

**RECEIVED**

**Oct 23 2020**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2020-001044

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Meghan Gaffney,.....Petitioner,

v.

The Greenville County Sheriff's Office, Greenville County, and Alorica, Defendants,

Of Which Alorica is the .....Respondent.

---

**APPENDIX**

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

MEGHAN GAFFNEY, )  
 )  
Plaintiff, )

v. )

C.A. No. 2020-CP-23-00906

THE GREENVILLE COUNTY )  
SHERIFF’S OFFICE, GREENVILLE )  
COUNTY, AND ALORICA, )

Defendants. )

**ORDER COMPELLING ARBITRATION**

THIS MATTER comes before the Court upon Defendant Alorica, Inc.’s (“Alorica”) Motion to Compel Arbitration. The matter was heard on June 11, 2020 and was conducted pursuant to the Order of the South Carolina Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended) (hereinafter "Emergency Order"). The parties consented to holding the hearing via videoconference with a Court Reporter. At the hearing, Plaintiff was represented by Josh Hawkins, Esquire of Hawkins & Jedziniak, LLC, Alorica was represented by T. Chase Samples, Esquire and John Connell, Esquire of Jackson Lewis, P.C, and Greenville County and Greenville County Sheriff’s Office were represented by Charles Turner, Esquire of Wilson Jones Carter & Baxley, P.A. The record before the Court included Plaintiff’s Complaint, Alorica’s Motion with a Memorandum, Exhibits, and Affidavit as well as Plaintiff’s Memorandum and Affidavit.

After careful consideration of this Matter, the record before the Court, arguments of counsel, and in the interest of equity, this Court finds and concludes that Alorica’s Motion to Compel Arbitration should be and is hereby **GRANTED**, as more fully set forth below.

**BRIEF STATEMENT OF FACTS**

A. Plaintiff's Arbitration Agreement with Alorica

Plaintiff was hired by Alorica on or around July 16, 2016. As a condition of her employment with Alorica, Plaintiff entered into an arbitration agreement (the "Agreement"), which she signed electronically before her employment commenced. Under the Agreement, Plaintiff and Alorica agreed that any and all disputes regarding Plaintiff's employment with Alorica would be resolved through arbitration. Specifically, the Agreement sets forth, in pertinent part, that:

All disputes, claims, or controversies arising out of or relating to your employment by the Company, the termination of your employment by the Company, and/or this Offer Letter, and any claims or disputes as to the scope and enforceability of this arbitration agreement, shall be resolved exclusively by final and binding arbitration.

Arbitration pursuant to this Agreement shall be held within the Federal Judicial District in which You are or were last employed by the Company and shall be conducted pursuant to the JAMS Employment Arbitration Rules, copies of which may be obtained at [www.jamsadr.com](http://www.jamsadr.com), from your on-site Human Resources Department, or by request directed to the Office of General Counsel, Alorica Inc., 5 Park Plaza, Suite 1100, Irvine CA 92614. The Company agrees to bear all but the first \$350 of the arbitration filing fee.

...

You and the Company agree that any dispute or controversy arising out of or in any way related to your employment, or the termination of your employment, which cannot be resolved by use of the Company's internal grievance procedures or by good faith negotiation between the parties, will be resolved by final and binding arbitration as provided herein. You and the Company voluntarily and irrevocably waive any and all rights to have any such dispute decided in court or by a jury.

Plaintiff alleges in her affidavit that "at the time of applying and orientation, it was a group setting, we were never explained what we were signing we were just instructed to sign." Alorica, however, submitted an affidavit from its Senior Director of Talent Acquisition, Judith Gangi. In her affidavit, Ms. Gangi described in detail the process upon which Alorica provides new-hire paperwork,

including an agreement to arbitrate, to new hires. Specifically, Ms. Gangi stated in her affidavit that after Alorica makes the decision to hire an individual, Alorica submits a request through Taleo, a third-party processing server, to manage the paperwork. Ms. Gangi further stated in her affidavit that prior to the employee completing the new-hire documents, Taleo requires the employee to create a username and password so that the new hire can electronically sign the documents. Taleo subsequently provides the new hire an email with a website link to the Company's Taleo website to accept the offer and complete the new hire onboarding documents, including an agreement to arbitrate. Ms. Gangi confirmed in her affidavit that the Taleo records indicated that Plaintiff received the Agreement on July 16, 2016, and that she electronically signed it on that same day. Ms. Gangi also attached to her affidavit a copy of a screenshot of Plaintiff's actions in the Taleo system, including the date (and exact time) she received and signed the Agreement.

B. Plaintiff's Allegations against Alorica.

Plaintiff's Complaint alleges, in part, that on February 26, 2019, Plaintiff was at work when her supervisor called her into a meeting with human resources. When Plaintiff entered the meeting, Alorica's local manager, Juanita Harrison, told her that she was misusing leave under the Family Medical Leave Act ("FMLA"). Plaintiff inquired into Alorica's allegations that she had misused her FMLA leave but, allegedly unable to provide proof, Alorica, instead, indicated that Plaintiff would be terminated as a result of her boyfriend's arrest on February 11. Plaintiff asserts three causes of action against Alorica including (1) Violation of the South Carolina Payment of Wages Act; (2) Wrongful and Retaliatory Discharge in Violation of Public Policy; and (3) Violation of the South Carolina Human Affairs Law.

