

IN THE  
SUPREME COURT OF THE UNITED STATES

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Jessica Graulau, Petitioner-Appellant,

v.

Credit One Bank, N.A., a foreign corporation, Respondent-Appellee.

**APPENDIX FOR WRIT OF CERTIORARI**

To the United States Court of Appeal for the Eleventh Circuit

Prepared by: Jessica Graulau, Petitioner-Appellant

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 23-13168

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JESSICA GRAULAU,

Plaintiff-Appellant,

*versus*

CREDIT ONE BANK, N.A.,  
a foreign corporation,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 6:19-cv-01723-WWB-EJK

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JUDGMENT

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

JESSICA GRAULAU,

Plaintiff,

v.

Case No.: 6:19-cv-1723-WWB-EJK

CREDIT ONE BANK, N.A.,

Defendant.

\_\_\_\_\_, /

**ORDER**

THIS CAUSE is before the Court on Plaintiffs Motion, to Vacate Arbitrator's Award for Defendant's Summary Disposition (Doc. 45) and Motion to Modify/Correct Arbitrator's Award for Defendant's Counterclaim (Doc. 46). Magistrate Judge Embry J. Kidd issued a Report and Recommendation ("R&R," Doc. 62), in which he recommends both motions be denied. Plaintiff filed an Objection (Doc. 66), to which Defendant filed a Response (Doc. 70).

**I. BACKGROUND**

Plaintiff has not objected to the relevant factual background as set forth in the R&R and it is hereby adopted and made a part of this Order accordingly. (Doc. 62 at 1-2).

**II. LEGAL STANDARD**

When a party objects to a magistrate judge's findings, the district court must "make a de novo determination of those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1). The district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* The district court must consider the record and factual issues independent of the magistrate judge's

report, as de novo review is "essential to the constitutionality of [§] 636." *Jeffrey S. v. State Bd. of Educ.*, 896 F.2d 507, 512 (11th Cir. 1990). The objecting party must state with particularity findings with which it disagrees, along with its basis for the disagreement. *Kohser v. Protective Life Corp.*, 649 F. App'x 774, 777 (11th Cir. 2016) (citing *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989)). The court will not consider "[i]rivolous, conclusive, or general objections." *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988) (citation omitted).

### III. DISCUSSION

After considering this Court's obligation to liberally construe *pro se* filings, Magistrate Judge Kidd first recommends that Plaintiff's Motion to Vacate and Motion to Modify/Correct are properly before the Court. Moreover, the R&R finds that the nature of Plaintiff's Motions is to challenge the arbitrator's decision on a federal claim arising under the Telephone Consumer Protection Act of 1991 ("**TCPA**"). The R&R thus concludes that this Court may properly exercise subject matter jurisdiction over both Motions. Neither party has objected to these conclusions. Therefore, after an independent de novo review of the record, the Court agrees entirely with the analysis set forth in the R&R as to these issues.

Magistrate Judge Kidd next recommends denying Plaintiff's Motion to Vacate, concluding the Motion merely attacks the merits of the Arbitrator's decision and fails to argue a statutory ground for relief under the Federal Arbitration Act ("**FAA**"), 9 U.S.C §§ 1-16. Plaintiff objects to Magistrate Judge Kidd's conclusion that "manifest disregard for the law" is not a valid basis for vacatur and proceed to argue the Arbitrator disregarded laws pertaining to summary judgment, tolling, and evidentiary rules. But

Plaintiff misstates the law. As the R&R correctly notes, "§§ 10 and 11 [of the FAA] respectively provide the FAA's *exclusive* grounds for expedited vacatur and modification." *S. Commc'ns Servs., Inc. v. Thomas*, 720 F.3d 1352, 1358 (11th Cir. 2013) (emphasis added) (quoting *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584 (2008)). "[M]anifest disregard for the law" and other "judicially-created bases for vacatur are no longer valid." *Frazier v. CitiFinancial Corp.*, 604 F.3d 1313, 1323-24 (11th Cir. 2010). Plaintiffs objection on this issue thus fails as a matter of law.

The R&R does note, however, that Plaintiff raises one ground for vacatur recognized by § 10 of the FAA when she argues the arbitrator displayed "evident partiality" against her in violation of § 10(2) of the FAA. However, Plaintiff has failed to argue the existence of any conflict, actual or potential, that could satisfy the showing necessary to establish evident partiality. See *Gianelli Money Purchase Plan & Tr. v. ADM Inv. Servs., Inc.*, 146 F.3d 1309, 1312 (11th Cir. 1998). This Court therefore agrees with Magistrate Judge Kidd's conclusions and recommendations as to Plaintiffs Motion to Vacate.

The R&R finally addresses Plaintiffs Motion to Modify/Correct Arbitrator's Award for Defendant's Counterclaim and similarly concludes that Plaintiff has failed to identify a statutory basis for modification under § 11 of the FAA. Plaintiff objects that the R&R mischaracterizes her argument and asserts that because Defendant's counterclaim was not submitted to arbitration, the Arbitrator's award on the counterclaim violates § 11(b) of the FAA. However, the Motion to Modify/Correct makes no such argument and instead attacks the merits of the Arbitrator's decision. The R&R rightly states that the FAA permits modification only on limited, statutorily-enumerated bases. This Court finds no error in

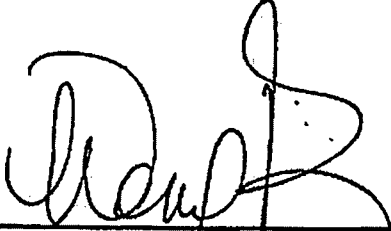
Magistrate Judge Kidd's conclusion that Plaintiff has failed to argue for any such basis.  
Plaintiffs Objection will be overruled.

#### IV. CONCLUSION

Therefore, it is **ORDERED** and **ADJUDGED** as follows:

1. Plaintiffs Objection (Doc. 66) is **OVERRULED**.
2. The Report and Recommendation (Doc. 62) is - **ADOPTED** and **CONFIRMED** and made a part of this Order.
3. Plaintiffs Motion to Vacate Arbitrator's Award for Defendant's Summary Disposition (Doc. 45) is **DENIED**.
4. Plaintiffs Motion to Modify/Correct Arbitrator's Award for Defendant's Counterclaim (Doc. 46) is **DENIED**.

**DONE AND ORDERED** in Orlando, Florida on September 18, 2023.

  
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WENDY W. BERGER  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Party

App C, p. 11a

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

JESSICA GRAULAU,

Plaintiff,

v.

Case No: 6:19-cv-1723-WWB-EJK

CREDIT ONE BANK, N.A.,

Defendant.

REPORT AND RECOMMENDATION

This cause comes before the Court on *Pro Se* Plaintiff's Motion to Vacate Arbitrator's Award for Defendant's Summary Disposition (the "Motion to Vacate") (Doc. 45) and Motion to Modify/Correct Arbitrator's Award for Defendant's Counterclaim (the "Motion to Modify") (Doc. 46), both filed December 9, 2022. Defendant has responded in opposition to the Motions. (Docs. 51, 52.) Upon consideration, I respectfully recommend that the Motions be denied.

I. BACKGROUND

Plaintiff initiated this case against Defendant in September 2019 alleging violations of the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.72. (Doc. 1.) The Court granted Defendant's Motion to Dismiss and directed Plaintiff to submit the case to arbitration based on a joint stipulation for voluntary dismissal without prejudice and referral to arbitration Plaintiff entered into while represented by an attorney in a prior case (No. 6:18-cv-106-Orl-ACC-DCI). (Doc. 27.)

Plaintiff subsequently appealed her dismissal to the Eleventh Circuit, which, in May 2021, affirmed the Court's decision in a written opinion. (Doc. 36.)

