any failure to file and account to the Court. Failure to comply with this Order shall be punishable by this Court's contempt powers which may

include community service, fines, or imprisonment, or any combination thereof that the Court deems appropriate.

- P. The Conservator shall comply with the Uniform Prudent Investor Act as set forth in SCPC §62-7-933.
- Q. The GAL and her attorney are authorized to continue the investigation and the pursuit of repayment of any conservatorship funds owed to the Minor.
- R. The Court will hold in abeyance any order concerning the pending Application for Relief.
- S. As Conservator, Petitioner shall pay from the Conservatorship funds the reasonable fees and costs of this proceeding, including those of the Court-appointed GAL, Deborah Boshaw, Esq.; counsel for the GAL, Ashley Amundson; and the bond premium; and the fees of Ms. Boshaw and Ms. Amundson and their costs incurred to date. Such invoices are attached hereto and incorporated herein as Exhibits A, B, and C.
- T. The Court approves and directs payment in the amount of \$8,489.35 to Boshaw Law Firm for the services of Deborah Boshaw as GAL; \$5,145.00 to Harvey & Battey, P.A. for the services of Ashley Amundson, as attorney for the GAL; and \$683.00 to State Farm for the bond premium due.

IT IS SO ORDERED.



Heather R. Galvin, Probate Judge
Beaufort County Probate Court

January 13th, 2023
Beaufort, South Carolina

CERTIFICATION OF COPY
This document consisting of 14 page(s) is hereby
certified to be a true copy of the original document
on file in the Probate Court of Beaufort County,
South Carolina. In witness whereof, I have hereto set
my official signature and affixed the seal of the
Probate Court, at the County and State aforesaid
Date 1-13-23 Name Doreen H. [Signature] (Seal)
Title Clerk Beaufort County Probate Court
Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

Amber Leigh Lovelace, by and through her
Conservator Richard Cooler,

)

Case No. 2023-CP-07-00646

)

Plaintiff,

)

vs.

)

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF THEIR MOTION TO COMPEL
ARBITRATION AND TO DISMISS OR STAY
THE ACTION SET FORTH IN THE
COMPLAINT**Steven Lovelace, Regions Bank, and Cetera
Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek,

)

)

)

)

Defendants.

)

Defendants, Regions Bank, Cetera Investment Services d/b/a Regions Investment Services, and Christopher Lazurek (collectively, "Defendants," but individually "Regions," "Cetera," and "Lazurek," respectively), respectfully submit this Memorandum in Support of their Motion to Compel Arbitration and to Dismiss or Stay the Action Set Forth in the Amended Complaint as to Plaintiff, Amber Leigh Lovelace, by and through her Conservator Richard Cooler ("Plaintiff").

FACTUAL BACKGROUND

Plaintiff filed his Complaint in this action on April 6, 2023. Plaintiff's Complaint alleges that the Defendants failed to prevent Defendant Steven Lovelace ("Defendant Lovelace") from wrongfully removing funds subject to a court appointed conservatorship from two accounts in violation of a Restricted Account Agreement and charged improper fees for services performed for the accounts at issue. (Compl. ¶ 24–29.) During his alleged tortious conduct, Defendant Lovelace was the court appointed conservator of the funds in the Cetera and/or Regions account. Defendants deny any liability arising from the allegations in Plaintiff's Complaint. Plaintiff alleges

that Defendant Lovelace resigned on October 13, 2022, (Compl. ¶ 31.) and Plaintiff was appointed as the successor conservator on January 13, 2023. (*Id.* at ¶ 32.)

After Plaintiff was appointed conservator, he entered into agreements with Regions and Cetera to arbitrate claims he has against Regions and Cetera and their respective employees and/or agents. Regions is an Alabama corporation, and Cetera is a Delaware Corporation headquartered in California. (Compl. ¶ 4-5.) As it relates to Cetera, Plaintiff completed a New Account Application on or about January 30, 2023. See Signed New Account Application, attached as **Exhibit A**. The Cetera New Account Application is a nine-page document. The sixth page of the Cetera New Account Application is the signature page. With his signature, Plaintiff acknowledged and agreed that: (1) he “received, read, [understood], and agree[d] with all of the information contained within this document” and “that this agreement contains a predispute arbitration clause that is fully set forth in paragraph 20 on page 9 of this form.” (Ex. A, 6.)

As part of the ordinary course of business, an account applicant would be provided all nine pages of the Cetera New Account Application and provided an opportunity to review the entire application prior to signing. When signed applications are imaged for purposes internal record keeping, the imaging team does not scan the entire New Account Application and stops after the signature page. Pages seven through nine contain terms and conditions that govern the relationship between Cetera and its account holders. The “Cetera Arbitration Agreement” is found on page 9 and provides as follows:

20. Arbitration. THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT THE PARTIES AGREE AS FOLLOWS:

- (A) ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.
- (B) ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.
- (C) THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.
- (D) THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD UNLESS, IN AN ELIGIBLE CASE, A JOINT REQUEST FOR AN EXPLAINED DECISION HAS BEEN SUBMITTED TO ALL PARTIES TO THE PANEL AT LEAST 20 DAYS PRIOR TO THE FIRST SCHEDULED HEARING DATE.
- (E) THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
- (F) THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.
- (G) THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.

ARBITRATION CLAUSE: I AGREE THAT ANY DISPUTE BETWEEN ME AND YOU ARISING OUT OF THIS AGREEMENT SHALL BE SUBMITTED TO ARBITRATION CONDUCTED UNDER THE PROVISIONS OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.'S CODE OF ARBITRATION PROCEDURE ADMINISTERED BY FINRA DISPUTE RESOLUTION, INC. ARBITRATION MUST BE COMMENCED WITHIN THE STATUTORY LIMITATION PERIODS APPLICABLE TO THE CLAIMS. I FURTHER AGREE THAT, IF THE FINRA ARBITRATION FORUM IS NOT AVAILABLE FOR THE DISPUTE, THE DISPUTE WILL BE SUBMITTED TO ARBITRATION CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION.

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PREDISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION, OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (i) THE CLASS CERTIFICATION IS DENIED; (ii) THE CLASS IS DECERTIFIED; OR (iii) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

See a clean copy of the entire New Account Application, attached hereto as **Exhibit B**.

Plaintiff completed a Fiduciary Account Maintenance and Signature Form with Regions on January 30, 2023, as well. See Signed Fiduciary Account Maintenance and Signature Form, attached as **Exhibit C**. Beside Plaintiff's signature, the form provides in bolded font,

By signing, I acknowledge receiving and agree to each and every term, condition, and provision of the Deposit Agreement (including without limitation, the ARBITRATION AND WAIVER OF JURY TRIAL provisions thereof and the provisions for changing the terms thereof) and related disclosures for this account.

Id.

Regions' customers are provided a copy of the Deposit Agreement in the ordinary course of business. The Deposit Agreement is also readily available online.¹ The Deposit Agreement contains, *inter alia*, an arbitration agreement between Plaintiff and Regions. See Deposit Agreement, attached hereto as **Exhibit D**.² On the first two pages of the Deposit Agreement, the Plaintiff was notified that that either party could be require any claims to be submitted to binding arbitration. (*Id.* at 1–2.) Page one of the Deposit Agreement provides that “[t]his Agreement covers any and all deposit accounts you have or have had from time to time with Regions Bank, by whatever name or description, including, but not limited to, checking accounts, savings accounts, money market deposit accounts, time deposit accounts, and certificates of deposit.” (*Id.*) Page one is also clarifies in conspicuous type that “**BINDING ARBITRATION** provisions set forth in [the] Agreement also apply to any account, contract, loan, credit, transaction, business, contact, interaction or relationship you may have or have had with us from time to time.” *Id.* For the avoidance of all doubt, page 2 of the Deposit Agreement contains the following notice:

¹ The Deposit Agreement can be found at <https://www.regions.com/-/media/pdfs/terms/Deposit-Agreement.pdf?6123>.

² Please note that this is the Deposit Agreement in effect when Plaintiff completed the Regions and Cetera Paperwork. The Deposit Agreement found online is a later dated version.

► ARBITRATION AND WAIVER OF JURY TRIAL. THIS AGREEMENT CONTAINS PROVISIONS FOR BINDING ARBITRATION AND WAIVER OF JURY TRIAL. YOUR ACCEPTANCE OF THIS AGREEMENT INCLUDES YOUR ACCEPTANCE OF AND AGREEMENT TO SUCH PROVISIONS. WHEN ARBITRATION IS INVOKED FOR CLAIMS SUBJECT TO ARBITRATION, YOU AND REGIONS WILL NOT HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM AND YOU WILL NOT HAVE THE RIGHT TO BRING OR PARTICIPATE IN ANY CLASS ACTION OR SIMILAR PROCEEDING IN COURT OR IN ARBITRATION.

The Regions Arbitration Provision broadly applies to “any controversy, claim, counterclaim, dispute or disagreement” claim relating to, *inter alia*, any account; any alleged contract or tort arising out of or relating in any way to the Agreement, any account, any agreement, any transaction, any advertisement or solicitation, or your business, interaction or relationship with Regions; any property loss or damage; or any claim, demand or request for compensation or damages from or against Regions would be required to be settled by binding Arbitration under the Federal Arbitration Act (“FAA”) if either party elects to arbitrate. (“Regions Arbitration Agreement”) (*Id.* at 3–4.) The Regions Arbitration Agreement provides that the arbitration shall be administered by the American Arbitration Association (“the AAA”). (*Id.* at 4.)

Plaintiff agreed to arbitrate any dispute he may have with Defendants as conservator for the minor Ms. Lovelace. He is bringing these claims in his capacity as a conservator. In an affidavit dated September 27, 2023, but filed November 10, 2023, Plaintiff swears that he was not provided with the final page of the Cetera New Account Application that contained the Cetera Arbitration Agreement or the Deposit Agreement that contains the Regions Arbitration Agreement. (Aff. of Richard Cooler, ¶ 11–16.) Plaintiff does not swear that the signatures contained on pages that include notices of arbitration are not his signature, but instead admits that he did sign these

documents. (Aff. of Richard Cooler, ¶ 12–13.) Plaintiff has voluntarily entered into the respective arbitration agreements, and his claims against Defendants should be submitted to binding arbitration.

LEGAL STANDARD

The policy of the United States and of South Carolina is to favor arbitration of disputes.³ *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 131 (2016) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001)). “In interpreting agreements within the scope of the FAA, ‘due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration.’” *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (quoting *Stokes v. Metropolitan Life Ins. Co.*, 351 S.C. 606, 610, 571 S.E.2d 711, 714 (Ct. App. 2002)).

Arbitration is a matter of contract law and general contract principles of state law apply to a court’s evaluation of the enforceability of an arbitration clause. *Parsons*, 418 S.C. at 6, 791 S.E.2d at 131. To determine whether an arbitration clause applies to a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the

³ The Cetera New Account Application provides that Minnesota law should be used to interpret it. (Ex. B, 9, ¶19.) This would only apply to the Cetera Arbitration Agreement, and not the Regions Arbitration Agreement. Minnesota’s public policy also favors arbitration. *Dunshee v. State Farm Mut. Auto. Ins. Co.*, 303 Minn. 473, 477, 228 N.W.2d 567, 570 (1975). The framework for determining whether there is an enforceable arbitration agreement appears the same in Minnesota as it does in South Carolina in that state law legal principles relating to contract formation govern whether an agreement to arbitrate was entered. *Mainville v. Coll. Town Pizza, Inc.*, 629 F. Supp. 3d 913, 920 (D. Minn. 2022) (“Although state contract law governs whether an enforceable agreement exists, federal law governs whether the dispute is within the scope of the parties’ arbitration agreement.”) Like South Carolina law, Minnesota law puts the burden on the party seeking to avoid the agreement to demonstrate why no arbitration agreement was reached. *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003).

arbitration clause. *Id.* at 7, 791 S.E.2d at 131. The heavy presumption in favor of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration. *Id.* (citing *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013)). “[A]greements to arbitrate must be enforced, absent a ground for revocation of the contractual agreement.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). “[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014) (quoting *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000)).

ARGUMENT

A. The Cetera Arbitration Agreement and Regions Arbitration Agreement Cover the Claims Asserted by Plaintiff.

Invested with the authority and power as conservator of the minor Lovelace’s financial holdings, Plaintiff entered into the respective agreements with Cetera and Regions. The Cetera Arbitration Agreement broadly covers “any dispute” between Plaintiff and Cetera. (Ex. B, 9.) Similarly, the Regions Arbitration Agreement applies to any controversy, claim, counterclaim, dispute or disagreement between you and [Regions]” (Ex. D, 3.) *See York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81–82, 749 S.E.2d 139, 146 (Ct. App. 2013)) (Finding that where an arbitration provision of the agreement relates to all disputes, the agreement indicates an “unambiguous, mutual intent to arbitrate.”).

Plaintiff brings claims against some or all of the Defendants alleging causes of action for negligence/gross negligence, violation of S.C. Code Ann. § 62-5-420, negligent hiring/training/supervision, breach of contract, conversion, and violation of the South Carolina Unfair Trade Practices Act arising out Plaintiff’s relationship with Cetera and Regions.

Consequently, his allegations clearly fall within the broad language of the arbitration agreements.⁴ *Carolina Care Plan, Inc.*, 361 S.C. at 550, 606 S.E.2d at 755 (citing *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118) (“[U]nless the Court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.”). Therefore, arbitration is the required form of dispute resolution for the Plaintiff’s Claims.

B. The FAA Requires the Arbitration Agreement be Enforced.

“Generally, any arbitration agreement affecting interstate commerce is subject to the FAA.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013) (internal citations omitted). The FAA provides that “[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such a contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2 (emphasis added). The FAA manifests “an emphatic federal policy in favor of arbitral dispute resolution,” and requires that courts “rigorously enforce agreements to arbitrate.” *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 631 (1985). When the FAA applies, federal substantive law regarding arbitrability controls. *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013) (citing *Mitsubishi*, 473 U.S. at 626). A litigant can compel arbitration under the FAA where there is:

- (1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the

⁴ Like South Carolina law, Minnesota law similarly considers whether the language of the arbitration agreement is intended to cover the dispute between the parties. *Lynch v. Condominiums of Buena Vista, Inc.*, No. A22-0864, 2023 WL 2230342, at *3 (Minn. Ct. App. Feb. 27, 2023), review denied (June 20, 2023) (quoting *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993) (“When considering a motion to compel arbitration, the court’s inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement.”)).

relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of [a party] to arbitrate the dispute.

Adkins v. Labor Ready, Inc., 303 F.3d 496, 500–01 (4th Cir. 2002).

As an initial matter, the Regions Deposit Agreement expressly provides that FAA applies. (Ex. D, 4.) Furthermore, the Regions Deposit Agreement provides that Plaintiff and Regions acknowledge and agree that the agreement “evidences a ‘transaction involving commerce’” under the FAA, and hereby waive and relinquish any right to claim otherwise.” (*Id.* at 6.) “Regions Bank is a multi-state banking organization engaging in interstate banking and commerce; Regions Bank’s deposits are federally insured; the funds deposited in any account flow through interstate commerce; and we regularly use the services of business located in other states in opening and administering accounts.” (*Id.*) While the Cetera Arbitration Agreement does not provide similar language, the test above requires that the FAA be applied.