### **LEGAL STANDARD**

The Court should give due regard to both the federal and the South Carolina policies favoring arbitration and resolve any doubts about the enforceability of an arbitration agreement in favor of arbitration. *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 596-97, 533 S.E.2d 110, 118 (2001) (“Beginning in the mid-1980’s, the United States Supreme Court, interpreting the [Federal Arbitration Act], essentially ‘federalized’ the law of arbitration by expanding the reach of the FAA to the full breadth of the Commerce Clause.”). Under the FAA,

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such 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 (2010). Furthermore, a court must stay “any suit or proceeding” pending arbitration of “any issue referable to arbitration under an agreement in writing for such arbitration.” 9 U.S.C. § 3. *See also* S.C. Code Ann. § 15-48-20 (noting that court shall order parties to arbitrate on application showing arbitration agreement and one party’s refusal to arbitrate). In so doing, a court should give due regard to both the federal and the South Carolina policies favoring arbitration and resolve any doubts in favor of arbitration. *See Zabinski*, 346 S.C. at 596 (“The policy of the United States and South Carolina is to favor arbitration of disputes.”). “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.” *Partain v. Upstate Automotive Group*, 386 S.C. 488, 491, 689 S.E.2d 602, 603-04 (S.C. 2010).

### **LEGAL ANALYSIS**

In determining whether to compel arbitration, this Court is required to evaluate (1) whether the Federal Arbitration Act applies; (2) whether the parties formed a valid and binding arbitration

agreement; and (3) whether the agreement covers Plaintiff's claims. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 843 (Ct. App. 1999).

a. The Agreement involves interstate commerce and is governed by the Federal Arbitration Act.

“For the FAA, 9 U.S.C.S. § 1, et seq., to apply, an agreement must evidence a transaction involving commerce, specifically interstate commerce.” *Towles*, 338 S.C. at 35-36, 524 S.E.2d at 843 (Ct. App. 1999) (citing 9 U.S.C.A. § 2, (1999)); *see also Soil Remediation Co. v. Nu-Way, Envtl., Inc.*, 323 S.C. 454, 460, 476 S.E.2d 149, 152 (1996). “The terms ‘involving commerce’ amount to the functional equivalent of ‘affecting commerce’ and signal ‘an intent to exercise Congress’ commerce clause power to the full.” *Id.* (citing *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 277, 130 L. Ed. 2d 753, 115 S. Ct. 834 (1995)); *see also Mathews v. Fluor Corp.*, 312 S.C. 404, 407, 440 S.E.2d 880, 881 (1994) (“The requirement that the underlying transaction involve commerce is to be broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause.”); *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (S.C. 2001) (“Beginning in the mid-1980’s, the United States Supreme Court, interpreting the FAA, essentially ‘federalized’ the law of arbitration by expanding the reach of the FAA to the full breadth of the Commerce Clause.”).

Courts construing the language of Section 2 of the FAA in the context of an employment relationship have focused on the nature of the defendant-employer’s business. *Cox v. Assisted Living Concepts, Inc.*, No. 6:13-747-JMC-KFM, 2013 U.S. Dist. LEXIS 186127, at \*8 (D.S.C. Nov. 19, 2013). In this case, and as alleged in the Complaint, Alorica is a California corporation with employees and customers across the country, including in South Carolina. Plaintiff worked for Alorica in South Carolina as a customer service representative in a call center, and, in this role, she fielded calls from Alorica’s customers nationwide and worked with Alorica employees in other

states. Accordingly, this Court finds and concludes that Plaintiff's employment involves interstate commerce and, consequently, the Agreement is governed by the FAA, 9 U.S.C. § 2. *See Lucey v. Meyer*, 401 S.C. 122, 138 (Ct. App. 2012) (finding that interstate commerce was involved in dispute between South Carolina law firm and South Carolina lawyer where firm performed work in other states); *Cox*, 2013 U.S. Dist. LEXIS 186127, at \*8-9 (finding that the employment relationship involved interstate commerce because the defendant-employer was a Nevada corporation that operated in South Carolina); *Brown v. Ryan's Family Steak Houses, Inc.*, No. 2:03-2582-PMD, 2004 U.S. Dist. LEXIS 27456, at \*7 n.3 (D.S.C. Feb. 27, 2004) ("Ryan's is a Delaware corporation headquartered in South Carolina, with over 300 restaurants in 22 states. Further, Ryan's is involved in the interstate procurement of food products and advertising. This is certainly sufficient to satisfy the interstate commerce requirement of the FAA."); *King v. IBEX Global*, No. 2:15-cv-07236, 2015 U.S. Dist. LEXIS 142178, at \*8 (S.D. W. Va. Oct. 20, 2015) (concluding that "the plaintiff's employment constitutes a transaction involving interstate commerce" because the defendant-employer was headquartered in a different state from the plaintiff and had locations across the country).

b. The Agreement is valid and binding on the Plaintiff.

"Arbitration is available only when the parties involved contractually agree to arbitrate." *Towles*, 338 S.C. at 37. (citing *General Drivers, Warehousemen and Helpers Local Union No. 509 v. Ehtyl Corp.*, 68 F. 3d 80, 83 (4th Cir. 1997). "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Id.* (*O'Neil v. Hilton Head Hosp.*, 115 F. 3d 272, 273 (4th Cir. 1997). Specifically, South Carolina's Supreme Court has held that "the federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate

arbitration agreements. The basic purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements." *Zabinski*, 346 S.C. at 596-97, 533 S.E.2d at 118 (citing *Allied-Bruce Terminix Cos., Inc.*, 513 U.S. at 268, 115 S. Ct. at 836 (1995)).