In December 2021, Plaintiff initiated arbitration against Defendant with the American Arbitration Association ("AAA") asserting her TCPA and FCCPA claims. (Doc. 51 at 1.) Defendant then filed a counterclaim against Plaintiff for breach of the cardholder agreement based on Plaintiff's alleged failure to pay her credit card bill. (*Id.*) On October 21, 2022, after Defendant filed a dispositive motion on Plaintiff's claims, the AAA-appointed arbitrator found Plaintiff's claims under the TCPA and FCCPA were time barred and dismissed them with prejudice. (*Id.* at 1-2; Doc. 45-1.) On November 17, 2022, after an evidentiary hearing, the arbitrator entered an Interim Award on Defendant's counterclaim finding jurisdiction over the counterclaim pursuant to the arbitration agreement and awarding Credit One \$1,145.50 in damages. (Docs. 52 at 1-2; 46-3.) On December 21, 2022, after the instant Motions were filed, the arbitrator entered the Final Award, which made final the arbitrator's award of \$1,145.50 in Defendant's favor. (Docs. 52 at 2; 50-1.) Plaintiff seeks vacatur of the arbitrator's October 21, 2022 Order dismissing Plaintiff's claims (Doc. 45) pursuant to 9 U.S.C. § 10, and modification of the November 17, 2022 Interim Award (Doc. 46), pursuant to 9 U.S.C. § 11.

## II. STANDARDS

"Sections 10 and 11 [of the Federal Arbitration Act ("FM"), 9 U.S.C. §§ 1-16,] proceed to lay out the exceedingly narrow grounds upon which an award can be vacated, modified, or corrected." *S. Commc'ns Servs., Inc. v. Thomas*, 720 F.3d



1352, 1357 (11th Cir. 2013). Section 10 of the FAA permits vacatur of arbitration awards in the following four circumstances:

- (1) where the award was procured by conuption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a)(1)-(4); *Frazier v. CitiFinancial Corp, LLC*, 604 F.3d 1313, 1321 (11th Cir. 2010).

Section 11 permits modification of arbitration awards in the following three circumstances:

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
- (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
- (c) Where the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

9 U.S.C. § 11(a)-(c); *Frazier*, 604 F.3d at 1321.

iii. **DISCUSSION**

**A. Motion to Vacate**

In the Motion to Vacate, Plaintiff requests that the Court vacate the arbitrator's October 21, 2022 Order on Respondent's Motion for Summary Disposition. (Docs. 45 at 1, 17; 45-1.) Plaintiff asserts that the arbitrator evidenced partiality and exceeded his power under § 10 because he: (1) disregarded the applicable rules for rendering summary judgment, (2) disregarded laws related to tolling of the applicable statute of limitations; (3) disregarded hearsay laws, and (4) was biased against Plaintiff. (Doc. 45 at 1, 8-17.)

As an initial matter, Defendant notes that Plaintiff's Motion to Vacate is premature and not properly before the Court because Plaintiff filed her Motion to Vacate prior to the arbitrator's entry of the December 21, 2022 Final Award. (Doc. 51 at 3.) The undersigned finds this argument well-taken but balances this assertion against the Court's obligation to liberally construe the filings of *pro se* litigants. *See Eidson v. Arenas*, 910 F. Supp. 609, 612 (M.D. Fla. 1995). As the Final Award incorporated the entirety of the Interim Award (cf. Doc. 46-3 *with* Doc. 50-1), the undersigned reviews Plaintiff's Motion to Vacate as if it is directed at the Final Award.<sup>1</sup> The undersigned also notes the exact nature of Plaintiff's requested relief is to vacate the October 21, 2022 Order dismissing Plaintiff's claims, not the Final Award. But

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<sup>1</sup> The Final Award also found that Defendant was not entitled to attorneys' fees and costs and corrected typographical errors in the Interim Award. (Doc. 50-1.)

again, the undersigned will construe Plaintiff's request for relief broadly to be encompassed by section 10 of the FAA.

Defendant next argues that the Court lacks subject matter jurisdiction to consider the Motion to Vacate because "a court's subject matter jurisdiction to vacate an arbitration award must be based on the 'application [to vacate] actually submitted' to the court" and the Motion to Vacate here does not provide the Court such a basis. (Doc. 51 at 4) (citing *Badgerow v. Walters*, 142 S. Ct. 1310, 1314 (2022)). In the recent case of *Badgerow v. Walters*, the Supreme Court held that a federal court, in determining whether it has jurisdiction to decide a motion to confirm or vacate an arbitration award under sections 9 or 10, looks only to the application submitted to the court-that is, the motion to confirm or vacate-and cannot "look through" the application to the underlying substantive dispute between the parties. 142 S. Ct. at 1314. *Badgerow* found that FAA Sections 9 and 10 "do not themselves support federal jurisdiction." *Id.* at 1316. Instead, a "federal court may entertain an action brought under the FAA only if the action has an 'independent jurisdictional basis.'" *Id.* (quoting *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008));

This case and the case in *Badgerow* came to their respective courts under slightly different procedural settings. In *Badgerow*, the plaintiff directly initiated an arbitration action and came to federal court only after she sued the defendant in state court to vacate the arbitration decisions and defendant removed the case-thus presenting a standalone petition to vacate the arbitration award, with no prior complaint having been filed. 142 S. Ct. at 1314-15. The Supreme Court determined that it lacked both

diversity and federal question jurisdiction over the case when it looked at the face of the application to vacate the arbitration award. Specifically, the Court stated:

The issue here is about where a federal court should look to determine whether an action brought under Section 9 or 10 has an independent jurisdictional basis. An obvious place is the face of the application itself. If it shows that the contending parties are citizens of different States (with over \$75,000 in dispute), then § 1332(a) gives the court diversity jurisdiction. Or if it alleges that federal law (beyond Section 9 or 10 itself) entitles the applicant to relief, then § 1331 gives the court federal-question jurisdiction. But those possibilities do [Respondent] no good. He and [Petitioner] are from the same State. And their applications raise no federal issue. Recall that the two are now contesting not the legality of [Petitioner's] firing but the enforceability of an arbitral award. That award is no more than a contractual resolution of the parties' dispute—a way of settling legal claims. See *Vaden*, 556 U.S., at 63, 129 S.Ct. 1262. And quarrels about legal settlements—even settlements of federal claims—typically involve only state law, like disagreements about other contracts. See *Kokkonen*, 511 U.S., at 378-382, 114 S.Ct. 1673.

*Badgerow*, 142 S. Ct. at 1316-17.

Here, Plaintiff filed a Complaint invoking the Court's federal question jurisdiction under the TCPA. (Doc. 1.) Following Defendant's Motion to Dismiss and Enforce Order Dismissing and Referring Case, the Court granted that motion, directed Plaintiff to submit the case to arbitration, and dismissed and closed the case. (Doc. 27.) Following arbitration, instead of opening a new matter with a petition to vacate or modify the arbitration award, Plaintiff filed her motions in this case. (Docs. 45, 46.)

When Plaintiff initially filed this case, there was no dispute that the Court had federal question jurisdiction over Plaintiff's Complaint. However, the Court dismissed

and closed the case, and the Court did not affirmatively retain jurisdiction to enforce the terms of the arbitration award. (See Doc. 27.)

Thus, the Court cannot look back or "look through" to Plaintiff's Complaint in this case to assess its jurisdiction. Rather, the undersigned must determine whether subject matter jurisdiction is present when looking at the face of Plaintiff's Motion to Vacate. Nowhere does it appear in that Motion that the parties are diverse, and the arbitration award in question would not satisfy § 1332's amount in controversy requirement in any event. Therefore, the only issue is whether federal question jurisdiction is present on the face of the Motion to Vacate. While that is a closer call, the undersigned concludes that the Court has jurisdiction. Plaintiff's entire argument in her Motion to Vacate is premised on the notion that the arbitrator wrongly decided Plaintiff's claims—one of them being her TCPA claim. (See Doc. 45.) Thus, the undersigned concludes that Plaintiff has presented an application under the FAA that provides the Court with an independent basis to exercise subject matter jurisdiction.