Criteria one and two are clearly satisfied as there is clearly a dispute and this dispute is covered by the language in the respective arbitration agreements for the reasons stated above. Criterion four is also satisfied by Plaintiff’s filing of this action in this Court rather than proceeding with filing a demand for arbitration. The third criterion, interstate commerce, is also satisfied. Regions and Cetera are incorporated and headquartered in different states than Plaintiff, necessarily involving interstate commerce. *Cape Romain Contractors, Inc.*, 405 S.C. at 123–24, 747 S.E.2d at 465 (noting that use of materials and services from out-of-state sources is an indicator of interstate commerce). As noted in the Regions Deposit Agreement, banking and financial institutions like Cetera and Regions engage in interstate banking and commerce as a natural consequence of their particularly industry. The funds are subject to federal regulation and the very monies at issue in this case were wired between states as part of Defendants business.

“The phrase ‘involving commerce’ as used in the FAA is ‘the functional equivalent of the more familiar term “affecting commerce”—words of art that ordinarily signal the broadest permissible exercise of Congress’ Commerce Clause power.” *Hicks Unlimited, Inc. v. UniFirst Corp.*, 439 S.C. 623, 633, 889 S.E.2d 564, 569 (2023) (quoting *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003)); *see also Cape Romain Contractors, Inc.*, 405 S.C. at 122, 747 S.E.2d at 464 (“The United States Supreme Court has previously described the FAA’s reach expansively as coinciding with that of the Commerce Clause.”) (internal citations and quotations omitted). *Hicks* noted that under the FAA, Congress’ Commerce Clause power may be exercised in individual cases without a showing of any specific effect upon interstate commerce if the economic activity in question would represent a general practice subject to federal control. *Hicks*, 439 S.C. at 634, 889 S.E.2d at 569. *Hicks* then distinguished the case before it from a case involving the banking industry and noted that the banking industry is “an activity that is, in general, subject to federal control.” *Id.*

With all four criteria satisfied, the FAA applies with its emphatic policy of favoring arbitration of dispute. A court “has no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview.” *Cape Romain Contractors, Inc.*, 405 S.C. at 128, 747 S.E.2d at 468 (citing *Adkins*, 303 F.3d at 500).

C. Even if Plaintiff Did Not See the Arbitration Provisions, his Claims are Still Subject to the Arbitration Agreements.

Defendants assert that Plaintiff was provided with both the Cetera Arbitration Agreement and the Regions Arbitration Agreement. As noted above, on the pages signed by Plaintiff with Cetera and Regions, he was put on notice that his signature acknowledged he was agreeing to arbitrate any dispute with Cetera and/or Regions. As it relates to Cetera, in the paragraph directly preceding Plaintiff’s signature, he acknowledged that by signing below, he “underst[ood] that this

agreement contains a predispute arbitration clause that is fully set forth in paragraph 20 on page 9 of this form.” (Ex. A, 6) Similarly, when he signed the Fiduciary Account Maintenance and Signature Form with Regions, Plaintiff was notified in bold and conspicuous text that by signing he “acknowledged receiving and agree[ing] to each and every term, condition, and provision of the Deposit Agreement (including, without limitation, the ARBITRATION AND WAIVER OF JURY TRIAL provisions (Ex. C., 2.) Defendants contend that Plaintiff was provided with both the Cetera Arbitration Agreement and the Regions Arbitration Agreement.

Plaintiff seeks to avoid these arbitration provisions by saying he was never provided a copy of either arbitration agreement. This cannot invalidate the effect of the arbitration provisions. *See Jenkins v. CitiFinancial, Inc.*, No. CV 2:05-1199-PMD-GCK, 2007 WL 9753133, at *6 (D.S.C. Jan. 16, 2007) (rejecting the argument that because plaintiff did not read the arbitration agreement, she did not accept the offer to arbitrate). In *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) and *Jenkins v. CitiFinancial, Inc.*, No. CV 2:05-1199-PMD-GCK, 2007 WL 9753133 (D.S.C. Jan. 16, 2007), employees claimed that they did not receive employee handbooks containing arbitration provisions despite each signing acknowledgement or receipt forms stating that each employee had received their respective employee handbooks and that the employee handbooks contained arbitration agreements. *Towles*, 338 S.C. at 34, 524 S.E.2d at 842; *Jenkins*, 2007 WL 9753133, at *2. *Towles* and *Jenkins* determined that the receipt form provided to each employee provided notice to each employee of the existence of the arbitration agreements. *Towles*, 338 S.C. at 39, 524 S.E.2d at 845; *Jenkins*, 2007 WL 9753133, at *5. Both Courts determined that each employees continued employment with the respective defendants constituted sufficient consideration. *Towles*, 338 S.C. at 40, 524 S.E.2d at 845; *Jenkins*, 2007 WL 9753133, at *6.

Like the plaintiffs in *Towles* and *Jenkins*, Plaintiff was clearly put on notice of the existence of the respective arbitration provisions for the reasons stated above. His signature and continued banking and investing with Regions and Cetera, like the continued employment in *Towles* and *Jenkins*, constitutes consideration sufficient to show acceptance of the Cetera Arbitration Agreement and the Regions Arbitration Agreement.

D. Defendant Lazurek is Entitled to Enforce the Arbitration Agreement.

Even though Defendant Lazurek is not a named party to the Cetera Arbitration Agreement, he is entitled to enforce the Cetera Arbitration Agreement. Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties. *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012). A signatory is equitably estopped from denying the enforcement of an arbitration agreement, “*when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.*” *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (citing *Goer v. Jasco Indus. Inc.*, 395 F. Supp. 308, 314 n.9 (D.S.C.)).

Plaintiff is estopped from denying the existence of the Cetera Arbitration Agreement as it relates to Defendant Lazurek. Plaintiff seeks to hold Defendant Lazurek liable arising out of the same set of facts for which it seeks to hold Defendant Cetera liable. *Id.* at 293, 733 S.E.2d at 603 (Courts “have been willing to estop a signatory from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.”) (internal citations omitted.) “South Carolina has recognized a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in

his complaint because this would nullify the rule requiring arbitration.”⁵ *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (internal quotations omitted).

E. The Dispute Between Plaintiff and Defendants is Subject to Arbitration Even Though Plaintiff and Defendant Lovelace Did Not Agree to Arbitrate.

Plaintiff cannot avoid the enforcement of the arbitration agreements just because Plaintiff and Defendant Lovelace did not enter into an arbitration agreement. Arbitration must still be ordered even if the claims against Defendant Lovelace must remain in state court and the claims against the remaining Defendants ordered to arbitration.

The FAA, “both through its plain meaning and the strong federal policy it reflects, requires courts to enforce the bargain of the parties to arbitrate, and not to substitute its own views of economy and efficiency for those of Congress.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 217 (1985) (internal quotations omitted). Providing that agreements to arbitrate “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of the of any contract,” 9 U.S.C. 2, the FAA “leaves no place for exercise of discretion by a [court], but instead mandates that [courts] shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Id.* at 218; *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 69, 620 S.E.2d 86, 90 (Ct. App. 2005).

The parties’ agreement to arbitrate all claims arising from the care received by the decedent must be enforced, even if it results in bifurcated proceedings. *Dean Witter Reynolds, Inc.*, 470 U.S. at 221; *Wellman, Inc.*, 366 S.C. at 68, 620 S.E.2d at 90. The legislative history of the FAA

⁵ Minnesota law also permits a nonsignatory to compel arbitration against a signatory, “when the signatory to the contract containing the arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.” *ev3 Inc. v. Collins*, No. A08-1816, 2009 WL 2432348, at *3 (Minn. Ct. App. Aug. 11, 2009) (internal quotations omitted).

illustrates that the driving purpose behind its passage “was to ensure judicial enforcement of privately made agreements to arbitrate” *Dean Witter Reynolds, Inc.*, 470 U.S. at 219. Arbitration agreements should be rigorously enforced “even if the result is ‘piecemeal’ litigation” *Id.* at 221.

Simply put, “a trial court may not refuse to enforce an otherwise valid arbitration provision on the basis of judicial economy. *Wellman, Inc.*, 366 S.C. at 71, 620 S.E.2d at 9. While this may result in litigation and arbitration of “intertwined issues”, “[a]ny inefficiency or risk of inconsistent results is a consequence of the parties’ bargaining.” *Id.* at 70, 620 S.E.2d at 91. To hold otherwise could lead to arbitration being foreclosed by simply adding as a defendant a person not a party to an arbitration agreement. *Id.* at 70–71, 620 S.E.2d at 91. The utility of arbitration agreements would “be seriously compromised.” *Id.* at 71, 620 S.E.2d at 91.

CONCLUSION

For these reasons, Defendants, Regions, Cetera, and Lazurek, respectfully request that this Court dismiss or stay Plaintiff’s Complaint against them and in the alternative compel those claims to arbitration.

NELSON MULLINS RILEY & SCARBOROUGH LLP

/s/Cory E. Manning

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*Attorneys for Defendants Regions Bank, Cetera
Investment Services, LLC d/b/a Regions
Investment Services, and Christopher Lazurek*

Columbia, SC
November 13, 2023

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)

)

IN THE COURT OF COMMON PLEAS

)

FOURTEENTH JUDICIAL CIRCUIT

Amber Leigh Lovelace, by and through her
Conservator Richard Cooler,

)

)

)

Plaintiff,

)

)

vs.

)

)

Steven Lovelace, Regions Bank, and Cetera
Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek,

)

)

)

)

Defendants.

)

Case No. 2023-CP-07-00646

DEFENDANTS' NOTICE OF FILING

Defendants Regions Bank, Cetera Investment Services d/b/a Regions Investment Services, and Christopher Lazurek (collectively, "Defendants"), by and through counsel, hereby give notice of their filing of the signed Affidavits of Kenneth Cobb and Mark J. Weeks, attached as Exhibits A and B, respectively.

NELSON MULLINS RILEY & SCARBOROUGH LLP

/s/Cory E. Manning

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*Attorneys for Defendants Regions Bank, Cetera
Investment Services, LLC d/b/a Regions
Investment Services, and Christopher Lazurek*

Columbia, SC
November 14, 2023

EXHIBIT A

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
Amber Leigh Lovelace, by and through her	)	Case No. 2023-CP-07-00646
Conservator Richard Cooler,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF KENNETH COBB
vs.	)	
	)	
Steven Lovelace, Regions Bank, and Cetera	)	
Investment Services d/b/a Regions Investment	)	
Services, and Christopher Lazurek,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Kenneth Cobb, who, being duly sworn under penalty of perjury, deposes and says:

1. My name is Kenneth Cobb. I am a resident of Georgia. I am over the age of 18, and I am competent to give this Affidavit. I have personal knowledge of the facts set forth in this Affidavit unless I state otherwise.
2. I am a financial advisor at Regions Bank and have been employed by Regions Bank since September 2019.
3. I am a registered representative with Cetera Investment Services, Inc. ("Cetera") in Evans, Georgia, and have been so registered with Cetera since September 2019.
4. I am familiar with the facts relating to the dispute captioned above as set forth in this Affidavit.
5. The Cetera New Account Application is a nine-page document. The sixth page of the Cetera New Account Application is the signature page. Page seven through nine contain terms and conditions that govern the relationship between Cetera and its account holders.
6. As part of the ordinary course of business, an account applicant would be provided all nine pages of the Cetera New Account Application and provided an opportunity to review the entire application prior to signing.

7. Unless it is an electronically signed document, when signed applications are imaged for purposes internal record keeping, the imaging team does not scan the entire New Account Application and stops after the signature page.

8. I have no reason to believe that Mr. Cooler was not provided all nine pages of the New Account Application prior to his signing the same.

FURTHER AFFIANT SAYETH NOT.


Kenneth Cobb

SWORN TO before me this 14th

Day of November, 2023


Notary Public for Georgia

LISA A. CUTLER
NOTARY PUBLIC
Wilkes County
State of Georgia
My Comm. Expires Oct. 13, 2025

My Commission Expires: 10-13-25

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT

Amber Leigh Lovelace, by and through her
Conservator Richard Cooler,

Plaintiff,

vs.

Steven Lovelace, Regions Bank, and Cetera
Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek,

Defendants.

Case No. 2023-CP-07-00646

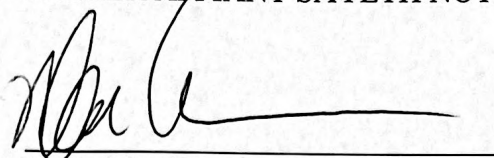
AFFIDAVIT OF MARK J. WEEKS

PERSONALLY APPEARED BEFORE ME, Mark J. Weeks, who, being duly sworn
under penalty of perjury, deposes and says:

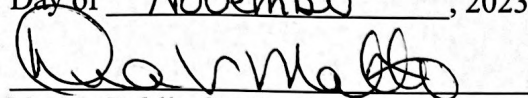
1. My name is Mark J. Weeks. I am a resident of South Carolina. I am over the age of 18, and I am competent to give this Affidavit. I have personal knowledge of the facts set forth in this Affidavit unless I state otherwise.
2. I am a Vice President and Commercial Banker for First Federal Bank in Lady's Island, South Carolina and have been employed by First Federal since February 2023.
3. Previously, I worked for Regions Bank in Beaufort, South Carolina, as a Business Relations Manager for nearly 12 years.
4. Mr. Cooler appears to have changed the fiduciary information on the Amber Lovelace Savings Account with Regions Bank on or around January 30, 2023, by completing the Fiduciary Account Maintenance and Signature Form.
5. As part of the ordinary course of business, when a new applicant completes paperwork associated with an account a Regions Bank, they are provided a copy of the Deposit Agreement.

6. I have no reason to believe that Mr. Cooler was not given a copy of the Deposit Agreement from Regions when he completed the Fiduciary Account Maintenance and Signature Form.

FURTHER AFFIANT SAYETH NOT.


Mark J. Weeks

SWORN TO before me this 14
Day of November, 2023


Notary Public for South Carolina

My Commission Expires: 6-8-27

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

Amber Leigh Lovelace, by and through her
Conservator Richard Cooler,

)

Case No. 2023-CP-07-00646

)

Plaintiff,

)

v.

)

**RULE 59(E) MOTION TO
RECONSIDER, ALTER, OR AMEND**Steven Lovelace, Regions Bank, and Cetera
Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek,

)

)

)

)

Defendants.

)

)

Defendants, Regions Bank, Cetera Investment Services d/b/a Regions Investment Services, and Christopher Lazurek (collectively, “Defendants,” but individually “Regions,” “Cetera,” and “Lazurek,” respectively), move the Court under Rule 59, SCRCP, to reconsider its December 7, 2023 Order denying their Motion to compel arbitration and dismiss or stay the case. (the “December 7 Order.”) The Court should compel Plaintiff’s claims to arbitration and dismiss with prejudice under the Federal Arbitration Act, 9 U.S.C. §§ 3–4 (the “FAA”), the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 through -240, and Rules 12(b)(1), (3), and (6), SCRCP. The arguments made and materials cited or referenced in Defendants’ Motion filed on June 16, 2023, Memorandum in Support filed on November 13, 2023, and at the November 15 hearing are incorporated herein, and the exhibits to Defendants’ motion to compel arbitration are reattached to this motion. See Plaintiff Signed Cetera New Account Application, Exhibit A; Clean Copy of Cetera New Account Application, Exhibit B; Plaintiff Signed Regions Fiduciary Account Maintenance and Signature Form, Exhibit C; and Regions Deposit Agreement, Exhibit D. Defendants also incorporate the previously filed affidavits of Kenneth Cobb and Mark J. Weeks, as Exhibit E and Exhibit F, respectively.

BACKGROUND

Plaintiff entered into arbitration Agreements with Cetera and Regions on January 30, 2023, after he was appointed as conservator for his granddaughter's conservatorship. (Defs.' Mem. in Supp. at 3-4.) This was necessary because, Defendant Steven Lovelace voluntarily resigned as conservator after it was discovered that funds protected by the conservatorship in accounts with Cetera and Regions were missing.