Here, Plaintiff electronically signed and dated the Agreement. This Court finds that the fact that Plaintiff signed it electronically rather than with a physical signature has no bearing on the enforceability of the Agreement and, as such, finds that Plaintiff's electronic signature constitutes valid acceptance of the Agreement. *See Smalls v. Credit Acceptance Corp.*, 2017 U.S. Dist. LEXIS 226336, \*9 (D.S.C 2017) citing *Grant-Fletcher v. Collecto, Inc.*, 2014 U.S. Dist. LEXIS 64163 (D. Md. May 9, 2014) (enforcing arbitration agreement bearing plaintiff's electronic signature despite her denial of signing or having access to agreement)); *Dimery v. Convergys Corp.*, 2018 U.S. Dist. LEXIS 50555, n. 2 (D.S.C. 2018) ("Courts have previously held that an electronic signature of acknowledgment of the receipt of an employee handbook containing an arbitration provision constitutes valid acceptance of an [arbitration] agreement.") (citing *Jackson v. University of Phoenix, Inc.*, No. 5:13-cv-736-BO, 2014 U.S. Dist. LEXIS 21175 (E.D.N.C. 2014)).

Accordingly, as Plaintiff's electronic signature constitutes a valid acceptance of the agreement, this Court finds that the Agreement is valid and binding on the Plaintiff and Alorica.

c. The Arbitration Agreement Covers Plaintiff's claims in this Case.

Determining whether a party agreed to arbitrate a particular dispute is an issue for judicial determination to be decided as a matter of contract. *Johnson v. Circuit City Stores*, 148 F.3d 373, 377 (4th Cir. 1998). An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute. *Zandford v. Prudential-Bache Sec., Inc.*, 112 F. 3d 723 727 (4th Cir. 1997). Importantly, "we must address questions of arbitrability with a healthy regard for the federal policy favoring arbitration."

*Gilmer v. Interstate/Johnson Lane Corp.* 500 U.S. 20, 26, 114 L. Ed. 26, 111 S. Ct. 1647 (1991), cited in *Johnson*, 148 F. 3d at 377. Therefore, “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.” *O’Neil*, 115 F.3d at 273-4 (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-5, 74 L. Ed. 2d 765, 103 S. Ct. 927 (1983)); see also *Johnson*, 148 F. 3d at 377. “Motions to compel arbitration should not be denied unless arbitration clause is not susceptible of any interpretation that would cover the asserted dispute.” *Zandford*, 112 F. 3d at 727.

As alleged in the Complaint, Plaintiff brought causes of action against Alorica for (1) Violation of the South Carolina Payment of Wages Act; (2) Wrongful and Retaliatory Discharge; and, (3) Violation of South Carolina Human Affairs Law. Each of Plaintiff’s causes of action solely arise out of Plaintiff’s employment with Alorica. Accordingly, I find and conclude that because each cause of action alleged against Alorica arises explicitly out of Plaintiff’s employment with Alorica, arbitration is proper under the terms of the Agreement.

### CONCLUSION

This Court finds and concludes that the Plaintiff entered into a valid and binding Arbitration Agreement with Alorica and that the claims arising out of Plaintiff’s Complaint are covered under the Arbitration Agreement. Therefore, it is **ORDERED, ADJUDGED AND DECREED** that the Plaintiff’s claims against Alorica be dismissed and compelled to arbitration pursuant to the Federal Arbitration Act 9 U.S.C. § 1 et seq.

Plaintiff’s claims against Defendants Greenville County and the Greenville County Sheriff’s Office will remain before the Court.

**IT IS SO ORDERED.**

*Signature Page of Judge Gravely to follow*



Greenville Common Pleas

**Case Caption:** Meghan Gaffney vs. Greenville County Sheriffs Office , defendant,  
et al  
**Case Number:** 2020CP2300906  
**Type:** Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-06-25 15:22:22 page 9 of 9

ELECTRONICALLY FILED - 2020 Jun 25 3:41 PM - GREENVILLE - COMMON PLEAS - CASE#2020CP2300906

Meghan Gaffney  
PLAINTIFF(S)

Greenville County Sheriffs Office et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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

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

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

See page 2.

**RECEIVED**

**Jul 28 2020**

**SC Court of Appeals**

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/15/2020 .

Greenville County

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

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

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This matter comes before the Court on the Plaintiff's Motion to Reconsider pursuant to South Carolina Rules of Civil Procedure 59(e). The Court's Order granting the Defendant Alorica's Motion to Dismiss was submitted on June 22, 2020. This subsequent motion by the Plaintiff was filed on June 29, 2020. The Court has reviewed the Plaintiff's Motion with the included legal argument and finds that it is not necessary to set a hearing to determine this matter.

After review of all arguments presented by the parties, the Court denies the Plaintiff's Motion. The Court finds no basis to reverse its previous decisions. Therefore, the Motion is denied and the previous decisions of this Court in this matter are affirmed.



Greenville Common Pleas

**Case Caption:** Meghan Gaffney vs. Greenville County Sheriffs Office , defendant,  
et al  
**Case Number:** 2020CP2300906  
**Type:** Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-07-15 10:26:37 page 3 of 3

ELECTRONICALLY FILED - 2020 Jul 15 10:36 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2300906

# The South Carolina Court of Appeals

Meghan Gaffney, Appellant,

v.

The Greenville County Sheriff's Office, Greenville  
County, and Alorica, Defendants,

of which Alorica is the Respondent.