Defendant next argues that the arbitrator's award is not subject to vacatur. (Doc. 51 at 4.) The Court agrees. Plaintiff has not persuaded the Court that a statutory basis to vacate the arbitration award exists under § 10. Plaintiff argues that the arbitrator disregarded laws, including summary judgment laws, tolling laws, and evidentiary rules. (Doc. 45 at 8, 10, 15.) Manifest disregard of the law, however, is not a valid ground to vacate an arbitration award under § 10. The 11th Circuit has explicitly stated that neither a manifest disregard of the law nor an incorrect legal conclusion constitutes grounds for vacating or modifying an arbitration award. *S. Comm'n's Servs.*,

720 at 1358.

Accordingly, most of Plaintiff's arguments do not provide a § 10 basis to vacate the arbitration award. Rather, Plaintiff's arguments mostly seek to re-hash the findings and holding of the arbitrator. The only argument Plaintiff makes for vacatur that § 10 encompasses is that the arbitrator was biased against her. 9 U.S.C. § 10(a)(2); (Doc. 45 at 16-17.) Specifically, Plaintiff states that the arbitrator "nulled/voided" her motion to strike Defendant's affirmative defenses for failure to meet and confer but did not equally enforce the meet and confer requirement against Defendant. (Doc. 45 at 16.) The arbitrator then denied other requests by Plaintiff to file a motion to strike an affirmative defense, to file a responsive pleading to Defendant's counterclaim, and to issue subpoenas, which Plaintiff took as a sanction for her misunderstanding of the meet and confer rules. (*Id.*) Moreover, Plaintiff ascribes bias to the arbitrator because he entered a monetary award against her even though she is indigent and let her proceed in the arbitration *prose*. (*Id.* at 16-17.)

None of these arguments rises to the level of partiality required to vacate an arbitration award. "[T]he mere appearance of bias or partiality is not enough to set aside an arbitration award." *Perez v. Cigna Health & Life Ins. Co.*, No. 20-12730, 2021 WL 2935260, at \*2 (11th Cir. July 13, 2021) (internal quotation marks omitted). Rather, the Eleventh Circuit has "explained that an arbitration award may only be vacated because of evident partiality when either '(1) an actual conflict exists; or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists.'" *Id.* (quoting *Gianelli*

*Money Purchase Plan & Trust v. ADM Inv. Servs., Inc.*, 16 F.3d 1309, 1312 (11th Cir. 1998)). Plaintiff has not met her burden of proving evident partiality. Rather, her arguments again attack the merits of the arbitrator's decision-making, and this Court will not "review the substance of an arbitrator's judgment." *Fowler v. Ritz-Carlton Hotel Co., LLC*, 579 Fed. App'x 693, 697 (11th Cir. 2014) (unpublished).

### **B. Motion to Modify**

In the Motion to Modify, Plaintiff requests that the Court modify the arbitrator's November 17, 2022 Interim Award granting Defendant's counterclaim and awarding damages, which was made final in the December 21, 2022 Final Award. (Docs. 46 at 1; 46-3; 50-1.) Plaintiff asserts that this award should be modified under § 11 because: (1) Defendant's counterclaim is not subject to arbitration; (2) it is time-barred, and (3) the arbitrator's award is "irrational" (Doc. 46 at 7-18.)

Defendant reiterates its arguments that the matter is premature and that the Court lacks subject matter jurisdiction to adjudicate the Motion to Modify, for the same reasons asserted *supra*. (Doc. 52 at 2-4.) And for the same reasons articulated above, the Court does not find those arguments to be outcome determinative.

Defendant then asserts that Plaintiff's Motion to Modify does not identify any basis under § 11 to modify the award. (Doc. 52 at 4.) Again, the Court agrees. Federal courts have "limited authority to vacate or modify an arbitration award" and can only do so in the "very unusual circumstances" articulated in the FAA. *Peebles v. Terminix Int'l Co., LP*, No. 20-14365, 2021 WL 5894857, at \*2 (11th Cir. 2021) (internal quotation marks omitted). Plaintiff once more presents arguments concerning the

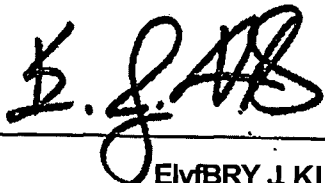
merits of the arbitrator's decision. That is not one of the enumerated reasons for modifying an arbitration award, so the undersigned ultimately does not find Plaintiff is entitled to her requested relief.

#### IV. RECOMMENDATION

Upon consideration of the foregoing, I RESPECTFULLY RECOMMEND that the Court:

1. DENY Plaintiff's Motion to Vacate Arbitrator's Award for Defendant's Summary Disposition (Doc. 45); and
2. DENY Plaintiff's Motion to Modify/Correct, Arbitrator's Award for Defendant's Counterclaim (Doc. 46).

Recommended in Orlando, Florida on March 27, 2023.

  
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EMBRY J. KIDD  
UNITED STATES MAGISTRATE JUDGE

App D, p. 21a



**NOTICE TO PARTIES**

The party has fourteen days from the date the party is served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1)(C). A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1; 28 U.S.C. § 636(b)(1).

App D, p. 22a

APPEAL,CLOSED

**U.S. District Court  
Middle District of Florida (Orlando)  
CIVIL DOCKET FOR CASE #: 6:19-cv-01723-WWB-EJK**

Graulau v. Credit One Bank, N.A.  
Assigned to: Judge Wendy W. Berger  
Referred to: Magistrate Judge Embry J. Kidd  
Case in other court: 11th Circuit, 20-12037  
11th Circuit, 23-11227  
11th Circuit, 23-13168  
Cause: Restrictions on Use of Telephone Equipment

Date Filed: 09/05/2019  
Date Terminated: 05/29/2020  
Jury Demand: Plaintiff  
Nature of Suit: 890 Other Statutory Actions  
Jurisdiction: Federal Question

**Plaintiff**

**Jessica Graulau**

represented by **Jessica Graulau**  
P.O. Box 721037  
Orlando, FL 32872  
407/721-6303  
PRO SE

V.