Plaintiff admits that he signed the Cetera New Account Application and the Regions Fiduciary Account Maintenance and Signature Form. Both of these documents, either directly above or right beside the signature line, contained language informing Plaintiff that he was agreeing to arbitrate his claims against Regions and Cetera. The Cetera New Account Application also provides that the statutory and common laws of the State of Minnesota excluding its conflicts of law provisions govern the interpretation of the Agreement.

Despite these arbitration provisions, Plaintiff filed the Complaint on April 6, 2023. Defendants filed their motion to compel arbitration and dismiss or stay the complaint on June 16, 2023, in response to the Complaint. Defendants filed their memorandum in support on November 13, 2023. A hearing was held on November 15, 2023. At the conclusion of the hearing, the Court asked counsel for Plaintiff and counsel for Defendants to submit proposed orders. On December 7, 2023, The Court adopted Plaintiff's proposed order, but making some changes to the factual recitation.

Defendants now file this Motion asking that the Court to reconsider its ruling and the arguments and materials presented and alter or amend its order and grant the motion to compel arbitration and dismiss or stay the action as to Defendants.

STANDARD

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). The Supreme Court

has clarified that a party may file a motion to reconsider “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24, 602 S.E.2d at 780.

ARGUMENT

I. A Valid Arbitration Agreement Exists Between Plaintiff and Defendants.

The December 7 Order erred in finding no valid arbitration agreement was reached between Plaintiff and Cetera and Plaintiff and Regions. It is undisputed that Plaintiff signed the Cetera New Account Application or the Regions Fiduciary Account Maintenance and Signature Form on January 30, 2023. It is also clear from reading the documents that Plaintiff was informed that he was agreeing to arbitrate his claims. (Defendants Mem. in Support 2–3.)

Unable to deny his signature, Plaintiff avers that he was not provided the final three pages of the Cetera New Account Agreement that contained the Cetera arbitration provision or the Regions Deposit Agreement that contained the Regions Arbitration Agreement. Contrary to the language of the December 7 Order at page 6, Defendants submitted two affidavits controverting Plaintiff’s affidavit that he did not receive these documents. Affidavits from representatives of Cetera and Regions state that Plaintiff would have received these documents in the ordinary course of business, and the affiants can think of no reason why Plaintiff would be any different. See Affidavits of Kenneth Cobb and Mark J. Weeks, submitted as Exhibits E and F, respectively.

Under South Carolina or Minnesota law, whether Plaintiff reviewed the Cetera Arbitration Agreement or the Regions Arbitration Agreement prior to signing the Cetera New Account Application or the Regions Fiduciary Account Maintenance and Signature Form, he entered into an arbitration agreement with Cetera and Regions.

As it relates to Cetera, the case of *Bam Navigation, LLC v. Wells Fargo & Co.*, No. 20-CV-1345 (NEB/ECW), 2021 WL 533692 (D. Minn. Feb. 12, 2021) is compelling. In *Bam Navigation*, the representative for the plaintiff applied for an account with the defendant bank.

Id. at *1. On the third page of the application, he agreed to a list of terms and conditions. *Id.* Specifically, the plaintiff agreed to be bound by a separate “account agreement that includes the Arbitration Agreement.” *Id.* The plaintiff also acknowledged receipt of the account agreement. *Id.* The court in *Bam Navigation* expressly rejected the plaintiff’s arguments that he could not be bound by the arbitration agreements because he never signed the arbitration agreement and claims to have never received the account agreement. *Id.* at *3.

The court ruled that “when a contract incorporates another document by reference, a party cannot avoid its obligations under the incorporated document by claiming it did not read or receive it. *Id.* at *3 (internal citations omitted). Similar to the Plaintiff here, the court found that the plaintiff “read and signed the Application, which put [the plaintiff] on notice not only of the [a]ccount [a]greement, but also the fact that it contained an arbitration agreement.” *Id.*

As it relates to Regions, South Carolina courts have enforced arbitration agreements where the plaintiff has claimed not to have actual notice of the arbitration agreement. *See, e.g., Jenkins v. CitiFinancial, Inc.*, No. CV 2:05-1199-PMD-GCK, 2007 WL 9753133, at *6 (D.S.C. Jan. 16, 2007) (rejecting the argument that because plaintiff did not read the arbitration agreement, she did not accept the offer to arbitrate). In the analogous cases of *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) and *Jenkins v. CitiFinancial, Inc.*, No. CV 2:05-1199-PMD-GCK, 2007 WL 9753133 (D.S.C. Jan. 16, 2007), employees attempted to avoid arbitration agreements by claiming, in part, that they never received actual notice of the arbitration provision. *Towles*, 338 S.C. at 34, 524 S.E.2d at 842; *Jenkins*, 2007 WL 9753133, at *2. The plaintiff in *Towles* claimed to have never received actual notice of the arbitration provisions. *Towles*, 338 S.C. at 37, 524 S.E.2d at 844. The plaintiff in *Jenkins* said she was not given an opportunity to read the employee handbook, or the receipt form she signed, and her manager told her that it was solely for purposes of processing payroll and benefits. *Jenkins*, 2007 WL 9753133 at *2. The plaintiff in *Jenkins* also claims to not have had actual

notice of the arbitration agreement contained in the handbook at the time she signed the receipt form stating she had received it. *Id.* Similarly, the plaintiff in *Towles* signed a Code of Conduct and Employee Handbook Acknowledgement form that summarized the arbitration policy.

Towles, 338 S.C. at 34, 524 S.E.2d at 842.

The courts in both *Towles* and *Jenkins* concluded that by signing the respective acknowledgment or receipt forms, neither plaintiff could “legitimately claim [the defendant] failed to provide actual notice of the arbitration provisions because the law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents from simply reading the document.” *Towles*, 338 S.C. at 39, 524 S.E.2d at 845. *Jenkins*, 2007 WL 9753133, at *4.

Similarly, Plaintiff was put on notice of the existence of the Regions Arbitration Agreement when he signed the Fiduciary Account Maintenance and Signature Form. Regions informed Plaintiff right beside the signature line in bold and conspicuous text that he “acknowledged receiving and agree[ing] to each and every term, condition, and provision of the Deposit Agreement (including, without limitation, the ARBITRATION AND WAIVER OF JURY TRIAL provisions” *See Citizens & S. Nat. Bank of S.C. v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994) (“The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document.”). Like Cetera, Plaintiff entered into an arbitration agreement with Regions. *See Bootle et al. v. Morrison et al.*, Case Nos. 2019-CP-15-00195/00196/00197, at *5–6 (S.C. Court of Common Pleas August 19, 2019) (J. Mullen) (compelling arbitration in an action brought by clients against a bank, brokerage firm, and investment adviser where plaintiffs signed an application putting them on notice of an arbitration agreement contained in a master account agreement).

The Court should alter or amend its December 7, 2023, Order to find that an arbitration agreement was entered into between Plaintiff and Cetera and Plaintiff and Regions. *See First*

Baptist Church of Timmonsville v. George A. Creed & Son, Inc., 276 S.C. 597, 599, 281 S.E.2d 121, 123 (1981) (concluding that “in the absence of showing of fraud, mistake, unfair dealing or the like, a party to a contract incorporating an arbitration provision cannot escape the obligation of such a provision by simply declaring: ‘But I did not read the whole agreement’”).

II. The Arbitration Agreements are Not Unconscionable.

The December 7, 2023, Order further erred in finding that the Cetera and Regions arbitration agreements are unconscionable. The Order focuses on the surrounding facts to determine that the contract was one of adhesion. (December 7 Order at 6–7.) However, the Order failed to identify any substantive provisions of either arbitration agreement that is unconscionable. Both procedural and substantive unconscionability must be present to establish unconscionability. 17A Am. Jur. 2d Contracts § 272.; *see also Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 754 (2022).

“[U]nconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (citing *Fanning v. Fritz's Pontiac–Cadillac–Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996)); *see also Bam Navigation*, 2021 WL 533692, at *4 (citing *TEM Capital, LLC v. Leonard*, Nos. A13-0158, A13-0215, 2013 WL 6152186, at *4 (Minn. Ct. App. Nov. 25, 2013)) (“Under Minnesota law, a party claiming that a contract is unconscionable must establish that he or she had no meaningful choice but to accept the contract terms as offered and that the terms of the contract were unreasonably favorable to the other party.”) (internal quotations omitted).

Without addressing whether the Cetera or Regions agreements are contracts of adhesion, even if they were, Plaintiff did not raise any issue of substantive unconscionability contained in either arbitration provisions. Similarly, the December 7 Order did not identify any offensive

substantive provision. Instead, the December 7 Order concluded that the facts surrounding the signing of the arbitration agreements and Plaintiff not being provided the documents rises to the level of unconscionability. This reasoning only applies to procedural findings. “In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker.” *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 368, 887 S.E.2d 534, 541 (Ct. App. 2023) (internal citations omitted). The December 7, 2023, Order did not identify any offending term, particularly any term that was geared towards achieving an unbiased decision by a neutral decision-maker. Further, the mere fact that a contract is one of adhesion does not render it unconscionable. *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365; *Mart v. Great S. Homes, Inc.*, 441 S.C. 304, 318, 893 S.E.2d 360, 367 (Ct. App. 2023). *See also Bam Navigation*, 2021 WL 533692, at *4 (citing *Vierkant v. AMCO Ins. Co.*, 543 N.W.2d 117, 120 (Minn. Ct. App. 1996)) (“A contract is not unconscionable merely because the parties to it possess unequal bargaining power.”).

Moreover, the inclusion of an arbitration clause is not unconscionable in an adhesion contract. *Jenkins*, 2007 WL 9753133, at *7 (citing *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365; *see also Bam Navigation*, 2021 WL 533692, at *4 (finding that an arbitration agreement contained in an account agreement separate and apart from the application was not unconscionable because the plaintiff “could have instead opted not to open an account”).

For these reasons, it was error to find that the arbitration agreements were unconscionable, and the December 7 Order should be altered or amended to require arbitration of Plaintiff’s Dispute with Defendants.

III. There was Consideration to Support the Agreement.

The December 7, 2023, Order found that there was no consideration because the Plaintiff did not open new accounts, but merely substituted his name on two existing accounts in response

to the Probate Court appoint him as Successor Conservator for his minor granddaughter. (December 7 Order at 8.) This determination overlooks the clear precedent finding that mutual agreements to arbitrate constitute valid consideration. *St. Aubin v. THI of S.C. at Camp Care, LLC*, No. 2020-000357, 2023 WL 3614283, at *1 (S.C. Ct. App. May 24, 2023).

Furthermore, valuable consideration may consist of “some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.” *Hennes v. Shaw*, 397 S.C. 391, 399, 725 S.E.2d 501, 505 (Ct. App. 2012); *see also Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 463 (Minn. Ct. App. 2001) (quoting *Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn.App.1996), review denied (Minn. Apr. 16, 1996)) (“Consideration is ‘something of value given in return for a performance or promise of performance,’ and requires that a contractual promise be the product of a bargain.”). Here, Plaintiff was required to enter into the respective agreements with Cetera and Regions to continue banking and investing with each. His signature and continued banking and investing with Regions and Cetera, like the continued employment in *Towles* and *Jenkins*, constitutes consideration sufficient to show acceptance of the Cetera Arbitration Agreement and the Regions Arbitration Agreement.

IV. The FAA Applies, and Its Emphatic Policy Requires Enforcement of the Arbitration Provisions.

The December 7 Order did not address the application of the Federal Arbitration Act (“FAA”). We ask that the Court amend the December 7 Order to find that the FAA applies, and that it requires Plaintiff’s claims to be arbitrated.

The FAA provides that “[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such a contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2 (emphasis added). The FAA manifests “an emphatic federal policy in favor of arbitral dispute resolution,” and requires that courts “rigorously enforce agreements to arbitrate.” *Mitsubishi Motors Corp. v.*

Soler Chrysler–Plymouth, Inc., 473 U.S. 614, 631 (1985). When the FAA applies, federal substantive law regarding arbitrability controls. *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013) (citing *Mitsubishi*, 473 U.S. at 626); *see also Churchill Env't & Indus. Equity Partners, L.P. v. Ernst & Young, L.L.P.*, 643 N.W.2d 333, 335–36 (Minn. Ct. App. 2002) (“The FAA creates a body of federal substantive law applicable to any arbitration agreement within the coverage of the Act.”) (internal citations omitted).

A litigant can compel arbitration under the FAA where there is:

- (1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of [a party] to arbitrate the dispute.

Adkins v. Labor Ready, Inc., 303 F.3d 496, 500–01 (4th Cir. 2002); *Churchill Env't & Indus. Equity Partners, L.P.*, 643 N.W.2d at 337 (“When a party moves to compel arbitration, the court is limited to determining whether an arbitration agreement exists and, if so, whether the dispute falls within the scope of that agreement.”). Criteria one and four are clearly satisfied as there is clearly a dispute between the parties and Plaintiff has brought this claim in state court rather than arbitration. Criterion two and three will be addressed below.

A. Plaintiff’s Claims are Covered by the Arbitration Agreements.

To determine whether an arbitration clause applies to a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the arbitration clause. *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 7, 791 S.E.2d 128, 131 (2016) (citations omitted); *Lynch v. Condominiums of Buena Vista, Inc.*, No. A22-0864, 2023 WL 2230342, at *3 (Minn. Ct. App. Feb. 27, 2023), review denied (June 20, 2023) (quoting *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993) (“When considering a motion to compel arbitration, the court's inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement.”)

The Cetera Arbitration Agreement broadly covers “any dispute” between Plaintiff and Cetera “arising out of this agreement.” Similarly, the Regions Arbitration Agreement applies to “any controversy, claim, counterclaim, dispute or disagreement between you and [Regions]” This applies to any account; any alleged contract or tort arising out of or relating in any way to the Agreement, any account, any agreement, any transaction, any advertisement or solicitation, or Plaintiff’s business, interaction or relationship with Regions; any property loss or damage; or any claim, demand or request for compensation or damages from or against Regions.

Plaintiff brings claims against some or all of the Defendants alleging causes of action for negligence/gross negligence, violation of S.C. Code Ann. § 62-5-420, negligent hiring/training/supervision, breach of contract, conversion, and violation of the South Carolina Unfair Trade Practices Act arising out Plaintiff’s relationship with Cetera and Regions. Consequently, his allegations clearly fall within the broad language of the arbitration agreements. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 95, 749 S.E.2d 139, 153 (Ct. App. 2013) (“Unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute[,]” arbitration should generally be ordered.) (internal citations omitted); *Minnesota Teamsters Pub. & L. Enft Employees’ Union, Loc. No. 320 v. Cnty. of St. Louis*, 611 N.W.2d 355, 358 (Minn. Ct. App. 2000) (“Doubts concerning the scope of arbitrable issues are resolved in favor of arbitration.”). The broad language of “any dispute” and “any controversy” or “claim” represents an unambiguous, mutual intent to arbitrate. See *York*, 406 S.C. at 81, 749 S.E.2d at 146 (finding that contractual language using “any and all disputes” “indicated the parties’ unambiguous, mutual intent to arbitrate”).

The December 7, 2023, Order found that the Cetera arbitration agreement did not cover the dispute because the provision applies to any dispute between Cetera and Plaintiff arising out of the agreement and could not cover facts that happened prior to Plaintiff’s signing of the Cetera New Account Application. (December 7, 2023, Order, 4.) The Cetera arbitration agreement contains broad language applying to any dispute arising out of the agreement, and “where a broad arbitration clause is involved, a dispute must be referred to arbitration as long as the

underlying factual allegations simply touch matters covered by it.” *Valspar Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 104 F. Supp. 3d 977, 981 (D. Minn. 2015) (internal citations omitted); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 598, 553 S.E.2d 110, 119 (2001) (“A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a ‘significant relationship’ exists between the asserted claims and the contract in which the arbitration clause is contained.”). Here, the whole dispute is over Defendants actions as it relates to funds covered by the conservatorship. The Cetera New Account Application sets forth the terms that will govern the relationship with the parties. Clearly, the factual allegations touch on issues covered by the Cetera Arbitration Agreement.