Appellate Case No. 2020-001044

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## ORDER

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This appeal arises out of the circuit court's order granting Respondent's motion to compel arbitration. Because the underlying order is not immediately appealable, this appeal is dismissed. *See Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co.*, 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003) (holding an order compelling arbitration is not immediately appealable). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

 C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

Joshua Thomas Hawkins, Esquire  
Helena LeeAnn Jedziniak, Esquire  
Thomas Chase Samples, Esquire

**FILED**  
**Aug 13 2020**

# The South Carolina Court of Appeals

Meghan Gaffney, Appellant,

v.

The Greenville County Sheriff's Office, Greenville  
County, and Alorica, Defendants,

of which Alorica is the Respondent.

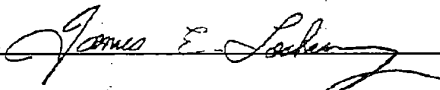
Appellate Case No. 2020-001044


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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_ C.J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

Columbia, South Carolina

cc:

Joshua Thomas Hawkins, Esquire  
Helena LeeAnn Jedziniak, Esquire  
Thomas Chase Samples, Esquire

**FILED**  
**Sep 25 2020**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

**Aug 27 2020**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable Perry H. Gravely, Circuit Court Judge

Meghan Gaffney.....Appellant,

v.

The Greenville County Sheriff's Office, Greenville County, and Alorica, Defendants,

Of which Alorica is the .....Respondent.

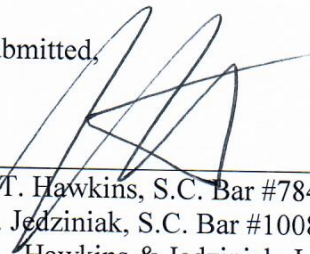
Case No. 2020-CP-23-00906  
Appellate Case No.: 2020-001044

**APPELLANTS PETITION FOR REHEARING**

COMES NOW the appellant, pursuant to Rule 221, SCACR, and other rules of Court, and petitions for rehearing as to the Court's dismissal of this appeal. The appellant, in an abundance of caution, files this petition in order to preserve her ability to file a petition for certiorari. The appellant respectfully submits that her substantial rights will be affected if the dismissal of her case is upheld and she is compelled to arbitrate without meaningfully entering into an agreement to do so. Additionally, as a question of fact exists as to whether the parties entered into an arbitration agreement, the plaintiff respectfully requests that the parties be allowed to conduct limited discovery on that issue. The appellant respectfully submits that the Appellate Court should have ruled that the Circuit Court should have retained jurisdiction pursuant to *Rent-A-Center, West, Inc. v. Jackson*, 561 US 63 (2010). The appellant also respectfully submits that any limitation on her ability to seek redress established by *Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co.*, 586 S.E.2d 581 (2003) and other case law should be modified, extended, or changed.<sup>1</sup>

<sup>1</sup> The appellant respectfully preserves for appeal all issues related to this case, including all issues discussed in memoranda or other filings, hearings, and herein, including issues related to Due Process, the state and federal right to a jury trial, Equal Protection, and all other constitutional issues.

Respectfully submitted,



---

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There were no witnesses.

There were no exhibits.

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Certificate of Reporter . . . . . 24

1 (WHEREUPON, the following proceedings were held  
2 via WebEx.)

3 COURT REPORTER'S NOTE: The video/audio faded in  
4 and out throughout the hearing, causing interruptions  
5 within the testimony. Those instances are denoted with --  
6 [indiscernible] -- in the transcript.

7 THE COURT: All right, everybody's here. All  
8 right, let me put people on mute so we can hear. I'm  
9 going to put y'all on mute. For some reason it's got  
10 some. . .

11 All right, this is the case of -- let me hit  
12 record here.

13 All right, this is the case of Meghan Gaffney  
14 vs. Greenville County and Alorica.

15 (WHEREUPON, all you can hear is background  
16 noise.)

17 Do y'all hear the noises or is it just on my  
18 end?

19 April, is it fine on your end?

20 THE COURT REPORTER: No, sir, I hear it.

21 THE COURT: I'm going to put you on mute,  
22 Mr. Samples, for now.

23 All right, this is the case of again, Gaffney  
24 vs. the County of Greenville County Sheriff's  
25 Department and Alorica. This is, first of all,

1 we're -- everybody consents to having this hearing by  
2 way of WebEx. And any notice requirements have been  
3 met. First I'm going to ask that each person  
4 identify themselves and who are they're representing.  
5 Like I said, you may be been muted so you may need  
6 the unmute yourself. All right.

7 MR. SAMPLES: Your Honor, this is Chase Samples,  
8 I'm here on behalf of Alorica. We're the moving  
9 party in this case. My associate John Connell is  
10 also with us. John is going to be taking the lead  
11 argument here on behalf of Alorica.

12 THE COURT: All right.

13 Mr. Hawkins.

14 MR. HAWKINS: Yes, Josh Hawkins on behalf of the  
15 Plaintiff, Your Honor. We're representing Meghan  
16 Gaffney in this suit.

17 THE COURT: All right.

18 Mr. Turner?

19 MR. TURNER: Yes, Your Honor, Chuck Turner here  
20 on behalf of Greenville County Sheriff's Office.

21 THE COURT: Okay. Just for y'all's purpose, let  
22 y'all know, April Herron is here as our court  
23 reporter and my law clerk, Ryan Bondura. Everybody  
24 consents to this being by WebEx and any notice  
25 requirements, Mr. Hawkins?