**Defendant**

**Credit One Bank, N.A.**  
*a foreign corporation*

represented by **Dayle Marie Van Hoose**  
Sessions, Israel & Shartle LLC  
3350 Buschwood Park Dr Ste 195  
Tampa, FL 33618-4317  
813-440-5327  
Fax: 877-334-0661  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Michael Schuette**  
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401 E. Jackson St.,  
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813-705-6275  
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**TERMINATED: 06/28/2023**  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
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09/05/2019	<u>1</u>	COMPLAINT against Credit One Bank, N.A. with Jury Demand filed by Jessica Graulau. (Attachments: # <u>1</u> Exhibits)(MAA) (Entered: 09/06/2019)
09/05/2019	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Jessica Graulau. (Attachments: # <u>1</u> Application)(MAA) Motions referred to Magistrate Judge Gregory J. Kelly. (Entered: 09/06/2019)
09/09/2019	<u>3</u>	<b>ORDER denying <u>2</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Gregory J. Kelly on 9/9/2019. (MB)</b> (Entered: 09/09/2019)
09/13/2019	<u>4</u>	<b>RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Notice of pendency of other actions due by 9/27/2019. Signed by Deputy Clerk on 9/13/2019. (copy mailed)(AKC)</b> (Entered: 09/13/2019)
09/13/2019	<u>5</u>	<b>INTERESTED PERSONS ORDER. Certificate of interested persons and corporate disclosure statement due by 9/27/2019. Signed by Judge Wendy W. Berger on 9/13/2019. (copy mailed)(AKC)</b> (Entered: 09/13/2019)
09/20/2019		FILING FEES paid by Jessica Graulau (Filing fee \$400.00 receipt number ORL085619) (DMA) (Entered: 09/20/2019)
09/20/2019	<u>6</u>	SUMMONS issued as to Credit One Bank, N.A. (BIA) (Entered: 09/20/2019)
10/09/2019	<u>7</u>	CERTIFICATE of interested persons and corporate disclosure statement re <u>5</u> Interested persons order by Jessica Graulau. (BIA) (Entered: 10/10/2019)
10/09/2019	<u>8</u>	NOTICE of pendency of related cases re <u>4</u> Related case order and track 2 notice per Local Rule 1.04(d) by Jessica Graulau. Related case(s): yes (BIA) (Entered: 10/10/2019)
11/05/2019	<u>9</u>	MOTION to Dismiss Complaint filed by plaintiff and Enforce Court Order Dismissing and Referring Claims to Arbitration by Credit One Bank, N.A.. (Schuette, Michael) (Entered: 11/05/2019)
11/12/2019	<u>10</u>	(treat as a response) MOTION to Strike <u>9</u> Defendant's MOTION to Dismiss Complaint filed by Jessica Graulau. (BIA) Motions referred to Magistrate Judge Gregory J. Kelly. Modified on 11/13/2019 (MEJ). Modified on 12/10/2019 (LAK). (Entered: 11/12/2019)
11/22/2019	<u>11</u>	RETURN of service executed on 10/17/2019 by Jessica Graulau as to Credit One Bank, N.A. (BIA) (Entered: 11/25/2019)
11/26/2019	<u>12</u>	RESPONSE in Opposition re <u>10</u> MOTION to Strike Motion to Dismiss Complaint filed by Credit One Bank, N.A. (Schuette, Michael) Modified on 11/27/2019 (MEJ). (Entered: 11/26/2019)
12/10/2019	<u>13</u>	<b>ORDER terminating <u>10</u> Motion to Strike. The motion will be treated as a response to <u>9</u> MOTION to Dismiss. Signed by Magistrate Judge David A Baker on 12/9/2019. (LAK)</b> (Entered: 12/10/2019)
01/24/2020	<u>14</u>	<b>INTERESTED PERSONS ORDER. Defendant Credit One Bank, N.A. shall file a Certificate of interested persons and corporate disclosure statement due by 2/7/2020. Signed by Judge Wendy W. Berger on 1/24/2020. (RMF)(ctp).</b> (Entered: 01/24/2020)
02/05/2020	<u>15</u>	<b>REPORT AND RECOMMENDATIONS that <u>9</u> MOTION to dismiss complaint and refer case to arbitration be granted, that the case be dismissed, and that the case be closed. Signed by Magistrate Judge David A Baker on 2/5/2020. (LAK)</b> (Entered: 02/05/2020)
02/12/2020	<u>16</u>	OBJECTION to <u>15</u> Report and Recommendations by Jessica Graulau. (LDJ) (Entered: 02/13/2020)

02/12/2020	<u>17</u>	MOTION for Leave to Proceed on Appeal in forma pauperis by Jessica Graulau. (LDJ) Motions referred to Magistrate Judge Gregory J. Kelly. (Entered: 02/13/2020)
02/18/2020	<u>18</u>	<b>ORDER to show cause. Plaintiff is hereby ORDERED TO SHOW CAUSE by a written response filed on or before February 28, 2020. Signed by Judge Wendy W. Berger on 2/18/2020. (RMF)ctp</b> (Entered: 02/18/2020)
02/24/2020	<u>19</u>	RESPONSE TO ORDER TO SHOW CAUSE re <u>18</u> Order to show cause filed by Jessica Graulau. (LDJ) (Entered: 02/24/2020)
02/24/2020	<u>20</u>	CERTIFICATE of interested persons and corporate disclosure statement re <u>14</u> Interested persons order by Credit One Bank, N.A. identifying Corporate Parent Credit One Financial for Credit One Bank, N.A. (Schuette, Michael) (Entered: 02/24/2020)
02/24/2020	<u>21</u>	NOTICE of pendency of related cases re <u>4</u> Related case order and track 2 notice per Local Rule 1.04(d) by Credit One Bank, N.A. Related case(s): yes (Schuette, Michael) (Entered: 02/24/2020)
02/26/2020	<u>22</u>	RESPONSE re <u>16</u> Objection to Report and Recommendations ( <i>Plaintiff's Notice of Appeal</i> ) filed by Credit One Bank, N.A.. (Schuette, Michael) (Entered: 02/26/2020)
04/07/2020	<u>23</u>	<b>ORDER denying without prejudice <u>17</u> Motion to Proceed on appeal in forma pauperis. Signed by Magistrate Judge David A Baker on 4/7/2020. (LAK)</b> (Entered: 04/07/2020)
05/22/2020	<u>24</u>	Amended CERTIFICATE of interested persons and corporate disclosure statement re <u>5</u> Interested persons order by Jessica Graulau. (ARJ) (Entered: 05/22/2020)
05/22/2020	<u>25</u>	MOTION directed to the Assigned District Judge Regarding the Proceedings by Jessica Graulau. (ARJ) Motions referred to Magistrate Judge Gregory J. Kelly. (Entered: 05/22/2020)
05/22/2020	<u>26</u>	MOTION directed to Assigned District Judge to Request Vacant of Magistrate Judge by Jessica Graulau. (ARJ) Motions referred to Magistrate Judge Gregory J. Kelly. (Entered: 05/22/2020)
05/28/2020	<u>27</u>	<b>ORDER: The Report and Recommendation <u>15</u>, is ADOPTED and CONFIRMED and made a part of this Order. Defendant's Motion to Dismiss and Enforce Order Dismissing and Referring Case to Arbitration <u>9</u> is GRANTED. Plaintiff shall submit to arbitration in accordance with the Joint Stipulation. The Clerk is directed to terminate all pending motions and close this case. Signed by Judge Wendy W. Berger on 5/28/2020. (RMF)ctp</b> (Entered: 05/28/2020)
06/02/2020	<u>28</u>	NOTICE OF APPEAL as to <u>27</u> Order on Motion to Dismiss, Order on Report and Recommendations by Jessica Graulau. Filing fee not paid. (Attachments: # <u>1</u> Order)(KNC) (Entered: 06/03/2020)
06/02/2020	<u>29</u>	MOTION to Appeal In Forma Pauperis / Affidavit of Indigency by Jessica Graulau. (KNC) (Entered: 06/03/2020)
06/02/2020	<u>30</u>	TRANSCRIPT information form filed by Jessica Graulau re <u>28</u> Notice of Appeal. USCA number: TBD. (KNC) (Entered: 06/03/2020)
06/03/2020	<u>31</u>	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable to USCA re <u>28</u> Notice of Appeal. (KNC) (Entered: 06/03/2020)
06/12/2020	<u>32</u>	DESIGNATION of Record on Appeal by Jessica Graulau re <u>28</u> Notice of Appeal (LDJ) (Entered: 06/12/2020)