This reasoning could not apply to the Regions Arbitration Agreement. It covers disputes that arise outside of Plaintiff’s agreement with Regions, including any controversy or claim relating to any account.

For these reasons and the reasons contained in the arguments previously made in briefs and at the hearing, the Court should find that the arbitration agreements cover the instant dispute.

B. Interstate Commerce is Involved and Requires the Application of the FAA.

“Generally, any arbitration agreement affecting interstate commerce is subject to the FAA.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013) (internal citations omitted). “The phrase ‘involving commerce’ as used in the FAA is ‘the functional equivalent of the more familiar term “affecting commerce”—words of art that ordinarily signal the broadest permissible exercise of Congress’ Commerce Clause power.”” *Hicks Unlimited, Inc. v. UniFirst Corp.*, 439 S.C. 623, 633, 889 S.E.2d 564, 569 (2023) (quoting *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003)); *see also DSAI, Inc. v. Mkt. Direct, LLC*, No. CIV. 06-4545 MJD/SRN, 2007 WL 551614, at *3 (D. Minn. Feb. 21, 2007) (same). Under the FAA, Congress’ Commerce Clause power may be exercised in individual cases without a showing of any specific effect upon interstate commerce if the economic activity in question would represent a general practice subject to federal control. *Hicks*, 439 S.C. at 634, 889 S.E.2d at 569; *DSAI, Inc.*, 2007 WL 55164 at *3. The South

Carolina Supreme Court has determined that the banking industry is “an activity that is, in general, subject to federal control.” *Hicks*, 439 S.C. at 634, 889 S.E.2d at 569.

Additionally, where parties from different states are involved, interstate commerce is found to be present. *Cape Romain Contractors, Inc.*, 405 S.C. at 123–24, 747 S.E.2d at 465 (noting that use of materials and services from out-of-state sources is an indicator of interstate commerce); *DSAI, Inc.*, 2007 WL 55164 at *3 (finding that a dispute between a Connecticut company and two Minnesota residents and their Minnesota-based business implicated interstate commerce). Plaintiff’s allegations acknowledge that Defendants Regions and Cetera are out of state defendants. (Compl. ¶ 4-5.) Plaintiff has never argued that the FAA should not apply, and the December 7, 2023, Order did not address this issue. With all four criteria satisfied, the FAA applies with its emphatic policy of favoring arbitration of dispute. A court “has no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview.” *Cape Romain Contractors, Inc.*, 405 S.C. at 128, 747 S.E.2d at 468 (citing *Adkins*, 303 F.3d at 500).

V. Defendant Lazurek is Entitled to Enforce the Arbitration Agreement.

The December 7, 2023, Order did not address whether Plaintiff was estopped from denying the enforcement of the arbitration agreement as to Mr. Lazurek. Mr. Lazurek was the Cetera representative on the applicable account from its creation until approximately March 2019. Even though Defendant Lazurek is not a named party to the Cetera Arbitration Agreement, he is entitled to enforce the Cetera Arbitration Agreement. Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties. *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012). A signatory is equitably estopped from denying the enforcement of an arbitration agreement, “*when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.*” *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (citing *Goer v. Jasco Indus. Inc.*, 395 F. Supp. 308, 314 n.9 (D.S.C.)) (emphasis in original); *ev3 Inc. v. Collins*, No. A08-1816, 2009 WL

2432348, at *3 (Minn. Ct. App., Aug. 11, 2009) (Minnesota law also permits a nonsignatory to compel arbitration against a signatory, “when the signatory to the contract containing the arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.”).

Plaintiff is estopped from denying the existence of the Cetera Arbitration Agreement as it relates to Defendant Lazurek. Plaintiff seeks to hold Defendant Lazurek liable arising out of the same set of facts for which it seeks to hold Defendant Cetera liable. *Pearson*, 400 S.C. at 293, 733 S.E.2d at 603 (Courts “have been willing to estop a signatory from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.”) (internal citations omitted.); *Bam Navigation, LLC*, 2021 WL 533692, at *5 (finding a nonsignatory could enforce an arbitration agreement when the complaint makes “no distinction between [the signatory and nonsignatory] when making its allegations against them.”). “[A] party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint because this would nullify the rule requiring arbitration.” *Pearson*, 400 S.C. at 288, 733 S.E.2d at 600 (internal quotations omitted).

VI. The Dispute Between Plaintiff and Defendants is Subject to Arbitration Even Though Plaintiff and Defendant Lovelace Did Not Agree to Arbitrate.

The December 7, 2023, Order did not address whether Plaintiff could avoid the arbitration agreements simply by adding Defendant Steven Lovelace as a party to this action. Plaintiff cannot. The FAA, “both through its plain meaning and the strong federal policy it reflects, requires courts to enforce the bargain of the parties to arbitrate, and not to substitute its own views of economy and efficiency for those of Congress.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 217 (1985) (internal quotations omitted). Providing that agreements to arbitrate “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of the of any contract,” 9 U.S.C. 2, the FAA “leaves no place for exercise of discretion by a [court], but instead mandates that [courts] shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Id.* at 218; *Wellman, Inc. v. Square D Co.*,

366 S.C. 61, 69, 620 S.E.2d 86, 90 (Ct. App. 2005). The legislative history of the FAA illustrates that the driving purpose behind its passage “was to ensure judicial enforcement of privately made agreements to arbitrate” *Dean Witter Reynolds, Inc.*, 470 U.S. at 219. Arbitration agreements should be rigorously enforced “even if the result is ‘piecemeal’ litigation . . .” *Id.* at 221.

Under these facts, this Court is required to compel Plaintiff to arbitrate his claims against Regions, Cetera, and Lazurek despite Plaintiff’s claims against Defendant Steven Lovelace remaining in this Court. To hold otherwise could lead to arbitration being foreclosed by simply adding as a defendant a person not a party to an arbitration agreement. *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 70–71, 620 S.E.2d 86, 91 (Ct. App. 2005).

VII. The Court Erred In Finding that a Probate Court Order and the Restricted Account Agreement Voided the Arbitration Provisions.

The December 7 Order found that Regions and Cetera waived jurisdiction through Cetera’s signing of the Restricted Account Agreement in February 2016 and the Beaufort County Probate Court’s Order dated January 13, 2023, appointing Plaintiff as conservator. (December 7 Order at 8–9.) The Order cites to language in the Restricted Account Agreement that says it is to be construed *in pari materia* with pertinent Court Orders. The Order then focuses on the language contained in the January 2023 Probate Court Order that provides that “[a]ny financial institution entering into a Court Restricted Account Agreement in so doing submits itself to the personal jurisdiction of this Court.” (December 7 Order at 8; Pl. Mem. in Opp., Exhibit B at 3.) (emphasis added). The December 7, 2023, Order then determined Defendants waived arbitration by submitting to the jurisdiction of the Court. (December 7 Order at 9.)

As was argued at the hearing on November 15, 2023, the Beaufort County Probate Court Order on its face extends personal jurisdiction over financial institutions by the Probate Court and not the Court of Common Pleas. Additionally, Counsel for Plaintiff in this action represented the *Guardian ad Litem* in the Probate Court Proceedings. Thus, it is likely Plaintiff’s counsel drafted this language contained in the Beaufort County Probate Order. Defendants were

not a party to the probate proceedings and were not provided any opportunity to protect their rights, including the right to enforce its own agreements with Plaintiff.

Defendants know of no authority that would support a finding of waiver under these facts. “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 449, 823 S.E.2d 193, 198 (Ct. App. 2018) (quoting *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)). Defendants received none of this in the underlying probate court proceedings before that Court stripped it of its contractual rights to demand arbitration.

The effect of the December 7, 2023, Order is to put arbitration agreements on lesser footing than other contractual arrangements, which is strictly preempted under the FAA. In *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011), the Supreme Court that a court may not invalidate an arbitration agreement based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Id.*; see also *Kindred Nursing Ctrs. Ltd. P’ship v. Clark*, 581 U.S. 246, 247 (2017) (finding that the Kentucky Supreme Court’s finding that a power of attorney did not permit a legal representative to enter into an arbitration agreement for someone else singled out arbitration agreements and violated the FAA). The FAA “preempts any state rule that discriminates on its face against arbitration or that covertly accomplishes the same objective by disfavoring contracts that have defining features of arbitration agreements.” *Kindred Nursing Centers*, 581 U.S. at 247.

Consequently, the December 7 Order erred in finding that the January 2023 Beaufort County Probate Court Order could derogate Defendants right to enforce the arbitration agreements in this Court.

VIII. The Court Erred in Applying a Clear and Convincing Standard.

The December 7 Order applied a clear and convincing standard in analyzing whether the parties entered into an agreement to arbitrate. (December 7 Order at 4.) The December 7 Order cites to *Hill v. Emp. Res. Grp., LLC* 816 F. App’x 804, 809 (4th Cir. 2020) for the standard. However, the clear and convincing standard applied in *Hill* is not applicable in this case.

Applying the state law of Virginia, Kentucky, West Virginia, and Ohio, *Hill* applied a clear and convincing standard because that case involved missing arbitration agreements for 71 plaintiffs. *Hill*, 816 F. App'x at 808. Under the laws of Virginia, Kentucky, West Virginia, and Ohio, clear and convincing evidence is required to establishing the existence of a missing or lost instrument through parole evidence. *Id.* *Hill* applied the clear and convincing standard to the summary judgment standard because it determined it must “view the evidence presented through the prism of the substantive evidentiary burden.” *Id.* at 809 (internal citations omitted.) Here, no similar evidentiary burden exists.

District Court opinions from South Carolina using a summary judgment standard have not applied a clear and convincing standard to determine whether parties entered into an arbitration agreement. *Webb v. Oaktree Med. Ctr., P.C.*, No. CV 3:18-924-JMC-SVH, 2018 WL 4519338, at *2 (D.S.C. May 16, 2018), report and recommendation adopted, No. 3:18-CV-00924-JMC, 2018 WL 3153614 (D.S.C. June 28, 2018); *Gordon v. TBC Retail Grp., Inc.*, No. 2:14-CV-03365-DCN, 2016 WL 4247738, at *4 (D.S.C. Aug. 11, 2016). Instead, the Court should have applied a *prima facie* standard in determining whether sufficient evidence existed to meet Defendants’ initial burden of demonstrating that an agreement to arbitrate was reached. *Gordon v. TBC Retail Grp., Inc.*, No. 2:14-CV-03365-DCN, 2016 WL 4247738, at *6 (D.S.C. Aug. 11, 2016)

CONCLUSION

Defendants respectfully requests that the Court reconsider its denial of Defendants' Motion to compel arbitration and dismiss or stay the action. The Court should withdraw its December 7 Order and issue a new order granting Defendants' Motion, dismissing all of Plaintiff's claims without prejudice, and compelling Plaintiff to submit his claims to arbitration.

This Motion is supported by the FAA; the South Carolina Rules of Civil Procedure; applicable federal and state case law; and such other authorities, arguments, and/or exhibits as may be included in any memoranda submitted by Defendants in support of this Motion prior to a ruling on the same.

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Investment Services, and Christopher Lazurek*

Columbia, SC
December 18, 2023

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

Amber Leigh Lovelace, by and through her
Conservator Richard Cooler,

)

Case No. 2023-CP-07-00646

)

Plaintiff,

)

v.

)

**SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF RULE 59(e)
MOTION TO RECONSIDER, ALTER,
OR AMEND**Steven Lovelace, Regions Bank, and Cetera
Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek,

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Defendants.

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Defendants, Regions Bank, Cetera Investment Services d/b/a Regions Investment Services, and Christopher Lazurek (collectively, “Defendants,” but individually “Regions,” “Cetera,” and “Lazurek,” respectively), submit this Supplemental Memorandum in Support of their Motion to Reconsider, Alter or Amend filed on December 18, 2023. The arguments made and materials cited or referenced in Defendants’ Motion filed on June 16, 2023, Memorandum in Support filed on November 13, 2023, the November 15 hearing, and the December 18 Motion to Reconsider, Alter, or Amend, including any exhibits thereto, are incorporated herein. For purposes of conformity to the Motion to Reconsider, the arguments and exhibits contained in this Memorandum will be consecutively numbered and alphabetically identified. In furtherance of conciseness, Defendants do not restate the factual background or legal standard in this Memorandum but instead incorporate the factual background in the previously incorporated Motions and the legal standard from the December 18 Motion to Reconsider, Alter, or Amend as noted above.

ARGUMENT

In Defendants' Motion to Reconsider, Alter, or Amend, Argument VII, provides why Defendants believe the December 7 Order erred in finding waiver through the Restricted Account Agreement and/or the Probate Court Orders. In addition to the arguments raised there, the section titled, *Jurisdiction*, appears to be based on facts not substantiated by anything submitted as part of the record to the Court. Moreover, it appears that the reasoning in this section would be largely inapplicable to Defendant Regions.

Plaintiff has admitted in its briefing for the Motion to Compel Arbitration, that there is not a restricted account agreement between Defendant Steven Lovelace and Defendant Regions (Pl. Mem. in Opp., 2), but the December 7 Order does not distinguish between Defendant Regions or Defendant Cetera in its findings beginning on page 8. Moreover, there is nothing to substantiate that Defendant Regions ever received the 2016 Order appointing Defendant Lovelace as conservator. Defendant Regions cannot be bound by documents it never signed or were never provided. Again, Defendants were never parties to any of the Probate Court proceedings in 2016 or 2023, so the Orders should not have any effect on their agreements.

IX. Claims Arising out of the Conservatorship Funds Maintained by Defendant Cetera and Defendant Regions Were Subject to Arbitration Dating Back to Defendant Lovelace's Original Creation of the Respective Accounts.

The Order dated December 7, 2023 notes on page 3 that the Cetera New Account Application and Regions Fiduciary Account Maintenance and Signature Form completed by Mr. Cooler was related to preexisting accounts.¹ On this same page, the Order notes that Mr. Cooler

¹ For the reasons set forth in Arguments I, II, III, and IV in the December 18 Motion to Reconsider, Alter, or Amend, Defendants assert Mr. Cooler's signing of these documents created an enforceable agreement to arbitrate.

was only substituting his name for Defendant Steven Lovelace, the former conservator. On page 5, the Order appears to base its finding, in part, on the factual basis that Mr. Cooler “had no choice but to sign the paperwork when he sought to remove Defendant [Steven] Lovelace’s name from the account and substitute his own name as Successor Conservator.” Finally, page 7 of the Order notes that “Plaintiff did not open new accounts; he merely substituted his name on two existing accounts in response to the Probate court appointing him as Successor Conservator for his minor granddaughter.”

This language in the December 7 Order appears to disregard the fact that the Cetera New Account Application and Regions Fiduciary Account Maintenance and Signature Form signed by Mr. Cooler explicitly informed him that he was signing agreements that require him to arbitrate claims against Cetera and Regions. With full knowledge that Mr. Lovelace had withdrawn funds from the Cetera and Regions accounts, Mr. Cooler entered into arbitration agreements with Cetera and Regions. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (“[A] person who can read is bound to read an agreement before signing it.”). Moreover, by signing the agreements with Defendant Cetera and Regions, Plaintiff is assumed to have read and understood the terms of the agreement. *Burwell v. S.C. Nat. Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986) (“[E]very contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.”); *see also First Baptist Church of Timmonsville v. George A. Creed & Son, Inc.*, 276 S.C. 597, 599, 281 S.E.2d 121, 123 (1981) (concluding that “in the absence of showing of fraud, mistake, unfair dealing or the like, a party to a contract incorporating an arbitration provision cannot escape the obligation of such a provision by simply declaring: ‘But I did not read the whole agreement’”). Contrary to Plaintiff’s assertions, Regions and Cetera were under no obligation to

explain the terms of the respective agreements to Plaintiff. *See Citizens & S. Nat. Bank of S.C. v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994) (“The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document.”) Defendants fail to see how the fact these were preexisting accounts have any effect on whether Mr. Cooler, as the conservator, agreed to arbitrate claims against Cetera and Regions.