1 MR. HAWKINS: I'm sorry, Judge, what was that?

2 THE COURT: I said, do you consent to having  
3 this hearing by way of WebEx?

4 MR. HAWKINS: Yes, sir.

5 THE COURT: Mr. Samples?

6 MR. SAMPLES: Yes, Your Honor.

7 THE COURT: Mr. Turner?

8 MR. TURNER: Yes, Your Honor.

9 THE COURT: All right. This is the --  
10 Alorica --

11 THE COURT REPORTER: Judge.

12 THE COURT: Yes.

13 THE COURT REPORTER: I'm sorry, there is a lot  
14 of background noise and I'm having a hard time  
15 hearing.

16 THE COURT: All right.

17 I'm going to mute you right now, Mr. Hawkins, I  
18 think that. . .

19 All right, Mr. Connell, I think you're going to  
20 take the lead on the motion. So if you would -- this  
21 is your motion so I'll be glad to hear from you.

22 MR. CONNELL: Thank you, Your Honor. Again,  
23 John Connell here on behalf of Alorica. Your Honor,  
24 we're here today seeking an order from the court to  
25 compel arbitration or in the alternative, sever these

1 two unrelated fact patterns. And I really want to  
2 start out first, Your Honor, did you happen to  
3 receive a copy of my motion and memorandum? I  
4 emailed it last week.

5 THE COURT: Right. I reviewed everything that's  
6 in the file, so.

7 MR. CONNELL: Thank you, Your Honor. And just  
8 by way of background and kind of familiarize yourself  
9 with the case, I'm going to really separate these  
10 two, what I consider unrelated facts between the  
11 three parties. And what I mean by that is there's a  
12 Greenville County -- there's a Greenville County  
13 Sheriff's Office and then, as I noted to you, I  
14 represent Alorica.

15 So as it relates to Greenville County and the  
16 sheriff's office, the Plaintiff alleges that on  
17 February 11, 2019, while the Plaintiff was in the  
18 shower, Greenville County entered her home and  
19 started questioning her when she got out of the  
20 shower and subsequently arrested her boyfriend.  
21 Following this interaction on February 11th, Your  
22 Honor, Plaintiff brought this suit alleging  
23 negligence and negligent hiring on behalf of  
24 Greenville County and Greenville County Sheriff's  
25 Office. So that's really the facts against -- that's

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the simplified facts against Greenville County and the sheriff's office.

So now I'm going to kind of switch the sides to talk about really what's at stake and why we're here to compel arbitration against Alorica. So Alorica, Your Honor, is the employer -- former employer of the plaintiff. So the Plaintiff was hired on at Alorica in 2016. She was a customer service representative. She, as in her role, she filled in calls all across the United States. She would constantly help out other consumers in different parts of the United States. And as part of -- when she was originally hired on in 2016, Alorica had several policies that they would implement and that they required their new hires to sign on.

And, Your Honor, as part of my motion and memorandum, I've attached Judith Gangi's affidavit. Now, Ms. Gangi, she's the senior director of Talent Acquisition for Alorica. Have you seen that as well?

THE COURT: I have, I reviewed that.

MR. CONNELL: Okay. And in the affidavit, as I'm sure you've seen, Ms. Gangi goes through the process of how they bring on new hires for Alorica. Specifically, when the new hire is brought on, they're offered a job. Once the employee accepts

1           that job over, they're required to go on to Alorica's  
2           electronic system. What that -- what the electronic  
3           system is Your Honor, it's called Taleo. And you can  
4           see that, as you scroll through the affidavit. Thank  
5           you. And what Taleo requires is they require each  
6           new hire to first sign in and create a personal user  
7           name and password. And this is all spelled out in  
8           Ms. Gangi's affidavit.

9           Then once they create their own user name and  
10          password, Alorica provides through Taleo, several  
11          employment related agreements. And one of those  
12          employment related agreements, Your Honor, is an  
13          arbitration agreement. And, in fact, the arbitration  
14          agreement is A-1 and it's attached to Ms. Gangi's  
15          affidavit. It's exhibit A-1. So specifically, as  
16          you can note, it's the fourth paragraph and this  
17          really kind of goes through the heart of the issues  
18          here. I note it begins right after the Now,  
19          Therefor.

20          And it states and I'll read, All disputes,  
21          claims, or controversies arising out of or relating  
22          to your employment by the Company.

23          So the Plaintiff's employment by the company.

24          The termination of her employment by the  
25          company, and/or this offer letter, any claims or

1 disputes as to the scope and enforceability of this  
2 arbitration agreement, shall be resolved exclusively  
3 by final and binding arbitration.

4 So, Your Honor, once she signed this agreement,  
5 she entered in -- and you can note at the bottom of  
6 this arbitration agreement, it states, Full name,  
7 Meghan Gaffney, the Plaintiff and signature. And as  
8 part of the signature it says, Please enter your  
9 password as your signature. As you can denote, it  
10 was signed on July 16th, 2016 with the signature and  
11 as her password.

12 So I really want to now bring in now what we  
13 talked about the arbitration agreement, bring you to  
14 the claims on why we're here today. So after that  
15 February 11, 2019 interaction with Greenville County,  
16 15 days later on February 26, the Plaintiff is at  
17 work. She gets called into the HR's office and while  
18 she's in the HR's office, the human resource officer  
19 explains to the Plaintiff that she will be terminated  
20 as a result of misusing her FMLA. So an employment  
21 issue.