07/08/2020	<u>33</u>	<b>ORDER denying <u>29</u> Motion for Leave to Appeal In Forma Pauperis. Signed by Judge Wendy W. Berger on 7/8/2020. (RMF)ctp</b> (Entered: 07/08/2020)
10/05/2020		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Florida certifies that the record is complete for the purposes of this appeal re: <u>28</u> Notice of Appeal. All documents are imaged and available for the USCA to retrieve electronically. USCA number: 20-12037 (ALL) (Entered: 10/05/2020)
11/04/2020	<u>34</u>	MANDATE of USCA as to <u>28</u> Notice of Appeal filed by Jessica Graulau Issued as Mandate: 11/04/2020 USCA number: 20-12037. DISMISSED. (ALL) (Entered: 11/09/2020)
11/05/2020	<u>35</u>	USCA Letter as to <u>28</u> Notice of Appeal filed by Jessica Graulau. EOD: 11/05/2020; USCA number: 20-12037. Appeal is clerically REINSTATED. (ALL) (Entered: 11/09/2020)
12/08/2020		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Florida certifies that the record is complete for the purposes of this appeal re: <u>28</u> Notice of Appeal. All documents are imaged and available for the USCA to retrieve electronically. USCA number: 20-12037 (ALL) (Entered: 12/08/2020)
05/06/2021	<u>36</u>	OPINION of USCA as to <u>28</u> Notice of Appeal filed by Jessica Graulau. EOD: 5/6/2021; Mandate to issue at a later date. USCA number: 20-12037. AFFIRMED. (TNP) (Entered: 05/06/2021)
06/04/2021	<u>37</u>	MANDATE of USCA as to <u>28</u> Notice of Appeal filed by Jessica Graulau. Issued as Mandate: 06/04/2021 USCA number: 20-12037. AFFIRMED. (ALL) (Entered: 06/07/2021)
11/17/2021	<u>38</u>	Notification from the U.S. Court of Appeals, 11th Circuit, that WRIT OF CERTIORARI has been denied by the U.S. Supreme Court as to <u>28</u> Notice of Appeal filed by Jessica Graulau Issued on 11/15/2021. The court's mandate having previously issued, no further action will be taken by this court. (TNP) (Entered: 11/18/2021)
10/31/2022	<u>39</u>	Time-Sensitive MOTION to Vacate Arbitrator's Award by Jessica Graulau. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(KNC) Modified on 10/31/2022 to edit docket text (KNC). (Entered: 10/31/2022)
10/31/2022	<u>40</u>	NOTICE Directed to Defendant by Jessica Graulau re <u>39</u> MOTION to Vacate (KNC) (Entered: 10/31/2022)
10/31/2022	<u>41</u>	Case Reassigned to Magistrate Judge Embry J. Kidd. New case number: 6:19-cv-1723-WWB-EJK. US Magistrate Judge Gregory J Kelly no longer assigned to the case. (RN) (Entered: 10/31/2022)
11/11/2022	<u>42</u>	RESPONSE in Opposition and Request for Sanctions re <u>39</u> MOTION to Vacate Arbitrator's Award filed by Credit One Bank, N.A. (Schuette, Michael) Modified on 11/14/2022 to edit docket text (KNC). (Entered: 11/11/2022)
11/30/2022	<u>43</u>	<b>ENDORSED ORDER denying without prejudice for failure to comply with Local Rule 3.01(g) <u>39</u> Plaintiff's Motion to Vacate Arbitrator's Award. The Motion fails to comply with Local Rule 3.01(g), which requires that each motion filed with the Court contain a certificate indicating that the moving party has conferred with opposing counsel prior to the filing of the motion in a good faith effort to resolve the issues raised by the motion. Signed by Magistrate Judge Embry J. Kidd on 11/30/2022. (RMN)</b> (Entered: 11/30/2022)
11/30/2022	<u>44</u>	<b>ENDORSED ORDER denying without prejudice <u>42</u> Defendant's Motion for Sanctions. A motion for affirmative relief, including sanctions, must be made by separate motion, rather than incorporated into a response brief, and must comply</b>

		<b>with Local Rule 3.01(g). Signed by Magistrate Judge Embry J. Kidd on 11/30/2022. (RMN) (Entered: 11/30/2022)</b>
12/09/2022	<u>45</u>	MOTION to Vacate Arbitrator's Award for Defendant's Summary Disposition by Jessica Graulau. (Attachments: # <u>1</u> Order on Motion for Summary Disposition, # <u>2</u> Credit One Paperwork, # <u>3</u> Joint Stipulation Dismissing Case, # <u>4</u> American Arbitration Letter, # <u>5</u> Order on Request to File Dispositive Motion, # <u>6</u> Motion for Summary Disposition, # <u>7</u> Response in Opposition)(KNC) (Entered: 12/09/2022)
12/09/2022	<u>46</u>	MOTION to Modify/Correct Arbitrator's Award for Defendant's Counterclaim by Jessica Graulau. (Attachments: # <u>1</u> Attachment 1, # <u>2</u> Attachment 2, # <u>3</u> Interim Award of Arbitrator, # <u>4</u> Credit One Paperwork, # <u>5</u> Joint Stipulation Dismissing Case, # <u>6</u> Answer and Affirmative Defenses, # <u>7</u> Communication)(KNC) Motions referred to Magistrate Judge Embry J. Kidd. (Entered: 12/09/2022)
12/09/2022	<u>47</u>	NOTICE to Defendant by Jessica Graulau re <u>45</u> MOTION to Vacate (KNC) (Entered: 12/09/2022)
12/09/2022	<u>48</u>	NOTICE to Defendant by Jessica Graulau re <u>46</u> MOTION to Modify (KNC) (Entered: 12/09/2022)
12/22/2022	<u>49</u>	SUPPLEMENT re <u>45</u> MOTION to Vacate by Jessica Graulau. (KNC) (Entered: 12/22/2022)
12/22/2022	<u>50</u>	SUPPLEMENT re <u>46</u> MOTION to Modify by Jessica Graulau. (Attachments: # <u>1</u> Final Award of Arbitrator)(KNC) (Entered: 12/22/2022)
12/23/2022	<u>51</u>	RESPONSE in Opposition re <u>45</u> MOTION to Vacate filed by Credit One Bank, N.A. (Schuette, Michael) Modified on 12/23/2022 to edit docket text (KNC). (Entered: 12/23/2022)
12/23/2022	<u>52</u>	RESPONSE in Opposition re <u>46</u> MOTION to Modify filed by Credit One Bank, N.A. (Schuette, Michael) Modified on 12/23/2022 to edit docket text (KNC). (Entered: 12/23/2022)
12/29/2022	<u>53</u>	Time Sensitive MOTION for Stay Pending Court's Disposition of Motion to Modify/Correct by Jessica Graulau. (Attachments: # <u>1</u> Final Award of Arbitrator)(KNC) (Entered: 12/30/2022)
01/13/2023	<u>54</u>	SUPPLEMENT re <u>53</u> MOTION to Stay by Jessica Graulau. (Attachments: # <u>1</u> Mailing Envelope)(KNC) (Entered: 01/13/2023)
01/18/2023	<u>55</u>	MOTION for Extension of Time to File Response/Reply as to <u>53</u> MOTION to Stay by Credit One Bank, N.A.. (Schuette, Michael) Motions referred to Magistrate Judge Embry J. Kidd. (Entered: 01/18/2023)
01/19/2023	<u>56</u>	Amended Unopposed MOTION for Extension of Time to File Response/Reply as to <u>53</u> MOTION to Stay by Credit One Bank, N.A.. (Schuette, Michael) Motions referred to Magistrate Judge Embry J. Kidd. Modified on 1/19/2023 to edit the docket text (RPB). (Entered: 01/19/2023)
01/20/2023	<u>57</u>	<b>ENDORSED ORDER denying as moot <u>55</u> Motion for Extension of Time, in light of the <u>56</u> Amended Motion. Signed by Magistrate Judge Embry J. Kidd on 1/20/2023. (Kidd, Embry) (Entered: 01/20/2023)</b>
01/20/2023	<u>58</u>	<b>ENDORSED ORDER granting <u>56</u> Motion for Extension of Time. Defendant may have until and through February 1, 2023, to respond to the Motion to Stay. Signed by Magistrate Judge Embry J. Kidd on 1/20/2023. (Kidd, Embry) (Entered: 01/20/2023)</b>