To the extent the Court’s opinion is based on the preexisting legal relationship between the conservatorship and Cetera and Regions, it overlooks the fact that claims against Cetera and Regions relating to the funds were already subject to binding arbitration provisions. The Order puts at issue matters not previously before the Court, and as such not previously argued. Consequently, Defendants want to inform the Court that Defendant Steven Lovelace signed similar agreements with Cetera and Regions when he was conservator in 2016 and created these accounts. Attached as Exhibit G and Exhibit H, respectively, are the Cetera New Account Application² and Regions Account Package³ that Defendant Lovelace signed in 2016. Like Mr. Cooler, Defendant Steven Lovelace’s signature appears on the 2016 Cetera New Account Application, which clearly and prominently provides:

I have received, read, understand, and agree to the Disclosures and Agreement above and the Important Disclosures, Customer Agreement and Important Information About Your Cetera Investment Services LLC Relationship as well as the Privacy Promise that are part of this New Account Application packet, and **I am aware that Section 21 of the Customer Agreement on Page 8 contains an agreement to arbitrate disputes.**

² Like the account application signed by Mr. Cooler in 2023, the New Account Application signed by Mr. Lovelace was imaged for purposes internal record keeping. The imaging team does not scan the entire New Account Application and stops after the signature page.

³ Like the Regions Fiduciary Account Maintenance and Signature Form signed by Mr. Cooler, Mr. Lovelace acknowledged receiving and agreeing to the Regions Deposition Agreement referenced in the Regions Account Package.

Ex. G, 5 (emphasis in original). Likewise, the 2016 Regions Account Package contains the following language in the paragraph preceding Defendant Steven Lovelace's signature:

By signing below, each party (i) acknowledges receiving and agrees to each and every term, condition and provision of the Regions Bank (the "Bank") Deposit Agreement (including, without limitation, the ARBITRATION AND WAIVER OF JURY TRIAL provisions thereof and the provisions for changing the terms thereof) and related disclosures for this account

Ex. H., 3 (emphasis in original). For the same reasons that Mr. Cooler entered into binding agreements to arbitrate, Defendant Steven Lovelace did as well. Claims relating to the funds in the conservatorship have always been subject to arbitration.

If the Court believes that 2016 documents are controlling, rather than the documents signed by Mr. Cooler in 2023, Defendants request the opportunity to submit additional briefing and argument as to why these documents would subject the claims in this action to arbitration. To be clear, Defendants contend the 2023 arbitration agreements signed by Mr. Cooler are applicable and require arbitration of these disputes. Defendants are demonstrating the existence of arbitration throughout the existence of the conservatorship because the Order determined "[t]he matters in dispute at this time involved actions occurred several years prior to Mr. Cooler's involvement in this matter." (Dec. 7 Order, 7.) The Fourth Circuit Court of Appeals "have generally applied broad 'any dispute' language retroactively" to require arbitration of claims that arose prior to the arbitration agreement. *Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 267 (4th Cir. 2011) This approach is buoyed by the Supreme Court's encouragement for a "healthy regard for the federal policy favoring arbitration." *Id.* at 266.

X. **To the Extent the Order is Requiring Compliance with S.C. Code § 15-48-10, This is in Error.**

S.C. Code Ann. § 15-48-10(a) of the South Carolina Uniform Arbitration Act provides, in part, that “[n]otice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.” The Order finds on page 7 that the Cetera New Account Agreement signed by Mr. Cooler “did not provide Plaintiff with conspicuous notice of the arbitration language. It continues, that “the reference to arbitration is included at the end of a long paragraph, with no bold or capital letters.” While the Order does not cite S.C. Code Ann. § 15-48-10(a), it appears to be enforcing the notice requirements contained therein.

In *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 537–38, 542 S.E.2d 360, 363 (2001), our Supreme Court ruled that the Federal Arbitration Act (“FAA”) preempts S.C. Code Ann. § 15-48-10, when the FAA applies. *Munoz* made clear that it was specifically referring to the portion of S.C. Code Ann. § 15-48-10 that “requires notice that a contract is subject to arbitration be ‘typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract.’” *Id.* at 538, 542 S.E.2d at 363 n.1. For the reasons contained in Defendants previously filed Motions, the FAA covers the arbitration agreements in this case. Therefore, the notice requirements referenced in the Order should not be permitted to invalidate the otherwise enforceable Cetera arbitration agreement. Even, if the Order is not referencing S.C. Code Ann. § 15-48-10, the Order’s enforcement of substantively similar requirements has the effect of “plac[ing] arbitration clauses on an unequal footing with contracts generally” and is preempted by the FAA. *Id.* at 539, 542 S.E.2d at 364 (citing *Allied–Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 281 (1995)); see also *Kindred Nursing Ctrs. Ltd. P’ship v. Clark*, 581

U.S. 246, 247 (2017) (finding that the Kentucky Supreme Court’s finding that a power of attorney did not permit a legal representative to enter into an arbitration agreement for someone else singled out arbitration agreements and violated the FAA); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (A court may not invalidate an arbitration agreement based on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.”).

CONCLUSION

Defendants respectfully request that the Court reconsider its denial of Defendants’ Motion to compel arbitration and dismiss or stay the action. The Court should withdraw its December 7 Order and issue a new order granting Defendants’ Motion, dismissing all of Plaintiff’s claims without prejudice, and compelling Plaintiff to submit his claims to arbitration.

Dated: April 16, 2024

Respectfully submitted,

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

/s/ Cory E. Manning
Cory E. Manning (SC Bar No. 14702)
Cory.manning@nelsonmullins.com
Andrew Rawl (SC Bar No. 102807)
Andrew.rawl@nelsonmullins.com
1320 Main Street / 17th Floor
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Columbia, SC 29201
Tel (803) 799-2000
Fax (803) 256-7500

*Attorneys for Defendants Regions Bank, Cetera
Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek*

EXHIBIT G



INVESTMENT
SERVICES LLC
Member FINRA/SIPC

NEW ACCOUNT APPLICATION INCLUDING ANNUITIES AND LIFE INSURANCE

☐ New Account ☐ Update ☐ PrimeSweep ☐ Advisory (additional documents required)

Account #: 5218

Principal Approval: _____

Branch Office #: 3RN Rep #: 2GK Branch Location: Beaufort Lady's Island (004017)

ACCOUNT REGISTRATION — Check only one.

*Additional documents required.

This form applies to persons/entities issued a Social Security Number (SSN).

Account Type: ☒ Individual ☐ Community Property ☐ Trust*
☐ Joint with Survivorship ☐ Qualified Plan* ☐ Estate*
☐ 529 Plan (add beneficiary information below) ☐ Custodian for Minor
☐ Other: _____
☐ Tenants in Common — Percent of ownership (total must equal 100%) Co-Owner 1: _____ Co-Owner 2: _____

Third-party as custodian IRAs

☐ IRA ☐ CESA
☐ Roth IRA ☐ Bene Trad IRA
☐ SEP IRA ☐ Bene Roth IRA
☐ SIMPLE IRA ☐ HSA

ACCOUNT INFORMATION — Required of all applicants

Owner

AMBER LEIGH LOVELACE

First/Middle/Last Name (If UGMA/UTMA, list minor name here)

SSN

Birth Date

Phone Number

Citizenship: ☒ U.S. Citizen ☐ Resident Alien** ☐ Non-Resident Alien**

Home Street Address — No P.O. Box

BEAUFORT

SC

29906

United States

City

State

Zip

Country

Mailing Address — P.O. Box allowed (Only if different than Home Street Address)

BEAUFORT

SC

29906

United States

City

State

Zip

Country

Email Address (By providing your address, you authorize Cetera Investment Services to contact you by email)

Co-Owner

First/Middle/Last Name (If UGMA/UTMA, list custodian name here)

SSN

Birth Date

Phone Number

Citizenship: ☐ U.S. Citizen ☐ Resident Alien** ☐ Non-Resident Alien**

Home Street Address — No P.O. Box (Only if different than Owner Home Street Address)

City

State

Zip

Country

Email Address (By providing your address, you authorize Cetera Investment Services to contact you by email)

** If any owner is a resident or non-resident alien, specify country: _____. Obtain W-8 Supplemental Customer Identification form if non-resident. Please note: Additional documentation may be required.

Will there be more than two account owners? ☐ Yes ☒ No If yes, Additional Account Owner Information form PV-119 is required.



IDENTIFICATION INFORMATION — Required of all applicants.

Owner Other [REDACTED] SOCIAL SECURITY
 Identification Type Valid Government Issued Photo ID# Issuing Entity
12/1/2009 12/1/2089 ☒ Government Issued Photo ID Viewed by Investment Executive
 Issue Date Expiration Date
 Other Verification Done: Other

Co-Owner _____
 Identification Type Valid Government Issued Photo ID# Issuing Entity

 Issue Date Expiration Date ☐ Government Issued Photo ID Viewed by Investment Executive
 Other Verification Done: _____

EMPLOYMENT INFORMATION — Required of all applicants. If retired, unemployed or disabled, complete with the most recent employment information (include name of business and industry). If self-employed, please specify name of business and industry.

Owner Student STUDENT STUDENT
 Employment Status Employer Name Occupation
BEAUFORT SC [REDACTED]
 Employer City/State Phone Number

Co-Owner _____
 Employment Status Employer Name Occupation

 Employer City/State Phone Number

AFFILIATION INFORMATION — Required of all applicants.

- ☐ Yes ☒ No Is any owner (or a member of your immediate family) a director, 10% shareholder or policy-making officer of a publicly traded company?
 If yes, specify company name: _____
 Trading Symbol: _____
- ☐ Yes ☒ No Is any owner (or a member of your immediate family) a politically exposed person?
 If yes, specify name of country: _____
- ☐ Yes ☒ No Is any owner (or a member of your immediate family) a registered representative of a broker-dealer?
 If yes, specify firm name: _____
- ☐ Yes ☒ No Is any owner (or a member of your immediate family) employed by, or otherwise affiliated with, FINRA or any broker-dealer?
 If yes, specify firm name: _____

ADDITIONAL REGISTRATION INFORMATION — May be required.**Required for:** Trusts, Estates, Third-party as Custodian IRAs, Qualified Plans and Managed Accounts

Trustee/Executor/Financial Institution Name/Agent Agreement Date

Optional for: 529 Plans — Beneficiary Information

First/Middle/Last Name SSN Birth Date

Account #: [REDACTED] 5218

ACCOUNT INSTRUCTIONS — Required. All securities are held in street name**Settlement Options (Select one)**Sweep Options

- ☒ FlexInsured Account® ☐ Federated Trust for US Treasury Obligations Fund
☐ Federated Treasury Obligations Fund (Advisory Retirement Accounts Only)

By signing this form below, you are providing your written affirmative consent to have any cash balances in your account automatically transferred to the following default sweep option: (i) for advisory retirement accounts including those subject to ERISA regulations, the Federated Treasury Obligations money market fund; and (ii) for all other accounts, the FlexInsured FDIC-insured sweep account. If your default option is the FlexInsured FDIC-insured sweep option, you can choose a sweep option other than the default option by selecting the Federated Trust for US Treasury Obligations money market fund. If a Sweep Option is not selected above, the default sweep option will automatically be used. For detailed information regarding the terms and conditions of the products, see the applicable prospectus or FDIC sweep disclosure document. We may change the products available for your selection.

Other Settlement Options (If not selecting a Sweep Option above)

- ☐ Check
☐ ACH to/from Financial Institution (ACH instructions below must be completed)

Dividend/Interest Options (Select one)

- ☐ Check to customer
☐ Check to Financial Institution
(Letter of Instruction signed by client must be included)
☐ ACH to/from Financial Institution
(ACH instructions below must be completed)
☒ Money Market Sweep
(Same as settlement option)

Money Movement on Demand? ☐ Yes Please complete ACH instructions below to allow money movement on demand.

ACH Instructions — Complete this information if ACH to/from Financial Institution or Money Movement on Demand are checked above.

Financial Institution Name _____ Financial Institution Address _____
 Account Name at Financial Institution (Ownership) _____ City _____ State _____ Zip _____
 Account # _____ ACH ABA Routing # _____ ☐ Checking Account # ☐ Savings Account #

Are there additional ACH Instructions? ☐ Yes ☒ No If yes, Authorization for Automatic Payments form PV-020 is required.

Wire Instructions — Required for outgoing wire transfers. ☐ Standard ☐ Special (fee will apply)

Financial Institution Name _____ Wire ABA # _____
(Please note that the Wire ABA Number may be different from the ACH ABA Number. Please verify the Wire ABA Number with the financial institution.)
 Account Name at Financial Institution (Ownership) _____ Account # _____

Further Credit _____

Intermediary Financial Institution (if applicable) _____

ABA # _____ Financial Institution Name _____ Reference _____

Are there additional Wire Instructions? ☐ Yes ☒ No If yes, Letter of Instruction form PV-284 is required.

I am interested in electronic delivery of trade confirmations and/or statements and other shareholder communications: ☐ Yes ☒ No

ACCOUNT PROFILE — Required of all applicants.

Do any of the owners have investment experience? ☐ Yes ☒ No

Please specify number of years (even if the number is zero) next to each investment product below:

Stocks: _____ yrs. Bonds: _____ yrs. Mutual Funds/ETFs: _____ yrs. Options: _____ yrs. DPPs: _____ yrs.
 REITs: _____ yrs. Annuities: _____ yrs. Other (identify): _____ yrs.

Account #: _____ 5218

Account Objective

(Select one)

- ☐ Capital Preservation
☐ Income
☐ Total Return
☒ Growth
☐ Aggressive Growth

Risk Tolerance

(Select one)

- ☐ Conservative
☐ Moderately Conservative
☒ Moderate
☐ Moderately Aggressive
☐ Significant Risk

Account Time Horizon

(Select one)

- ☐ 4 years or less
☐ 5 - 8 years
☒ More than 8 years

Annual Income

- ☒ \$0 - 29,999
☐ 30,000 - 49,999
☐ 50,000 - 74,999
☐ 75,000 - 99,999
☐ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 399,999
☐ 400,000 - Over

Adjusted Net Worth

(Exclude primary residence)

- ☐ \$0 - 74,999
☐ 75,000 - 99,999
☒ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 499,999
☐ 500,000 - 999,999
☐ 1,000,000 - 2,999,999
☐ 3,000,000 - Over

Liquid Net Worth

- ☐ \$0 - 74,999
☐ 75,000 - 99,999
☒ 100,000 - 149,999
☐ 150,000 - 249,999
☐ 250,000 - 499,999
☐ 500,000 - 999,999
☐ 1,000,000 - 2,999,999
☐ 3,000,000 - Over

Account Liquidity Needs

(over next 3 years)

- ☒ None
☐ \$1 - 4,999
☐ 5,000 - 9,999
☐ 10,000 - 24,999
☐ 25,000 - 49,999
☐ 50,000 - 74,999
☐ 75,000 - 99,999
☐ 100,000 - Over

Federal Tax Bracket: ☒ 0 - 15% ☐ 16 - 28% ☐ 29 - 36% ☐ >36%

Other Investments Not Held Through Cetera Investment Services (list amounts held next to investment type below):

☒ None ☐ Client Declined to Disclose

Equities	\$ _____	Unit Investment Trusts	\$ _____	Annuities - Variable	\$ _____
Options	\$ _____	Exchange Traded Funds	\$ _____	Annuities - Fixed	\$ _____
Fixed Income	\$ _____	Real Estate	\$ _____	Precious Metals	\$ _____
Mutual Funds	\$ _____	Insurance	\$ _____	Commodities & Futures	\$ _____
Other (please list type): _____		\$ _____			

Other relevant financial information provided:

BACKUP CONTACT INFORMATION — Optional. Your backup should NOT be a co-owner.