22 Well, allegedly, the Plaintiff asked why she was  
23 being terminated. She tries then to circumvent and  
24 say, Well, Alorica actually told me I was being  
25 terminated as a result of this interaction with the

1 Greenville County Sheriff's Office two weeks earlier.

2 Well, Your Honor, here we're asking that you  
3 either compel arbitration or in the alternative,  
4 serve these cases. As I just went through, they're  
5 two wholly unrepeated. And I really want to talk to  
6 you first about why arbitration is appropriate in  
7 this case. So, Your Honor, looking at, as you're  
8 well aware, the courts in South Carolina generally  
9 favor arbitration. And specifically, I'm citing the  
10 Towles v. United Healthcare Corp., 338 S.C. 29,  
11 that's a Court of Appeals case. And it notes for the  
12 court to compel arbitration, specifically under the  
13 federal arbitration act, the Court needs to look at  
14 three really big elements. And the first element is  
15 whether the FAA applies. The second element is  
16 whether the parties formed a valid and binding  
17 arbitration agreement. And the third element is  
18 whether the agreement actually covers what the  
19 Plaintiff is claiming.

20 And again, once -- after Plaintiff was  
21 terminated, she now claims a violation of The South  
22 Carolina Payment and Wage Act. She claims a  
23 violation of The South Carolina Human Affairs Act.  
24 And she claims a wrongful termination. These are all  
25 employment related claims. So I'm gonna kind of go

1 through the steps of what the Plaintiff claims.

2 So for the first -- for the FAA to apply, an  
3 agreement must evidence a transaction involving  
4 Interstate Commerce. As we've gone through, Alorica  
5 is a California corporation. It has employees all  
6 over the country, including South Carolina, as  
7 Plaintiff worked in the South Carolina office. And  
8 as noted in Ms. Gangi's affidavit, the Plaintiff  
9 handled calls all across the country. So the  
10 Interstate Commerce element for the FAA to apply has  
11 certainly been satisfied here.

12 Your Honor, the second element of whether  
13 arbitration applies is whether the parties formed a  
14 binding agreement. As we discussed a little bit  
15 about this arbitration agreement, the Plaintiff in  
16 its response or motion brings up the fact that it was  
17 electronically signed and she may not even have any  
18 knowledge of signing. Well, Your Honor, the case is  
19 interpreting the FAA routinely enforce arbitration  
20 agreements bearing Plaintiff's electronic signature  
21 despite a denial of signing it.

22 In fact, and I'll even point to another case and  
23 I'm sure you're aware, it's Aaron v. Centry BMW,  
24 that's a South Carolina Supreme Court case. And I'll  
25 read to you a piece of this case and it says, The

1 plaintiffs both admitted that they did not read the  
2 arbitration agreement and their deposition testimony  
3 confirmed the failure to read the documents was  
4 solely attributable to them and not to the  
5 defendant's actions. Or jurisprudence forbids us to  
6 allow the plaintiffs to invalidate the enforceability  
7 of the arbitration agreement by claiming they did not  
8 read it.

9 So, Your Honor, it just, kind of looking at the  
10 Plaintiff's response, stating that they weren't sure  
11 or didn't read the arbitration agreement, has no  
12 merit here. Your Honor, as I've shown through the  
13 Taleo system, through Ms. Gangi's affidavit, the  
14 arbitration agreement was entered into and was signed  
15 and is binding on the parties.

16 Third and finally, Your Honor, on arbitration  
17 agreement is whether the agreement extends to the  
18 Plaintiff's claims. As I noted to you, the  
19 Plaintiff's claims are about the violation of South  
20 Carolina Payment of Wage Act relating to her  
21 employment with Alorica. The violation of South  
22 Carolina Humans Affairs Act. Again, relating to her  
23 employment. As well as wrongful termination relating  
24 to her employment.

25 Like I said from the beginning, all the disputes

1 and claims, and again I'm reading from the agreement  
2 to arbitrate. And that's Paragraph 4 of the --  
3 attached to Ms. Gangi's affidavit.

4 All disputes, claims, or controversies arising  
5 out of or relating to your employment shall be  
6 resolved exclusively by final and binding  
7 arbitration.

8 Your Honor, here it's undisputed that she signed  
9 the arbitration agreement when she started working at  
10 Alorica. Although the claims she's brought against  
11 Alorica were -- revolve out of her employment. Your  
12 Honor, arbitration is the appropriate measure.

13 Now, I'm happy to go into our second argument,  
14 however, if you grant arbitration I can save us some  
15 time and I won't go into my motion to sever.  
16 Certainly, please let me know how you would like for  
17 me to proceed.

18 THE COURT: Let's hear from Mr. Hawkins about  
19 the arbitration and then we'll go into the second  
20 part.

21 MR. CONNELL: Thank you, Your Honor.

22 MR. HAWKINS: Thank you, Your Honor. It is --  
23 let me ask, it is -- is the background noise coming  
24 from here because it's just quiet in here.

25 THE COURT: No, I think it's Mr. Samples who was

1 the guilty party.

2 MR. HAWKINS: Okay. All right.

3 THE COURT: I'm not sure why but somehow I'm  
4 getting some feedback from you. No offense, but.

5 MR. HAWKINS: Well, Your Honor, we don't care if  
6 the claim is severed. Obviously, we don't want to  
7 arbitrate it. We don't care if it's severed. So if  
8 that's the Court's decision, we don't oppose or  
9 contest severing the action, we're happy to litigate  
10 separately, that's fine.

11 As to arbitration, my colleague said something  
12 that we disagree with. And that is that it's  
13 undisputed that she signed the arbitration agreement.  
14 We submit a affidavit, she don't have any  
15 recollection of signing an arbitration agreement.  
16 When she was hired by Alorica, everybody was in a  
17 group, they were instructed to sign some things to  
18 complete some paperwork, she didn't know what it was.  
19 And she says she has an election of signing an  
20 arbitration agreement.