01/31/2023	<u>59</u>	RESPONSE to Motion re <u>53</u> MOTION to Stay filed by Credit One Bank, N.A. (Schuette, Michael) Modified on 2/1/2023 to edit docket text (KNC). (Entered: 01/31/2023)
03/02/2023	<u>60</u>	US Marshal 285 form for Motion to Vacate- Package was returned to US Marshals, Return to Sender, Unclaimed and unable to forward. (KNC) (Entered: 03/02/2023)
03/09/2023	<u>61</u>	Unopposed Time Sensitive MOTION to Waive Service by US Marshal by Jessica Graulau. (LDJ) (Entered: 03/09/2023)
03/27/2023	<u>62</u>	<b>REPORT AND RECOMMENDATIONS. I RESPECTFULLY RECOMMEND that the Court DENY <u>45</u> Plaintiff's Motion to Vacate Arbitrator's Award for Defendant's Summary Disposition and <u>46</u> Plaintiff's Motion to Modify/Correct Arbitrator's Award for Defendant's Counterclaim. Signed by Magistrate Judge Embry J. Kidd on 3/27/2023. (RMN) (Entered: 03/27/2023)</b>
03/27/2023	<u>63</u>	<b>ENDORSED ORDER granting <u>61</u> Plaintiff's Unopposed Time Sensitive Motion to Waive Service by U.S. Marshals. The undersigned finds Defendant agreed to waive service related to Plaintiff's Motions to Vacate and Modify. (Docs. <u>45</u>, <u>46</u>.) Signed by Magistrate Judge Embry J. Kidd on 3/27/2023. (RMN) (Entered: 03/27/2023)</b>
03/27/2023	<u>64</u>	<b>ENDORSED ORDER denying <u>53</u> Plaintiff's Motion for Stay Pending Court's Disposition of Plaintiff's Motion to Modify/Correct Arbitrator's Award for Defendant's Counterclaim. The undersigned has recommended that Plaintiff's Motion to Modify be denied. (Doc. <u>63</u>.) Signed by Magistrate Judge Embry J. Kidd on 3/27/2023. (RMN) (Entered: 03/27/2023)</b>
03/27/2023	<u>65</u>	<b>NOTICE TO COUNSEL AND PARTIES: Pursuant to this Court's February 10, 2023 Standing Order, available at <a href="https://www.flmd.uscourts.gov/sites/flmd/files/documents/flmd-berger-standing-order-on-objections-6-23-mc-4-wwb.pdf">https://www.flmd.uscourts.gov/sites/flmd/files/documents/flmd-berger-standing-order-on-objections-6-23-mc-4-wwb.pdf</a>, objections to reports and recommendations shall not exceed fifteen pages and responses to objections shall not exceed ten pages. Failure to comply with the applicable guidelines set forth in the Standing Order may result in the striking of objections or responses without further notice. Signed by Judge Wendy W. Berger on 3/27/2023. (KSR) (Entered: 03/27/2023)</b>
04/05/2023	<u>66</u>	OBJECTION to <u>62</u> Report and Recommendations by Jessica Graulau. (KNC) (Entered: 04/06/2023)
04/12/2023	<u>67</u>	NOTICE OF APPEAL as to <u>62</u> REPORT AND RECOMMENDATIONS by Jessica Graulau. Filing fee not paid. (Attachments: # <u>1</u> Report and Recommendation)(KNC) (Entered: 04/13/2023)
04/12/2023	<u>68</u>	MOTION to Appeal In Forma Pauperis / Affidavit of Indigency by Jessica Graulau. (KNC) (Entered: 04/13/2023)
04/13/2023	<u>69</u>	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable to USCA re <u>67</u> Notice of Appeal. (KNC) (Entered: 04/13/2023)
04/19/2023	<u>70</u>	RESPONSE to objections to <u>62</u> Report and Recommendations filed by Credit One Bank, N.A. (Schuette, Michael) Modified on 4/19/2023 to edit docket text (KNC). (Entered: 04/19/2023)
04/24/2023	<u>71</u>	TRANSCRIPT information form filed by Jessica Graulau re <u>67</u> Notice of Appeal. USCA number: 23-11227. (Requesting transcripts from Arbitration Final Hearing. Does not appear to be from this court.) (KNC) (Entered: 04/26/2023)
05/08/2023	<u>72</u>	NOTICE/CERTIFICATE That No Transcript Ordered and Withdraw of Transcript Order Dated by Jessica Graulau re <u>71</u> Transcript Information Form (Attachments: # <u>1</u> Mailing

		Envelope)(KNC) (Entered: 05/09/2023)
05/15/2023	<u>73</u>	MANDATE of USCA as to <u>67</u> Notice of Appeal filed by Jessica Graulau Issued as Mandate: 5/15/23 USCA number: 23-11227. DISMISSED (RN) (Entered: 05/15/2023)
05/16/2023	<u>74</u>	<b>ENDORSED ORDER denying as moot <u>68</u> Plaintiff's Application for Leave to Appeal In Forma Pauperis. The Eleventh Circuit has dismissed Plaintiff's appeal. (Doc. <u>73</u>) Signed by Magistrate Judge Embry J. Kidd on 5/16/2023. (RMN) (Entered: 05/16/2023)</b>
06/26/2023	<u>75</u>	Unopposed MOTION for Michael P. Schuette to Withdraw as Attorney by Credit One Bank, N.A. (Schuette, Michael) Motions referred to Magistrate Judge Embry J. Kidd. Modified on 6/27/2023 to edit docket text (KNC). (Entered: 06/26/2023)
06/28/2023	<u>76</u>	<b>ENDORSED ORDER granting <u>75</u> Michael P. Schuette, Jr.'s Motion to Withdraw as Counsel of Record for Defendant, Credit One Bank, N.A. Attorney Michael P. Schuette, Jr. is TERMINATED. The Clerk of Court is DIRECTED to remove this attorney from the CM/ECF service list. Signed by Magistrate Judge Embry J. Kidd on 6/28/2023. (RMN) (Entered: 06/28/2023)</b>
09/18/2023	<u>77</u>	<b>ORDER: Plaintiff's Objection <u>66</u> is OVERRULED. The Report and Recommendation <u>62</u> is ADOPTED and CONFIRMED and made a part of this Order. Plaintiff's Motion to Vacate Arbitrator's Award for Defendant's Summary Disposition <u>45</u> is DENIED. Plaintiff's Motion to Modify/Correct Arbitrator's Award for Defendant's Counterclaim <u>46</u> is DENIED. Signed by Judge Wendy W. Berger on 9/18/2023. (RMF) (Entered: 09/18/2023)</b>
09/27/2023	<u>78</u>	NOTICE OF APPEAL as to <u>77</u> Order on Motion to Vacate Order on Motion to Amend / Correct / Modify / Supplement Order on Report and Recommendations, by Jessica Graulau. Filing fee not paid. (EAM) (Entered: 09/27/2023)
09/27/2023	<u>79</u>	MOTION to Appeal In Forma Pauperis by Jessica Graulau. (EAM) (Entered: 09/27/2023)
09/27/2023	<u>80</u>	NOTICE of Statement of the issues on Appeal by Jessica Graulau. (EAM) Modified text on 9/28/2023 (GL). (Entered: 09/27/2023)
09/27/2023	<u>81</u>	NOTICE of Certificate of no Transcript Ordered for Appeal by Jessica Graulau. (EAM) Modified text on 9/28/2023 (GL). (Entered: 09/27/2023)
09/27/2023	<u>82</u>	NOTICE of Statement of Relevant proceedings and evidences for Appeal by Jessica Graulau. (Attachments: # <u>1</u> Exhibit)(EAM) Modified text on 9/28/2023 (GL). (Entered: 09/27/2023)
09/27/2023	<u>83</u>	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable to USCA re <u>78</u> Notice of Appeal. (EAM) (Entered: 09/27/2023)
10/04/2023	<u>84</u>	<b>ENDORSED ORDER taking under advisement <u>79</u> Plaintiff's Motion to Appeal In Forma Pauperis. On or before October 16, 2023, Plaintiff shall complete and file Appellate Form 4 - Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis, available at <a href="https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/appellate-rules-forms">https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/appellate-rules-forms</a>. Signed by Magistrate Judge Embry J. Kidd on 10/4/2023. (RMN) (Entered: 10/04/2023)</b>
10/12/2023	<u>85</u>	AFFIDAVIT of indigency by Jessica Graulau. (EAM) (Entered: 10/12/2023)
10/17/2023	<u>86</u>	<b>ORDER granting <u>79</u> Plaintiff's Motion to Proceed In Forma Pauperis on Appeal for Final Order Dated 9/18/2023. Signed by Magistrate Judge Embry J. Kidd on 10/17/2023. (RMN) (Entered: 10/17/2023)</b>