If we are unable to reach you in relation to this account, you authorize us to contact the person listed below and potentially disclose nonconfidential information about you in order to confirm the specifics of your current situation, including contact information, health status, and to inquire about the identity of any possible legal guardian, executor, trustee, or holder of a power of attorney. You also authorize us to contact the person listed below should we believe you to be evidencing signs of diminished mental capacity or of potential elder abuse in any form including financial, physical, or emotional abuse. This person will NOT be authorized to act on your behalf regarding this account nor will they be able to access your personal or financial information. **Your backup contact should not be a co-owner.**

RICHARD COOLER

First/Last Name of Backup

FATHER IN LAW

Relationship to Account Owner

Phone Number

OR☐ I do not want to provide a backup contact at this time.Account #: _____ **5218**

DISCLOSURES AND AGREEMENT — Required.

Securities and insurance products are offered through Cetera Investment Services LLC (doing insurance business in CA as CFGIS Insurance Agency). Advisory services are offered through Cetera Investment Advisers LLC. Neither firm is affiliated with the financial institution where investment services are offered. Investments are (1) not insured by the Federal Deposit Insurance Corporation (FDIC), any government agency or any other deposit insurance program; (2) not deposits with, obligations of, or guaranteed by the financial institution where you obtained Cetera Investment Services services or any of its affiliates; and (3) subject to investment risk, including possible loss of the principal amount invested. (Certain brokered certificates of deposit may be FDIC insured.) (4) To obtain credit, the financial institution may not (a) require me to purchase any insurance or annuity from the financial institution or any of its affiliates or (b) require me to agree not to purchase, or prohibit me from purchasing, any insurance or annuity from any unaffiliated party.

By signing below, I certify under penalty of perjury that: (1) the Social Security Number/Taxpayer Identification Number provided on page 1 is correct; (2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) the IRS has never notified me that I am subject to backup withholding as a result of failure to report interest or dividends, or if I have been notified, the IRS has notified me that I am no longer subject to backup withholding; (3) I am a U.S. citizen or other U.S. person.

☐ I am subject to backup withholding. (If applicable, check this box in lieu of line 2 above). If I am not a U.S. citizen or resident alien, the three statements above do not apply to me.

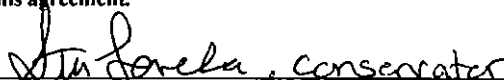
The Internal Revenue Service does not require that I consent to any provision other than the certifications required to avoid backup withholding.

I have received, read, understand, and agree to the Disclosures and Agreement above and the Important Disclosures, Customer Agreement and Important Information About Your Cetera Investment Services LLC Relationship as well as the Privacy Promise that are part of this New Account Application packet, and I am aware that Section 21 of the Customer Agreement on page 8 contains an agreement to arbitrate disputes.

Please note that ALL Account Owners or Trustees must sign this agreement.

AMBER LEIGH LOVELACE

Printed Name of Owner


Signature of Owner

2/24/16
Date

If an entity (e.g. corporation), Title

Printed Name of Co-Owner (if applicable)

Signature of Co-Owner (if applicable)

Date

INVESTMENT STRATEGY RECOMMENDATION — To be completed by Investment Executive.

Based on the information provided within this document and our discussions, the following account investment strategy recommendation(s) is/are made (some investment strategy recommendations may require additional paperwork):

(If applicable, select all that apply)

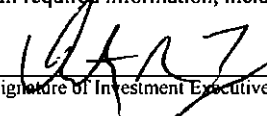
- | | | | |
|--|---|--|--|
| ☐ Active Trading | ☒ Asset Allocation | ☐ Buy and Hold | ☐ Diversification |
| ☐ Income Oriented | ☐ Passive/Indexing Strategy | ☐ Tax Management | ☐ Value Investing |
| ☐ Dollar Cost Averaging | ☐ Socially Responsible Investing | ☐ Other (briefly describe): _____ | |

INVESTMENT EXECUTIVE SIGNATURE

I am introducing this application for approval. I have provided all required information, including a prospectus (if applicable).

Christopher Lazurek

Printed Name of Investment Executive


Signature of Investment Executive

3/24/16
Date

Account #: [REDACTED] 5218

EXHIBIT H

Sales and Service

SIGNATURE REQUIRED



Account Package

(Personal Checking/Savings Services)

 02/24/2016
 OPEN DATE

 SC LADY'S ISLAND
 STATE / BRANCH NAME

AMBER L LOVELACE

1. CUSTOMER NAME

BENEFICIARY

RELATIONSHIP

BIRTH DATE

SOCIAL SECURITY #

STEVEN A LOVELACE

2. CUSTOMER NAME

CONSERVATOR

RELATIONSHIP

BIRTH DATE

SOCIAL SECURITY #

3. CUSTOMER NAME

RELATIONSHIP

BIRTH DATE

SOCIAL SECURITY #

4. CUSTOMER NAME

RELATIONSHIP

BIRTH DATE

SOCIAL SECURITY #

CUSTOMER ADDRESS

CUSTOMER E-MAIL ADDRESS(ES)

PRIMARY PHONE

SECONDARY PHONE

3680
ACCOUNT NUMBERSAVINGS FOR MINORS
ACCOUNT NAMEINTEREST RATE INFORMATION
(IF APPLICABLE)BALANCE
ALL BALANCESINTEREST RATE
0.01%ANNUAL PERCENTAGE YIELD
0.01%THE INTEREST RATE(S) PROVIDED
REFLECT THE RATE(S) IN EFFECT AT
ACCOUNT OPENING.THE RATE(S) ARE SUBJECT TO
CHANGE DAILY.

By signing below, each party (i) acknowledges receiving and agrees to each and every term, condition and provision of the Regions Bank (the "Bank") Deposit Agreement (including, without limitation, the ARBITRATION AND WAIVER OF JURY TRIAL provisions thereof and the provisions for changing the terms thereof) and related disclosures for this account; (ii) agrees to the terms and conditions on the reverse side of this document including, if applicable, the designation of a selected joint account ownership type; (iii) promises that all information on this form is true and complete.

Certification: By signing below, I certify, under penalties of perjury, that: (1) the number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, (3) I am a U.S. person (including U.S. resident alien) as defined in the full instructions of the W-9. If I am not a U.S. citizen or resident, I agree to provide Form W-8, and (4) The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. Exemption from FATCA reporting code (if any) (Applies to accounts maintained outside the U.S.)

NOTE: You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature Card

Acct. Description		Acct. Number	
AMBER L LOVELACE		3680	
STEVEN A LOVELACE CONSERVATOR		Acct. Type	
		TD 406	
NOTE: If the account is a joint account, it is owned by the parties whose signatures appear below and/or who are added to the account in accordance with the designation of ownership made by the parties listed below. You should consult your tax advisor to determine the type of account ownership which best suits your needs.			
Signature	AMBER L LOVELACE	Date	
	<i>[Signature]</i>	2/24/16	
Signature	STEVEN A LOVELACE	Date	
Signature		Date	
Signature		Date	

☐ JWROS
☐ AAS - Primary Owner
☐ JWROS
☐ AAS - Primary Owner
☐ JWROS
☐ AAS - Primary Owner
☐ JWROS
☐ AAS - Primary Owner

SEE REVERSE SIDE FOR ADDITIONAL IMPORTANT TERMS AND CONDITIONS.

Thank you for banking with REGIONS

Customer Requests Overdraft Protection (Sign Below):

 Funding Acct. #: _____ Type: _____
 (DA, TD, MC, VC, PCL OR ACL)

Funded Acct. #: _____ Type: _____

Overdraft Protection Funding Account Owner Signature

Overdraft Protection Funding Account Co-Owner Signature

This signature card supersedes and replaces any and all previous signature cards for this account. However, Regions Bank shall have a reasonable opportunity to act upon this signature card and shall not be liable for any action it takes in good faith and through the exercise of ordinary care on the basis of information contained in previous signature cards for this account.

Member FDIC

By signing on the reverse side, each account owner authorizes the Bank to (a) open the account and service listed on the reverse side in the name(s) listed on this application for the account and service; (b) transfer funds to the checking account from the designated funding account listed on the reverse side from time to time for the purpose of providing the account owner(s) with Overdraft Protection as described in the Bank's Deposit Agreement. If authorization is given to the Bank to transfer funds to the checking account from a Regions credit product for the purpose of providing Overdraft Protection, each account owner acknowledges and agrees that any funds so transferred shall be deemed to be: (1) cash advances if they are transferred from a Regions MasterCard® or VISA® and shall be treated as cash advances under the agreement governing such account; and (2) advances if they are transferred from a Regions Equity Line of Credit or Regions Preferred Line of Credit, or Regions Credit Line and shall be treated as advances under the agreement governing such account.

Each person signing on the reverse side: (i) is an owner of or has been designated as an authorized signatory on the account by an owner of the account and is authorized to sign checks or other withdrawal orders on the account listed on the reverse and (ii) agrees to be bound by the Bank's Deposit Agreement and pricing schedule for the account indicated on the reverse side as now in force and as amended from time to time hereafter.

If the account is a joint account or a sole owner account with a designated authorized signatory, withdrawals of funds on deposit may be made in whole or in part upon the order of either or any of the parties authorized on the reverse side to sign withdrawal orders on the account subject to the Deposit Agreement.

The Bank shall not be obligated to pay, but in its discretion may pay, any check which causes an account to be overdrawn. All joint owners on a joint account which becomes overdrawn shall be jointly and severally liable for and guarantee payment to the Bank of the full amount of any overdraft regardless of whether such joint owner(s) knew about or participated in the transaction creating the overdraft or received funds or otherwise derived a benefit as a result of the overdraft.

If the action noted on the reverse side is an account conversion, the conversion is effective on (1) business day after the business day the signed card is received by the Bank. If the conversion card is received by the Bank after 2:00 pm, it shall be considered as having been received on the next business day. For purposes of this provision, Saturday is not a business day. If the action noted involves conversion to or from a truncated account, the conversion shall be effective on the first day of the next statement cycle.

TRUST/PAYABLE ON DEATH ACCOUNTS (STATE OF ALABAMA ONLY): The party(ies) establishing this account reserves the right to revoke this trust account and retains the right to delete, change or add beneficiary(ies) to this type of account.

CUSTOMER IDENTIFICATION PROGRAM IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING AN ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means to you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NO. 2023-CP-07-00646
COUNTY OF BEAUFORT	)	
AMBER LEIGH LOVELACE, by and	)	
through her CONSERVATOR RICHARD	)	
COOLER,	)	
	)	PLAINTIFF'S BRIEF IN OPPOSITION TO
Plaintiff,	)	DEFENDANTS' MOTION TO RECONSIDER
vs.	)	
	)	
STEVEN LOVELACE, REGIONS BANK,	)	
and CETERA INVESTMENT SERVICES	)	
d/b/a REGIONS INVESTMENT	)	
SERVICES, and CHRISTOPHER	)	
LAZURAK,	)	
Defendants,	)	
_____	)	

This Matter is before the Court upon a Motion for Reconsideration pursuant to SCRCR Rule 59(e) filed by Defendants Regions Bank, Cetera Investments Services d/b/a Regions Investment Services, and Christopher Lazurek (collectively, "Defendants,") of this Court's Order dated December 7, 2023, in which the Court denied Defendants' Motion to Compel Arbitration ("the Order").

Standard of Review

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); see also Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

In their Motion, as well as their Supplemental Memorandum in Support of the Motion, Defendants re-argue the facts of the case which have been already been argued and ruled upon by this Court. Specifically, Defendants argue the Court should rescind its prior Order and grant their Motion to Compel Arbitration on ten grounds, each of which Plaintiff addresses in turn below:

1. *Existence of an Enforceable Agreement to Arbitrate*

The parties previously briefed and argued this issue extensively and the Court held that an enforceable agreement did not exist. Nothing in Defendant’s argument is new nor does it necessitate the Court’s reconsideration.

2. *Unconscionability*

In the Order, the Court correctly found that the arbitration provisions Defendants purported were included in the documents signed by Plaintiff when he sought to substitute his name for the prior conservator were unconscionable. A determination of unconscionability requires a case-by-case analysis, which the Court performed based on arguments previously made. Nothing presented by Defendants in their Motion and Memorandum necessitates the Court's reconsideration of the Order.

3. *Consideration*

The issue of consideration for the arbitration language was fully briefed and argued by the parties before the Court's issuance of its Order. Nothing presented by Defendants in their Motion and Memorandum necessitates the Court's reconsideration.

4. *Application of the FAA*

The Defendants seek a finding that the Federal Arbitration Act is applicable, and, as such, that arbitration is enforceable. Defendants previously made this argument, as the Court noted on Page 4 of the Order. The Court went on to correctly analyze that the arbitration provisions are not enforceable in light of contract defenses. The South Carolina Supreme Court employed a similar analysis in Damico v. Lennar Carolinas, LLC, 437 S.C. 593, 879 S.E.2d 746 (2022), involving a motion to compel arbitration in connection with a dispute involving homeowners and a developer. In Damico, though the Court acknowledged that the FAA applied, it reinstated the circuit court's denial of the motion to compel arbitration on the ground that the underlying contract provisions involving arbitration were unconscionable.

Nothing presented by Defendants in their Motion and Memorandum necessitates the Court's reconsideration of the Order on this issue.

5. *Defendant Lazurek's Entitlement to Enforce*

Defendants seek a finding that Defendant Lazurek is entitled to enforce the arbitration provisions of Cetera. This is not a necessary finding of the Court in that the Court found that no Defendant is entitled to enforce arbitration provisions.

6. *Arbitration Despite Lack of Agreement by Defendant Lovelace*

Defendants seek a finding that Plaintiff is compelled to arbitrate its claims against Defendants despite claims against Lovelace, who was not a party to an arbitration agreement. Again, the Court previously ordered that arbitration is unenforceable; therefore, reconsideration of the prior Order to address this point is unnecessary.

7. *Probate Court Order and Restricted Account Agreement*

The Court correctly found that the arbitration provisions were unenforceable. Despite this, the Court also correctly addressed the relationship between the parties in light of the Probate Court Order and the Restricted Account Agreement. Defendants now argue that it is unfair to hold the Defendants to the Restricted Account Agreement and the Probate Court Order because they were not parties to those proceedings. The parties previously fully argued and briefed this issue, and nothing in the Motion or the Memorandum necessitates reconsideration of the Court's Order.

8. *Clear and Convincing Standard*

Defendants argue that the Court mistakenly applied a clear and convincing evidentiary standard in this matter. They argue that this standard is appropriate only in cases where there is a missing or lost arbitration agreement. This is incorrect. In the recent case Beasenburg v. Ultragenyz Pharmaceutical, Inc., a case in which there was no allegation of a lost or missing agreement, the

District Court cited Hill v. Emp. Res. Grp., LLC, in its discussion of the summary judgment standard in ruling on a motion to compel arbitration. The Court set forth:

“Because the Court must ‘apply the summary judgment standard in deciding whether an arbitration agreement exists ...[it] must “view the evidence presented through the prism of the substantive evidentiary burden.” ...Thus, the question is whether the evidence in the record could support a reasonable jury finding that [Defendant] has proven by “clear and conclusive evidence,” ... that an agreement to arbitrate exists between the parties.’”