21 And if you look at the Rent-A-Center West case I  
22 cited, that Supreme Court case that I cited in my  
23 response, when you have something like that, a  
24 genuine fact question, you know, as to that we're  
25 only required to show a scintilla of a dispute, we

1           should figure out that question before we move to the  
2           attributability of the claim. And what Rent-A-Center  
3           said, if there had been something like fraud  
4           inducement, something like that, then the court would  
5           retain jurisdiction. And if these employees were  
6           given a bunch of documents and this thing was just  
7           shuffled through, that's akin to fraud and  
8           inducement. Or at a minimum bearing this stuff so  
9           that they have the arbitration -- so they have the  
10          arbitration issue covered.

11                 But these people don't know what they're  
12          signing. She doesn't say, It's my fault, I didn't  
13          read it, like the case that he cited. She says, I  
14          have no recollection of signing an arbitration  
15          agreement. And I had this exact same issue come up  
16          before in the case of Quinn vs. Kopljar [ph] over in  
17          Spartanburg. And what Judge Knie did there is she  
18          basically said, All right, you do limited discovery  
19          on the issue of the signature and you figure out.  
20          And then you come back and we figure out -- because  
21          that's what Rent-A-Center basically says. Then you  
22          come back and we figure out -- or did you sign the  
23          agreement, did you agree to arbitrate, all this kind  
24          of stuff.

25                 And I cite some cases, including the Lucey case,

1           that's one of the first cases I cite. And it says  
2           exactly what all these other cases said. Just a  
3           matter of contract law. Don't have any fundamental  
4           meeting of the minds. You don't have an agreement to  
5           arbitrate. Then the courts aren't bound by an  
6           arbitration agreement. Some car dealerships have a  
7           document and it's signed, it looks like the  
8           plaintiff's signature and all that. And that's a  
9           much clearer and easier case.

10           But it's not a clear case where there's just a  
11           name printed and Alorica's saying, Oh, look, her  
12           name's printed, she signed it. And she's saying, I  
13           have no recollection of this. There's a genuine fact  
14           issue around that. And she submitted an affidavit  
15           about it, Your Honor.

16           And, you know, under Hancock, at least that  
17           question has a scintilla of dispute and we should  
18           figure that out at a minimum before we're required to  
19           do something, in my view, is fundamentally  
20           unconstitutional anyway.

21           THE COURT: Well, what additional discovery -- I  
22           mean, you got the people at Alorica saying this is  
23           what was done. And your lady saying, I don't recall  
24           doing it. What other information could you get?

25           MR. HAWKINS: The information that I would seek

1 out is, you know, a 30(b)(6) representative of  
2 Alorica or somebody that knows how this signature was  
3 executed, how do you know this is my client's  
4 signature? She's saying she doesn't remember it.  
5 She's saying a group of people turned it in and told  
6 them to complete some paperwork. You're saying she  
7 signed an arbitration agreement, those are two  
8 different things. So tell me how, you know, is there  
9 identifying information that would allow us to know  
10 that she had to have signed it. What proof do you  
11 have that she signed it?

12 THE COURT: Isn't that what that affidavit says?  
13 Isn't that exactly what that affidavit says?

14 MR. HAWKINS: Yes and that's my point, Your  
15 Honor. Is that's what they're saying and it  
16 conflicts with what we're saying. She said I had no  
17 intention to be bound by an arbitration agreement, I  
18 don't remember signing an arbitration agreement. And  
19 the time that I was hired, it's not that they didn't  
20 give me something that explains and says this is what  
21 this is, they just said complete the paperwork. She  
22 doesn't even know what all the paperwork was. She  
23 just signed what she was told to sign to get the job.  
24 And that goes back to the line of cases including the  
25 Simpson case, which everybody knows about and all the

1 other ones that say there's no fundamental -- if  
2 there's a fundamental unfairness and if there's no  
3 real choice, there's not a meaningful choice is  
4 actually what the language says, then you're not  
5 bound by it.

6 And she fits squarely in the facts of Simpson.  
7 Because in that case it was a car dealership. And  
8 this guy comes to buy a car and they make him sign  
9 this thing or just does what he's supposed to do  
10 because he's unsophisticated. I don't think she has  
11 a college education. I would have to look back but I  
12 don't think she does. She's just trying to get a job  
13 to pay her bills. She fits squarely within the facts  
14 of Simpson. And you go back to the Rent-A-Center  
15 case, we got to figure out the issue of signature  
16 before we do anything. That's how I read it.

17 So for those two reasons -- and I don't know why  
18 they're scared to arbitrate -- I mean, I don't know  
19 why they're scared of a trial anyway. They get to  
20 defend it just the same way they would -- we're going  
21 to get it figured out, the merits of the case. And  
22 so I don't know what the big deal is about going to a  
23 jury, you know. They don't make any sense to me.  
24 But I know that's--

25 THE COURT: I'm not sure we're ever going to get

1 to a jury in our near future anyway on any case.

2 MR. CONNELL: Your Honor, would you mind if I  
3 respond to some of those?

4 THE COURT: Yeah, are you finished, Mr. Hawkins?

5 MR. HAWKINS: Sure, yeah, go ahead.

6 THE COURT: All right.

7 MR. CONNELL: Thank you, Your Honor. I think  
8 this, you know, squarely talking about whether it  
9 fits entirely in the Simpson case, you know, I've got  
10 the Simpson case pulled up and I'll read exactly what  
11 the Simpson case is really about. They don't talk  
12 about whether it was a meaningfulness. It certainly  
13 discusses it. The reason they find the arbitration  
14 agreement in the Simpson case is bound is because the  
15 arbitration -- and this is a quote from the case, The  
16 arbitration clause in Simpson's contract with --  
17 [indiscernible] -- provides that, and this is quote,  
18 In no event shall the arbitrator be authorized to  
19 award punitive, exemplary, double, or treble damages  
20 or any other damages which are punitive in nature  
21 against either party.