11/13/2023		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Florida certifies that the record is complete for the purposes of this appeal re: <u>78</u> Notice of Appeal. All documents are imaged and available for the USCA to retrieve electronically. USCA number: 23-13168. (RPB) (Entered: 11/13/2023)
03/19/2024	<u>87</u>	OPINION of USCA as to <u>78</u> Notice of Appeal filed by Jessica Graulau. EOD: 03/19/2024; Mandate to issue at a later date. USCA number: 23-13168. AFFIRMED (TRF) (Entered: 03/21/2024)
04/18/2024	<u>88</u>	MANDATE of USCA as to <u>78</u> Notice of Appeal filed by Jessica Graulau Issued as Mandate: 04/18/2024 USCA number: 23-13168. AFFIRMED. (TRF) (Entered: 04/18/2024)

PACER Service Center			
Transaction Receipt			
04/20/2024 14:46:14			
<b>PACER Login:</b>	Graulaj7	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	6:19-cv-01723-WWB-EJK
<b>Billable Pages:</b>	7	<b>Cost:</b>	0.70

**General Docket**  
**United States Court of Appeals for the Eleventh Circuit**

**Court of Appeals Docket #:** 23-13168  
**Nature of Suit:** 3890 Other Statutory Actions  
Jessica Graulau v. Credit One Bank, N.A.  
**Appeal From:** Middle District of Florida  
**Fee Status:** IFP Granted

**Docketed:** 09/27/2023  
**Termed:** 03/19/2024

**Case Type Information:**

- 1) Private Civil
- 2) Federal Question
- 3) -

**Originating Court Information:**

**District:** 113A-6 : 6:19-cv-01723-VWB-EJK  
**Civil Proceeding:** Wendy W. Berger, U.S. District Judge  
**Secondary Judge:** Embry J. Kidd, U.S. Magistrate Judge  
**Date Filed:** 09/05/2019  
**Date NOA Filed:**  
09/27/2023

**Prior Cases:**

<u>20-12037</u>	<b>Date Filed:</b> 06/03/2020	<b>Date Disposed:</b> 05/06/2021	<b>Disposition:</b> Affirmed
<u>23-11227</u>	<b>Date Filed:</b> 04/13/2023	<b>Date Disposed:</b> 05/15/2023	<b>Disposition:</b> Dismissed

**Current Cases:**

None

JESSICA GRAULAU

Plaintiff - Appellant

Jessica Graulau  
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[NTC Pro Se]  
PO BOX 721037  
ORLANDO, FL 32872

versus

CREDIT ONE BANK, N.A.

Defendant - Appellee

Dayle Marie Van Hoose  
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[COR LD NTC Retained]  
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3838 N CAUSEWAY BLVD STE 2800  
METAIRIE, LA 70002

JESSICA GRAULAU,

Plaintiff - Appellant,

versus

CREDIT ONE BANK, N.A.,  
a foreign corporation,

Defendant - Appellee.

09/27/2023	<input type="checkbox"/> <u>1</u> 23 pg, 788.91 KB	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Jessica Graulau on 09/27/2023. Fee Status: IFP Pending. Awaiting Appellant's Certificate of Interested Persons due on or before 10/12/2023 as to Appellant Jessica Graulau. Awaiting Appellee's Certificate of Interested Persons due on or before 10/26/2023 as to Appellee Credit One Bank, N.A. [Entered: 09/28/2023 09:54 AM]
09/28/2023	<input type="checkbox"/> <u>2</u>	USDC MOTION for leave to proceed in forma pauperis as to Appellant Jessica Graulau was filed on 09/27/2023. Docket Entry 79. [Entered: 09/28/2023 09:56 AM]
09/28/2023	<input type="checkbox"/> <u>3</u> 1 pg, 504.75 KB	Certificate of Interested Persons and Corporate Disclosure Statement filed by Party Jessica Graulau. On the same day the CIP is served, any filer represented by counsel must also complete the court's web-based stock ticker symbol certificate at the link here <a href="http://www.ca11.uscourts.gov/web-based-cip">http://www.ca11.uscourts.gov/web-based-cip</a> or on the court's website. See 11th Cir. R. 26.1-1(b). [23-13168] (ECF: Jessica Graulau) [Entered: 09/28/2023 05:08 PM]
09/28/2023	<input type="checkbox"/> <u>4</u> 2 pg, 181.11 KB	Certificate of No Transcript Ordered for Appeal filed by Appellant Jessica Graulau to comply with requirement no. 2 of 11th Cir. Civil Docketing Notice dated 9/28/2023 filed by Party Jessica Graulau. [23-13168] (ECF: Jessica Graulau) [Entered: 09/28/2023 07:21 PM]
10/03/2023	<input type="checkbox"/> <u>5</u> 2 pg, 181.11 KB	TRANSCRIPT INFORMATION form filed by Party Jessica Graulau. No transcript is required for appeal purposes. [Entered: 10/03/2023 11:26 AM]
10/09/2023	<input type="checkbox"/> <u>6</u> 1 pg, 123.31 KB	APPEARANCE of Counsel Form filed by Dayle Marie Van Hoose for Credit One Bank, N.A.. Related cases? No. [23-13168] (ECF: Dayle Van Hoose) [Entered: 10/09/2023 02:55 PM]
10/09/2023	<input type="checkbox"/> <u>7</u> 1 pg, 122.09 KB	APPEARANCE of Counsel Form filed by Kirsten H. Smith for Credit One Bank, N.A. Related cases? No. [23-13168] (ECF: Kirsten Smith) [Entered: 10/09/2023 03:02 PM]
10/23/2023	<input type="checkbox"/> <u>8</u> 4 pg, 868.11 KB	<i>TIME SENSITIVE MOTION to appeal on original record and dispense with appendix filed by Jessica Graulau. Motion is Unopposed. [8] [23-13168]--[Edited 10/24/2023 by KJJ] (ECF: Jessica Graulau) [Entered: 10/23/2023 05:15 PM]</i>
10/24/2023	<input type="checkbox"/> <u>9</u> 4 pg, 126.3 KB	USDC order granting IFP as to Appellant Jessica Graulau was filed on 10/17/2023. Docket Entry 86. [Entered: 10/24/2023 09:45 AM]
10/24/2023	<input type="checkbox"/> <u>10</u> 2 pg, 88.6 KB	Briefing Notice issued to Appellant Jessica Graulau. The appellant's brief is due on or before 11/27/2023. The appendix is due no later than 7 days from the filing of the appellant's brief. [Entered: 10/24/2023 09:45 AM]
10/26/2023	<input type="checkbox"/> <u>11</u> 4 pg, 8.65 KB	Certificate of Interested Persons and Corporate Disclosure Statement filed by Attorney Kirsten H. Smith for Appellee Credit One Bank, N.A.. On the same day the CIP is served, any filer represented by counsel must also complete the court's web-based stock ticker symbol certificate at the link here <a href="http://www.ca11.uscourts.gov/web-based-cip">http://www.ca11.uscourts.gov/web-based-cip</a> or on the court's website. See 11th Cir. R. 26.1-1(b). [23-13168] (ECF: Kirsten Smith) [Entered: 10/26/2023 01:12 PM]
11/11/2023	<input type="checkbox"/> <u>12</u> 41 pg, 555.69 KB	Appellant's brief filed by Jessica Graulau. [23-13168] (ECF: Jessica Graulau) [Entered: 11/11/2023 12:58 AM]
11/15/2023	<input type="checkbox"/> <u>13</u>	Received 4 paper copies of EBrief, filed by Appellant Jessica Graulau. [Entered: 11/15/2023 03:44 PM]
11/20/2023	<input type="checkbox"/> <u>14</u> 3 pg, 109.27 KB	ORDER: Motion to Appeal on Original Record and Dispense with Appendix filed by Appellant Jessica Graulau is GRANTED. [8] BL (See attached order for complete text) [Entered: 11/20/2023 02:00 PM]
12/06/2023	<input type="checkbox"/> <u>15</u> 5 pg, 641.16 KB	<i>MOTION for extension of time to file appellee's brief to 01/10/2024 filed by Credit One Bank, N.A.. Opposition to Motion is Unknown. [15] [23-13168] (ECF: Kirsten Smith) [Entered: 12/06/2023 12:54 PM]</i>
12/07/2023	<input type="checkbox"/> <u>16</u> 1 pg, 97.5 KB	ORDER: Motion for extension to file appellee brief filed by Appellee Credit One Bank, N.A. is GRANTED by clerk [15]. Appellees brief due on 01/10/2024. <b><u>Any request for a second or subsequent extension of time shall be subject to 11th Cir. R. 31-2(d).</u></b> [Entered: 12/07/2023 08:17 AM]
12/07/2023	<input type="checkbox"/> <u>17</u> 12 pg, 1.32 MB	<i>TIME SENSITIVE MOTION to vacate clerk's order filed by Jessica Graulau. Motion is Opposed. [17] [23-13168] (ECF: Jessica Graulau) [Entered: 12/07/2023 11:24 PM]</i>
12/07/2023	<input type="checkbox"/> <u>18</u> 11 pg, 1.32 MB	<i>Response to Motion for Extension of Time to File Appellee's Brief filed by Jessica Graulau. [18] [23-13168]--[Edited 01/05/2024 by JC] (ECF: Jessica Graulau) [Entered: 12/07/2023 11:35 PM]</i>
01/05/2024	<input type="checkbox"/> <u>19</u>	***Docketed in Error***No action will be taken on the appellant's response to the motion for extension of time to file the appellee's brief because it is untimely. See FRAP 27(a)(3)(A). The appellant's motion for reconsideration of the clerk's order granting the motion for extension of time to file the appellee's brief remains pending before the Court. [18]--[Edited 01/05/2024 by JC] [Entered: 01/05/2024 02:11 PM]
01/05/2024	<input type="checkbox"/> <u>21</u>	The no action notice sent today to the appellant was sent by mistake and can be disregarded. The appellant's response to the motion for extension of time to file the appellee's brief, which was incorrectly filed as a motion to vacate a clerk's order, has now been docketed as a response. The motion for