Citing Hill v. Emp. Res. Grp., LLC, 816F. App’x 804, 809 (4th Cir. 2020).

This Court did not err in applying the clear and conclusive standard.

9. Arbitration Dating Back to Lovelace’s Creation of Accounts

Throughout the case at hand, the Defendants have never argued that Lovelace, who initially opened the conservatorship accounts in question, entered into arbitration agreements. In fact, their arguments have been based on the assumption that he did not. If there are agreements signed by Lovelace, that information was available to Defendants at the time of the Motion to Compel Arbitration. A motion pursuant to SCRCP Rule 59(e) does not allow a party to raise an argument that could have been raised previously but was not made.

10. Inferred Requirement of Compliance with S.C. Code Ann. §15-48-10

Defendants argue that the Court erred to the extent that its Order was based on a requirement that arbitration language comply with §15-48-10, which requires that “notice that a contract is subject to arbitration ... shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.” Defendants argue that this provision is inapplicable because of the application of the FAA, which does not have a similar requirement.

The Order did not invalidate the arbitration provisions because of the failure to comply with the state law requirement set forth in §15-48-10. Instead, however, the Court was free to

evaluate the placement and prominence of the arbitration language as part of its evaluation of Plaintiff's argument concerning proper notice of the agreement to arbitrate, particularly in light of Plaintiff's argument that he did not receive the portions of the purported agreement that set forth details concerning arbitration. Further, the Court went on to say in the Order that even if the wording had been conspicuous, the arbitration language did not cover the matters in dispute in this case.

The Court's noting of the placement of the verbiage about arbitration did not constitute error necessitating issuance of a new Order.

Conclusion

Defendants' Motion for Reconsideration merely raises issues and arguments that were previously raised or could have been raised and were not. The Court's ruling of December is just and proper and Defendants' arguments merely express disagreement with the Court's ruling. After consideration of the issues raised in Defendants' motion, Plaintiff respectfully requests the Court to deny Defendants' Motion for Reconsideration.

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Attorneys for Petitioner

May 1, 2024

Beaufort, South Carolina

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF BEAUFORT

4 Amber Leigh Lovelace, by and
5 through her conservator Richard
6 Cooler,

7 Plaintiff,

8 vs. Transcript of Record
2023-CP-07-00646

9 Steven Lovelace, Regions Bank,
10 and Cetera Investment Services
11 d/b/a Regions Investment Services,
12 and Christopher Lazurek,

13 Defendants.

14
15 November 15, 2023
16 Beaufort, South Carolina

17 B E F O R E:

18 The Honorable MICHAEL G. NETTLES

19 A P P E A R A N C E S:

20 Ashley Amundson, Representing the plaintiff
21 Thomas A. Holloway, Representing the plaintiff

22 Andrew Rawl, Representing the defendants

23
24 SHARON G. HARDOON, CSR
25 Official Circuit Court Reporter, III

1 THE COURT: Thank you. The next case is
2 Amber Leigh Lovelace vs. Steven Lovelace. It's
3 kind of refreshing to have people here.

4 You-all take a moment to get settled and
5 I'll be glad to hear from the moving party when
6 everybody is ready.

7 MR. RAWL: Your Honor, Andrew Rawl on
8 behalf of defendants Cetera, Regions, and
9 Mr. Lazurek. We're here today, Your Honor, on a
10 motion to compel arbitration or dismiss or stay in
11 the alternative. As this Court is aware, it is
12 the policy of United States, State of South
13 Carolina, and Minnesota, and I say that because
14 the Cetera arbitration agreement is subject to
15 Minnesota law, although it appears that the
16 framework is substantially the same. But, it's
17 the policy of the United States, South Carolina,
18 and Minnesota to favor arbitration.

19 And the question before the Court today
20 is whether there was an arbitration agreement
21 entered, and, if so, does it cover the dispute?
22 And South Carolina law is clear that when this
23 happens, the Court is obligated to compel
24 arbitration.

25 The facts relevant to this motion: On

1 January 30th, 2023 -- well, let me back up, Your
2 Honor. The funds at issue here that these
3 accounts with Cetera and Regions came from -- were
4 in a conservative fund and came -- were ordered
5 there by Beaufort County Probate Court.

6 There was a previous conservator who was
7 replaced by the current conservator Mr. Cooler.
8 He, I believe, was appointed officially in January
9 of this year. On January 30th, 2023, he entered
10 into a new account application with Cetera. It's
11 a six-page document. He signed it based off the
12 briefing. I don't believe that's in dispute that
13 he signed it. It's Exhibit A to our brief, Your
14 Honor. And this is typically a nine-page
15 document. The signature -- or not typically.
16 This is a nine-page document. And his signature
17 page appeared on the sixth page, and above his
18 signature he acknowledged and agreed that he
19 received, read, understood, and agreed with all
20 the information contained in this document and
21 that this agreement contains a pre-dispute
22 arbitration clause that is fully set forth in
23 paragraph 20 on page 9 of this form. And on page
24 9, paragraph 20, the arbitration agreement is
25 present. And the arbitration agreement on that

1 page applies to any dispute between Mr. Cooler and
2 Cetera.

3 He also, on that same day, it appears,
4 completed the fiduciary account, maintenance, and
5 signature form with Regions Bank. Besides his
6 signature on that document, he acknowledged that:
7 "By signing, I acknowledge receiving and agree to
8 each and every term, condition, and provision of
9 the Deposit Agreement (including without
10 limitation, the ARBITRATION AND WAIVER OF JURY
11 TRIAL PROVISIONS." And "ARBITRATION AND WAIVER of
12 JURY TRIAL PROVISIONS" are in all caps.
13 "(Thereof and the provisions for changing the
14 terms thereof) related to the disclosure to this
15 account."

16 And in affidavits that were filed
17 yesterday evening, Your Honor, in response to
18 Mr. Cooler's affidavit -- and I have copies of
19 those if Your Honor needs them. May I approach?

20 THE COURT: Sure.

21 MR. RAWL: Here's Mr. Cobb and here's
22 Mr. Weeks.

23 And these are affidavits of Mr. Weeks and
24 Mr. Cobb, Your Honor. Mr. Cobb is a
25 representative of Cetera. Mr. Weeks is a former

1 representative of Regions. And Mr. Cooler filed
2 an affidavit on Friday, Your Honor, alleging
3 that -- or swearing that he did not receive all
4 nine pages of the Cetera new account application,
5 nor did he receive the deposit agreement.

6 And these affidavits provide that this is
7 standard practice to provide all nine pages of
8 agreement to an applicant as it relates to Cetera.
9 And that in the case of Regions that each new
10 applicant or person added to the account is
11 provided a copy of the deposit agreement.

12 And as it relates to the Cetera
13 agreement, the reason why Exhibit A is only six
14 pages is that when it's a -- as Mr. Cobb points
15 out, when it's an actual signature and not an
16 electronic signature, for imaging purposes, they
17 only image the first six pages, which is where the
18 signature page is. It's pages 7, 8, and 9 for
19 record keeping purposes are not imaged because
20 that contains the terms and conditions that govern
21 the agreement. So, but -- you know, as I was
22 saying he signed those two documents.

23 And Cetera's arbitration provision, on
24 page 9 there, it says that it covers any dispute
25 between Mr. Cooler as to conservator and Cetera

1 arising out their agreement.

2 Regions similarly has a broad arbitration
3 provision covering any controversy, any claim,
4 counterclaim, dispute, or disagreement relating to
5 any account, any alleged contract or tort arising
6 out of or relating in any way to the agreement,
7 any account in the agreements, any transaction,
8 any interaction or relationship with Regions.

9 And here, the plaintiffs' allegations are
10 that Regions, Cetera, Mr. Lazurek failed to
11 properly manage these accounts in a way to prevent
12 defendant Mr. Lazurek from wrongfully removing
13 funds from these accounts.

14 So we think that -- you know, we have
15 Mr. Cooler's signature's on these agreements. We
16 have broad arbitration provisions that relate
17 to -- that arise -- we have broad arbitration
18 agreements that covered the allegations in this
19 complaint, namely that -- you know, relating to
20 Cetera and Regions's behavior as it relates to
21 these accounts.

22 So, Your Honor, therefore, defendants
23 believe it's very clear that these agreements --
24 that the actions -- the allegations in this
25 complaint are covered by the arbitration

1 agreements in this case.

2 Additionally, the FAA applies, Your
3 Honor. The FAA, as you know, reflects an emphatic
4 federal policy in favor of arbitration. A
5 litigant can compel arbitration under the FAA when
6 there is, one, the existence of a dispute between
7 the parties; two, a written agreement that
8 includes an arbitration provision which purports
9 to dispute; three, that the relationship of
10 transition which is evidenced by the agreement to
11 interstate or foreign commerce; and, 4, failure,
12 or neglect, or refusal of a party to arbitrate the
13 dispute.

14 Criteria 1, 2, and 4, Your Honor, are
15 very clearly met. All four are clearly met, but
16 on the face 1, 2, and 4 are clearly met because
17 there's clearly a dispute for the reason that I
18 just stated; there's a written agreement that
19 covers this dispute and we're here in State court
20 not in arbitration.

21 Three, as it relates to interstate or
22 foreign commerce, Your Honor, here we have a South
23 Carolina plaintiff and we have an Alabama
24 defendant in Regions, and we have a Delaware and
25 California defendant in Cetera. And so with

1 out-of-state -- with parties in different states,
2 money moving across state lines, we feel that
3 interstate commerce is clearly involved in this
4 transaction. And under the FAA, if there is an
5 agreement to arbitrate and it covers a dispute,
6 the court is forced with no option but to compel
7 arbitration.

8 As it relates to Mr. Cooler's affidavit
9 claiming not to have received the deposit
10 agreement and the final three pages of the Cetera
11 new account application, Your Honor, as I stated
12 earlier, Cetera, Regions, Mr. Lazurek would say
13 that he did receive these. But even if he did not
14 that has no effect on the outcome of compelling
15 this to arbitration.

16 In defendant's brief, we cite the Toal's
17 and Jenkins's opinions. Those are analogous
18 cases, Your Honor, where the plaintiffs in those
19 cases claim to have not had actual notice of the
20 arbitration provisions. They signed either an
21 acknowledge form or a receipt, similar to
22 Mr. Cooler in this case. And in the Toal's
23 opinion they determined that the acknowledge form
24 he signed that put him on notice that he was
25 agreeing to arbitrate constituted a binding

1 arbitration agreement. So, you know, we would say
2 the same effect would happen here.

3 And this is true under Minnesota law as well,
4 Your Honor. If I may --

5 THE COURT: Let me ask out of curiosity.

6 MR. RAWL: Yes, sir.

7 THE COURT: Is entering into this
8 arbitration agreement a condition precedent to
9 doing business with Regions and Cetera?

10 MR. MCDANIEL: I'm sorry, Your Honor. I
11 couldn't quite hear you.

12 THE COURT: Is signing this arbitration
13 agreement a condition precedent to doing business?
14 Could they say, *I don't want to enter into the*
15 *arbitration agreement*?

16 MR. RAWL: It's my understanding that all
17 new customers must sign this agreement, Your
18 Honor.

19 THE COURT: Okay.

20 MR. RAWL: But in this BAM Navigation,
21 Your Honor, out of the district of Minnesota, the
22 situation with the plaintiff and Wells Fargo Bank,
23 therein he signed an application agreement. The
24 application agreement said it was subject to an
25 account agreement that contained an arbitration

1 provision. There the Court said that, by signing
2 the application agreement, you're on notice of the
3 arbitration provisions, and the Court compelled
4 arbitration in this opinion as well, Your Honor.

5 And then as it relates to Mr. Lazurek,
6 who is an individual defendant and was a Cetera
7 rep during a portion of the time of the facts
8 giving rise to this case, he is also entitled to
9 compel arbitration. As noted in the brief,
10 non-signatories can't compel arbitration against
11 signatories as signatories are estopped from
12 denying the arbitration agreement on the basis
13 that were the controversy -- or the allegations
14 with the individual -- with the non-signatory are
15 intertwined with the allegations with the parties
16 to the arbitration agreement, in this case Cetera
17 and Regions, that the non-party can't -- or the
18 non-signatory can't compel arbitration. That's
19 true in South Carolina. That's also true under
20 Minnesota law. That issue also appears in the BAM
21 case I just handed up, Your Honor.

22 And one last point that was raised in
23 defendant's brief, the fact that Mr. Lovelace was
24 named as a defendant in this case does not prevent
25 the compulsion of arbitration. Just because

1 plaintiff and Mr. Lovelace do not have an
2 arbitration agreement doesn't mean that the
3 remaining defendants don't have the right to force
4 arbitration.

5 The Supreme Court of the United States
6 and South Carolina, the opinion cited there, noted
7 that to hold that would be to put arbitration
8 agreements on uneven footing and to prevent them
9 from being not enforced, or would allow them to be
10 not enforced just by naming a party not a party to
11 the arbitration agreement.

12 I do want to address some of the
13 arguments raised in plaintiff's brief, Your Honor.
14 The first argument appears to be that there was no
15 consideration. Mr. Cooler agreed by entering into
16 this agreement to remain a customer subject to --
17 and entitled him to the benefits of being a
18 customer in exchange for the services of these two
19 institutions.

20 South Carolina law provides that that
21 consideration consist of some right, interest,
22 profit, or benefit accruing to one party or
23 forbearance, detriment, loss, or responsibility
24 given except for when undertaken by another. Here
25 the benefit is, you know, continuing to bank and

1 invest with these institutions in exchange for
2 their services.

3 Same thing under Minnesota law.
4 Something of value given in return for a promise
5 or performance. His continued business in
6 exchange for their services.

7 The plaintiff also argues that this
8 agreement was unconscionable. They note that this
9 -- argue that this was an adhesion contract, but
10 they point out in their brief and it's law of
11 South Carolina, and Minnesota for that matter,
12 they're not only has to be a contract of adhesion,
13 but it must also be oppressive. And I don't
14 believe there is any attacks on the substantive
15 provisions of these arbitration agreements.
16 Plaintiff relies on the *Damico* case out of the
17 Supreme Court from last year. That case is
18 distinguishable on the facts -- from the facts of
19 this case. There the provisions of the
20 arbitration agreement contained language that gave
21 the defendant Lennar Homes in that case the sole
22 right to determine who would be the parties to the
23 arbitration agreement. No similar provision is in
24 this agreement, Your Honor.

25 And the last argument, plaintiffs argue that

1 defendants have waived their right to arbitration. It
2 appears to be based on Mr. Lovelace entering into a
3 restricted account agreement as part of him being a
4 conservator back in 2016, read together with the
5 recent 2023 order appointing Mr. Cooler as the
6 conservator. And in that order the judge ordered
7 that, you know, Mr. Cooler could -- would have to
8 enter into a restricted account agreement of his own
9 and that the financial institutions that enter into
10 that with him would be subject to the Beaufort County
11 probate court's jurisdiction.

12 I have looked. I am not aware of any
13 case law authority that had supports waivering
14 under those facts. Cetera, Regions do not appear
15 to have been parties to that probate matter. I
16 don't know how they -- you know, waiver is a
17 voluntary and intentional act. I don't know how
18 Regions or Cetera could have been said to have
19 waived their right to compel arbitration here
20 today.

21 Moreover, waiver in the context of
22 arbitration usually hinges on undue delay causing
23 undue burden to the non-moving side here. There's
24 been no delay. In fact, Cetera, Regions, in
25 response to the complaint in this action moved to

1 compel arbitration as it's first act in this case,
2 Your Honor.