22 Your Honor, the Court then said, We find a  
23 provision prohibiting double and treble damages to be  
24 oppressive, one sided and not geared toward an  
25 unbiased decision by a neutral decision-maker.

1           That is nothing what's going on here. In fact,  
2           the Alorica's arbitration agreement agrees to pay for  
3           all of the associated fees except for the initial  
4           \$350 filing fee. And I can point back to our  
5           arbitration agreement, it's not one sided at all.  
6           They don't say no double, no triple, no punitive  
7           damages. It says, We're going to have a neutral fact  
8           finder decide on the issues. I think, you know,  
9           going back, the one thing that I did agree with  
10          Mr. Hawkins is that this is a matter of contract law.

11           And, Your Honor, you stated it perfectly. You  
12          said, just as Mr. Hawkins wanted on the 30(b)(6),  
13          well we've already provided that in an affidavit.  
14          What additional information -- to me, just claiming  
15          that you didn't recall signing it, the cases  
16          routinely hold that that doesn't matter. We've got  
17          all the information in the affidavit on how to  
18          identify that the Plaintiff did, in fact, sign. And  
19          so, Your Honor, to just state I don't know and to  
20          have additional discovery, is not -- it's prejudice  
21          against the Defendant, it breaches a contract. And  
22          we need to move forward with arbitration.

23           THE COURT: All right, anything else,  
24          Mr. Hawkins?

25           MR. HAWKINS: Yes, Your Honor. Because I think

1           it's important -- I think the Simpson case is  
2           important. And what that case says is don't have a  
3           meaningful choice, that's what the case says. And I  
4           don't know if they're reading it a different way but  
5           that's what it says. Then the agreement or the  
6           purported agreement to arbitrate is not enforceable.  
7           If that applies to somewhere where somebody is buying  
8           a car, it definitely applies to somebody in that same  
9           situation that's trying to get a job.

10                  And what we're saying is he wants to paint it as  
11           the cases all say that she don't recall that -- the  
12           cases that he was talking about say if you say you  
13           didn't read it. She's not saying I didn't read.  
14           She's saying I don't know what was in all the stuff  
15           that we were told to do and I don't recall signing an  
16           arbitration agreement. She's saying that she -- that  
17           she doesn't recall ever seeing it. And they're  
18           saying, Oh no, you did sign it. And those are two  
19           conflicting things. Those are diametrically opposed  
20           views of what happened.

21                  And as to the \$350, that is a lot of money to  
22           her. You know, she already paid the filing fee and  
23           the service fee and all this kind of stuff. Every  
24           dollar for a plaintiff, especially somebody that's  
25           working -- or was working at Alorica to pay her bills

1 matters. That goes back to Simpson. Is a vulnerable  
2 plaintiffs that are not sophisticated, trying to make  
3 a living and they shouldn't be railroaded by signing  
4 a bunch of stuff that they don't know what it is.  
5 And then I'm not even sure that she signed a  
6 arbitration agreement at all. Because she don't  
7 remember it. And that's not her signature. I mean,  
8 it's a printed -- it's her name printed. But it's  
9 not -- she didn't write it down, she doesn't remember  
10 seeing it. And she said she never intended to be  
11 bound by it. So, I mean, I think it's just clear as  
12 day that this isn't arbitral. But it's not my call  
13 to make, I realize.

14 THE COURT: And I think, you know, we deal a lot  
15 with these arbitration agreements and we deal with  
16 them in car dealership cases a lot as well. I mean,  
17 I think the Simpson one is a different scenario but,  
18 I mean, they are enforceable. I think that they  
19 established that this arbitration agreement was  
20 signed by your client, electronically and that it is  
21 binding. It's a separate agreement, it clearly  
22 states it's an arbitration agreement. Your client  
23 indicates she doesn't recall -- didn't intend to  
24 arbitrate, I still think that the case law supports  
25 that is still would be valid. So I'm going to grant

1           their motion compelling arbitration as to the claims  
2           against Alorica. And ask Mr. Connell to submit a  
3           proposed order and copy you with that.

4           MR. CONNELL: Thank you, Judge.

5           MR. HAWKINS: Thank you, Your Honor.

6           THE COURT: All right, with that I'll end the  
7           hearing. Y'all have a good day.

8           MR. TURNER: Thanks, Judge.

9           MR. SAMPLES: Thank you.

10           (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER


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STATE OF SOUTH CAROLINA        )  
COUNTY OF GREENVILLE        )

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 11 day of June, 2020.

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

September 1, 2020

  
\_\_\_\_\_

APRIL P. HERRON, Court Reporter

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

**RECEIVED**

**Jul 28 2020**

**SC Court of Appeals**

Meghan Gaffney.....Appellant,

v.

The Greenville County Sheriff's Office, Greenville County, and Alorica, Defendants,

Of whom Alorica is the .....Respondent.

Case No. 2020-CP-23-00906

**NOTICE OF APPEAL**

Meghan Gaffney appeals the Orders of the Honorable Perry H. Gravely, dated July 15, 2020. The appellant received electronic notice of the entry of Judge s Gravely'latest Order on July 15, 2020.

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