3 So I'm happy to answer any questions you
4 may have and respond to anything plaintiff may
5 raise.

6 THE COURT: All right. Let me hear from
7 the plaintiff at this time.

8 Thank you, sir.

9 MS. AMUNDSON: Thank you, Your Honor.
10 Ashley Amundson here along with my co-counsel Tom
11 Holloway.

12 MR. HOLLOWAY: Good morning, Your Honor.

13 MS. AMUNDSON: On behalf of Richard
14 Cooler who is the successor conservator for minor
15 Amber Leigh Lovelace.

16 I'd like to give a little bit more
17 background in this case. Amber Lovelace, who is
18 now a middle schooler, was five years old when her
19 mother died in an accident. And subsequent to
20 that, it became clear that it was going to be
21 necessary for a conservatorship to be established.
22 Her father, Steven Lovelace, went to the probate
23 court and was appointed conservator.

24 As a condition of his appointment, the
25 Court ordered that the funds from the

1 conservatorship be placed in one or more
2 restricted bank accounts from which no funds could
3 be released without a prior court order.

4 Mr. Lovelace went to the local branch of
5 Regions Bank, which is also where Cetera operates,
6 and opened two banks accounts, one of which was a
7 savings account at regions, the other was an
8 investment account at Cetera.

9 At that time Cetera also did enter into
10 that restricted account agreement that the defense
11 counsel discussed, and these accounts were opened
12 pursuant to the probate court's order.

13 Despite the fact that the court order
14 required that these funds be set up in a
15 restricted account, Mr. Lovelace figured out about
16 a year into his appointment that he didn't need
17 prior court authorization if he would just go into
18 Regions Bank and start taking the money out.

19 So in a series of transactions beginning
20 in 2017, he withdrew substantial funds from
21 Amber's accounts.

22 THE COURT: How much money was in it
23 originally?

24 MS. AMUNDSON: The accounts originally
25 were started with a smaller amount. I don't

1 recall what was in there. But, eventually, Amber
2 had \$250,000 approximately in her accounts.

3 THE COURT: All right.

4 MS. AMUNDSON: Through the actions of her
5 father, through the actions of the bank,
6 approximately \$170,000 was taken from Amber.

7 And Mr. Lovelace wasn't the only one who
8 benefited from that. The bank did too, because,
9 not only did they charge fees for Cetera's
10 investment services, but they also charged wire
11 fees. Because, not only did he take the money out
12 of the savings account, but when that money got
13 low he went over to Cetera and set up wire
14 transfers from the Cetera account to the Regions
15 account so that he could then withdraw the money.

16 So Regions even charged excessive
17 withdraw fees as well as wire fees, as did Cetera.
18 So all in all, approximately \$170,000 taken from
19 this young lady.

20 When this came to light, Mr. Lovelace
21 left town. He left his daughter, essentially
22 orphaned with her grandfather. Her grandfather is
23 a gentleman in his mid-70's who has taken her into
24 his home, who provides for her every need, who
25 oversees her home schooling, and, of course, when

1 it was clear that it was necessary for a successor
2 conservator to be appointed, Mr. Cooler
3 volunteered to do that. Probate court appointed
4 him in January of this year.

5 Shortly thereafter, he made contact with
6 his contact person at the bank, Mr. Mark Weeks,
7 who is one of the affiants in the affidavit that
8 was handed up by defense counsel. Mr. Weeks met
9 with him at the branch where these accounts were
10 ordinarily opened. And not only did he do the
11 paperwork for Regions, but also the paperwork for
12 Cetera.

13 I'd like to talk a little bit more
14 specifically about the paperwork that was done
15 that day. For Cetera, the paperwork was already
16 discussed by defense counsel. It was a six-page
17 document, and that was what was given as an
18 exhibit to what was presented by the defense.
19 They're now arguing that it was actually a
20 nine-page document, but our client didn't receive
21 pages 7, 8, and 9. Page 9 is where the
22 arbitration language exists.

23 There is a paragraph on page 6 towards
24 the top of the page. It's relatively lengthy.
25 And the last sentence of that paragraph does

1 allude to pre-suit arbitration.

2 When we look at page 9, the language of
3 the arbitration clause says that the arbitration
4 is for matters arising out of this agreement. The
5 dispute that we have with Cetera is not arising
6 out of this agreement that Mr. Cooler allegedly
7 signed in January of 2023. It's for things that
8 happened way before when Cetera was allowing funds
9 to be transferred in violation of the restricted
10 account agreement to an unrestricted account from
11 which Mr. Lovelace took the funds.

12 With regard to the Regions paperwork, we
13 have a one-page form that Mr. Cooler's signature
14 appears on in a very small font. Next to his
15 signature, there is an acknowledgement of
16 receiving and agreeing to every term, condition,
17 and provision of the deposit agreement. Your
18 Honor, the deposit agreement was submitted to the
19 court as an exhibit. It's 51 pages in length.

20 Our client did not receive a deposit
21 agreement, nor is there any evidence in the record
22 that he was told where to find this deposit
23 agreement. And Mr. Weeks, when he met with him,
24 would have known that when our client signed this
25 paperwork.

1 The other thing I'd like to point out
2 about the Cetera paperwork before I move on is
3 that it was set up -- it's Entitled New Account
4 Application. This is not a new account. Our
5 client simply went in with his paperwork showing
6 that he was the new conservator to have his name
7 added to an existing account. But the bank by
8 this time was well aware that there were problems
9 with this account. Mr. Weeks in particular had
10 actual notice that there were problems with this
11 account. The accounts had already been frozen.
12 And by December of 2022, he knew that there were
13 issues.

14 So less than a month later when Mr. -- or
15 about a month later when Mr. Cooler went into the
16 office to put his name on the account, the bank
17 took advantage of this situation and slid in these
18 arbitration provisions that they are now seeking
19 to enforce against the plaintiff when all he was
20 doing was going in to get his name substituted on
21 existing accounts.

22 Now, defense counsel has said that the
23 FAA applies and the arbitration must be enforced,
24 but arbitration enforcement must take into -- the
25 Court's decision regarding whether or not to

1 enforce arbitration has to look at any defenses
2 that may exist with regard to moral equity. And,
3 yes, we do argue that these are unconscionable.
4 We argue a lack of consideration. As I said, this
5 was an existing account that Mr. Cooler simply was
6 going into the bank to sign onto to have his name
7 be the signature party.

8 Additionally, we have to look at the
9 contract itself. These are contracts of adhesion.
10 As Your Honor asked earlier, are these contracts
11 required to be able to do business? Yes, they
12 are. And, of course, the client doesn't have any
13 ability to negotiate the terms of these
14 agreements. So not only is our client powerless
15 to negotiate the terms of the agreement, he wasn't
16 given the agreement at all. So he wouldn't have
17 known what terms were even involved in the
18 agreement.

19 Contracts of adhesions are not on their
20 face -- they are not, per se, unconscionable, but
21 the courts have looked at them with considerable
22 skepticism.

23 In this case, Your Honor, we've got a
24 huge disparity in bargaining power between the
25 parties. We have a huge disparity between the

1 parties' relative sophistication. We have this
2 elderly gentleman with this young lady coming in
3 just to simply put a name on the account versus
4 these banks that do business all over the country.

5 And not only that, Your Honor, but they
6 are using this opportunity, when they knew that
7 there were problems with the account, to slip in
8 these arbitration clauses that not only are
9 prospective and handle anything that might have
10 occur in the future, but they're also seeking to
11 be retroactive in handling things that have
12 already occurred in the past that they're aware
13 of. So they're taking advantage to put themselves
14 in what they believe is a better position legally
15 and taking away the jurisdiction of the court to
16 review my disputes.

17 With regard to the jurisdiction --

18 THE COURT: Did I understand you
19 correctly --

20 MS. AMUNDSON: Yes, sir.

21 THE COURT: -- that the original
22 agreement with the original conservator did not
23 have the arbitration agreement?

24 MS. AMUNDSON: They have not produced
25 anything. I'm not aware of any -- the

1 circumstances or the paperwork that the original
2 conservator did.

3 THE COURT: Okay.

4 MR. RAWL: I'm sorry. I can wait until
5 she finishes.

6 THE COURT: Let's let her finish her
7 train of thought and then I'll recognize you since
8 you're the moving party.

9 Yes.

10 MS. AMUNDSON: Thank you, Your Honor.

11 Again, these account were opened pursuant
12 to the court order. We argue that the court
13 retains jurisdiction to oversee problems that may
14 have existed with regard to the restrictive nature
15 of the accounts.

16 Finally, Your Honor, in looking at the
17 standard of review, it's the defendant's burden to
18 show by clear and conclusive evidence that the
19 parties entered into an enforceable arbitration
20 agreement. We submit to you that they did not.
21 We submit to you that the defendants have not
22 carried their burden. What they've attached is
23 copies of document that we have discussed today.
24 And the affidavits that they've submitted in
25 support are merely two people who are saying that,

1 *Well, he should have received that in the normal*
2 *course of business.*

3 Mr. Weeks, who submitted an affidavit,
4 who was the one who met with our client, who was
5 the one who I knew had personal knowledge of the
6 issues with the accounts, gave no personal
7 recollection. He gave nothing that would
8 controvert what our client said. He didn't
9 indicate at all any recollection of meeting with
10 our client. There was nothing that he added.

11 Our client's testimony that he didn't
12 receive that information is controverted, and we
13 believe that they have not met their burden.

14 And, you know, if we're to look at what
15 these banks do in their ordinary course of
16 business, I find that very interesting because,
17 Your Honor, we would not be here today, Amber
18 Lovelace would not be out \$170,000 if the banks
19 had done what they ought to have done in the
20 ordinary course of business which would be to
21 review the court order appointing a conservator
22 and review the restricted account's requirement
23 that's set forth, not only in the court order that
24 they would have been reviewing in setting up that
25 account, but also the fiduciary letters and the

1 certificates of appointment issued to the original
2 conservator which also evidence those
3 requirements.

4 Say for all of these reason, Your Honor,
5 we respectfully request the Court deny the
6 defendant's motion to compel arbitration.

7 THE COURT: Yes, sir.

8 MR. RAWL: Thank you, Your Honor.

9 A few responses. You know, a lot of that
10 contained factual information about this case that
11 defendants believe needs to be handled in
12 arbitration. There's been a complaint filed, Your
13 Honor, and we filed a motion to compel
14 arbitration. There's been no findings of fact yet
15 in this case, Your Honor.

16 Secondly, there was a question I believe
17 Your Honor had about the agreement back when
18 Mr. Lovelace was appointed. I believe that
19 plaintiffs are referring to this probate court
20 agreement or the restrictive account agreement
21 from the probate court back in 2016. You know,
22 that's something that Mr. Lovelace had to enter
23 into as his duties as a conservator.

24 Here we're talking about the agreements
25 between Mr. Cooler and Regions and Mr. Cooler and

1 Cetera, Your Honor. And that while this puts
2 limitations on what Mr. Cooler as conservator can
3 do with this money, there's nothing in here that
4 restricts them from entering into an arbitration
5 agreement, Your Honor.

6 I do want to point out that plaintiff's
7 counsel mentioned that the Cetera agreement says
8 that any dispute -- or any dispute related to
9 agreement, that they're bringing this complaint
10 based off this restrictive account agreement.
11 Your Honor, the *Zabinski v. Bright Acres*
12 *Association's* case is cited in our brief. "A
13 broadly worded arbitration clause applies to
14 disputes that would not arise under the governing
15 contract when a significant relationship exists
16 between the asserted claims and the contract in
17 which the arbitration is contained."

18 And here, Your Honor, a significant
19 relationship exists between the allegations in
20 plaintiff's complaint and these arbitration
21 agreements, particularly Cetera.

22 You know, the whole complaint relates to
23 Cetera, Regions, and Mr. Lazurek's management of
24 these accounts, and so -- which directly relate to
25 the agreement that governs the relationship

1 between Mr. Cooler and Cetera.

2 And while certain facts may have
3 happened -- well, the facts of this case may have
4 happened prior to Mr. Cooler becoming conservator,
5 he still signed an arbitration agreement with full
6 knowledge that he had a dispute and still entered
7 into an arbitration agreement.

8 And as to the opinion of Toal, Jenkins,
9 and BAM Navigation case handed up to Your Honor,
10 having notice of an arbitration, like Mr. Cooler
11 had, it's sufficient to find that an arbitration
12 agreement exists and should be compelled.

13 Thank you, Your Honor.

14 THE COURT: Yes, ma'am. You know, he
15 brings up a good point in that the points you
16 bring up are, indeed, factual points. We haven't
17 done any discovery. We don't have any affidavits,
18 really, supporting that. How do you respond to
19 that?

20 MS. AMUNDSON: Well, Your Honor, there
21 was a recent case that was decided in federal
22 district court that discussed the standard for
23 determining whether or not an arbitration
24 agreement existed, and that is, the same standard
25 is to be used in evaluating the measure for

1 summary judgment. I'm happy to hand that case up
2 if you'd like.

3 THE COURT: I think that's kind of the
4 point that I was bringing up, is that we don't
5 have any discovery setting forth what actually
6 happened and when things took place. You brought
7 up some very good points.

8 But how can I consider that? For
9 instance, if it were a summary judgment motion,
10 we'd have affidavits, we'd have discovery, we'd
11 have those things.

12 What do you think about that?

13 MS. AMUNDSON: Your Honor, I think that
14 what they have submitted thus far has been
15 deficient and it's not -- it's not going to be
16 adequate to meet that clear and conclusive
17 standard that's set forth in case law;
18 particularly, these affidavits do nothing to tie
19 together the arguments that they've made. They've
20 attached to their memo that was submitted to the
21 Court documents that they purport were signed,
22 that they purport were given to our client.
23 They've given affidavits to say, *Well, they must*
24 *have given because that's what we do in our normal*
25 *course of business.*

1 THE COURT: Okay, I understand what
2 you're saying.

3 I do want to take a closer look at this.
4 Would you-all mind preparing proposed orders and
5 let me review this matter a little bit further and
6 take a look more at the cases and study this
7 matter. Would you-all -- how long would it take
8 for you to get a proposed order?

9 MR. RAWL: Ten days. I'm trying to think
10 ahead. I know Thanksgiving is coming up, so maybe
11 a little longer.

12 THE COURT: Sure. How much time do you
13 need?

14 MR. RAWL: What's good for you, Miss
15 Amundson?

16 MS. AMUNDSON: About two weeks. I think
17 two weeks would be adequate.

18 THE COURT: I think two weeks would be
19 fine. If that poses a problem -- let's try to get
20 it done within two weeks. If you run into holiday
21 difficulties, let me know and we can make
22 adjustments.

23 MS. AMUNDSON: Thank you.

24 MR. RAWL: Could I just add one other
25 thing for the record?

1 THE COURT: Sure.

2 MR. RAWL: I believe it was said that
3 there was a clear and convincing standard, I'll
4 obviously look into that. There was a case
5 mentioned. I didn't hear the cite.

6 But I just want to point out that under
7 South Carolina, and this is true under Minnesota
8 law as well, it's the party resisting arbitration
9 that bears the burden of proving that the claims
10 at issue are unsuitable for arbitration.

11 So I don't know --

12 THE COURT: And I'm sure that she'll
13 address that in the riveting proposed order.

14 MR. HOLLOWAY: Thank you, Your Honor.

15 THE COURT: And I will -- these are
16 important matters and I do want to study it a
17 little bit. But you-all have presented it very
18 well, prepared it well. I just want to ponder on
19 it a little bit.

20 Thank you-all very much.

21 MR. RAWL: Thank you, Your Honor.

22 MS. AMUNDSON: Thank you, Your Honor.

23 (The hearing was concluded.)

24

25

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Beaufort County, South Carolina.

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

July 2, 2024

A handwritten signature in black ink, reading "Sharon G. Hardoon", written in a cursive style.

Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III