reconsideration of the clerk's December 7, 2023, order granting an extension of time to file the appellee's brief remains pending before the Court. [Entered: 01/05/2024 02:37 PM]

01/05/2024 ☐ 22  
2 pg, 23.06 KB

ORDER: Appellant's motion for reconsideration of the clerk's December 7, 2023, order granting an extension of time to file the Appellee's brief is DENIED. Appellee's brief remains due on January 10, 2024. [17] KCN [Entered: 01/05/2024 03:08 PM]

01/10/2024 ☐ 23  
24 pg, 1.65 MB

Appellee's Brief filed by Appellee Credit One Bank, N.A.. [23-13168] (ECF: Kirsten Smith) [Entered: 01/10/2024 08:49 AM]

01/11/2024 ☐ 24

Received 6 paper copies of EBrief, filed by Appellee Credit One Bank, N.A.. [Entered: 01/16/2024 03:28 PM]

01/19/2024 ☐ 25  
15 pg, 379.7 KB

Reply Brief filed by Appellant Jessica Graulau. [23-13168] (ECF: Jessica Graulau) [Entered: 01/19/2024 04:05 AM]

01/23/2024 ☐ 26

Received 4 paper copies of EBrief, filed by Appellant Jessica Graulau. [Entered: 01/25/2024 10:22 AM]

03/19/2024 ☐ 27  
7 pg, 165.87 KB

Opinion issued by court as to Appellant Jessica Graulau. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. The opinion is also available through the Court's Opinions page at this link <http://www.ca11.uscourts.gov/opinions>. [Entered: 03/19/2024 09:42 AM]

03/19/2024 ☐ 28  
2 pg, 26.88 KB

Judgment entered as to Appellant Jessica Graulau. [Entered: 03/19/2024 09:45 AM]

04/18/2024 ☐ 29  
3 pg, 113.27 KB

Mandate issued as to Appellant Jessica Graulau. [Entered: 04/18/2024 11:16 AM]

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

JESSICA GRAULAU,

Plaintiff,

v.

Case No: 6:18-cv-106-Ort-22DCI

CREDIT ONE BANK, N.A.,

Defendant.

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**ORDER**

This cause comes before the Court on the Joint Stipulation<sup>1</sup>)fsmiissing and Referring Case to Arbitration (Doc. No. 11).

Based on the foregoing, it is ordered as follows:

1. This case is REFERRED to arbitration.
2. This case is hereby DISMISSED.
3. The Clerk is directed to CLOSE the file.

DONE and ORDERED in Chambers, in Orlando, Florida on April 10, 2018.

  
ANNE C. CONWAY  
United States District Judge

Copies furnished to:

Counsel of Record

<b>Interest Rates and Interest Charges</b>	
<b>ANNUAL PERCENTAGE RATE (APR) for Purchases and Cash Advances</b>	<b>23.90%</b> This APR will vary with the market based on the Prime Rate.
<b>Paying Interest</b>	We will begin charging interest on purchases and cash advances on the posting date.
<b>Minimum Interest Charge</b>	If you are charged interest, the minimum Interest Charge will be no less than \$1.00 for any billing cycle in which an Interest Charge is due. Credit lines less than \$400 will not receive a minimum Interest Charge in the first year (Introductory period).
<b>For Credit Card Tips from the Consumer Financial Protection Bureau</b>	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at <a href="https://www.consumerfinance.gov/learnmore">https://www.consumerfinance.gov/learnmore</a> .
<b>Fees</b>	
<b>Set-up and Maintenance Fees</b>  • Annual Membership Fee  • Authorized User Participation Fee	<p>Notice: The Annual Membership Fee will be billed to your account when it is opened and will reduce the amount of your initial available credit. If your account is established with a \$300 credit line, your initial available credit will be \$225.</p> <p>You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges.</p> <p><b>\$75</b> First year (Introductory period). <b>\$99</b> thereafter, billed monthly at \$8.25.</p> <p><b>\$19</b> annually (if applicable).</p>
<b>Transaction Fees</b> • Cash Advance	<b>\$0</b> First year (Introductory period). Thereafter, either <b>\$5</b> or <b>8%</b> of the amount of each advance, whichever is greater.
<b>Penalty Fees</b> • Late Payment  • Returned Payment	<p>Up to <b>\$35</b></p> <p>Up to <b>\$35</b></p>

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)". See your Cardholder Agreement, Disclosure Statement and Arbitration Agreement ("Agreement") for more details.

**Billing Rights:** Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.



## VISA/MASTERCARD CARDHOLDER AGREEMENT, DISCLOSURE STATEMENT AND ARBITRATION AGREEMENT

This Agreement, together with the application you previously signed and the enclosed Arbitration Agreement, governs the use of your VISA® or Mastercard® Account issued by Credit One Bank, N.A. (the "Account," "Card" or "Card Account"). The words "you," "your" and "Cardholder(s)" refer to all persons, jointly and severally, authorized to use the Card Account; and "we," "us," "our," and "Credit One Bank" refer to Credit One Bank, N.A., its successors or assigns. By requesting and receiving, signing or using your Card, you agree as follows:

**IMPORTANT NOTICE:** Please read the Arbitration Agreement portion of this document for important information about your and our legal rights under this Agreement.

**1. CHANGES IN AGREEMENT TERMS:** We can change any term of this Agreement, including the rate of the finance charge or the manner in which the finance charges are calculated, or add new terms to this Agreement, at any time upon such notice to you as is required by law. As permitted by law, any change will apply to your new activity and, in certain circumstances, to your outstanding balance when the change is effective. If you do not wish to be subject to the change, you must notify Credit One Bank by calling our toll-free number at 866-515-5721 or you may write to us at Bank Card Center, P.O. Box 95516, Las Vegas, NV 89193-5516 prior to the effective date of the change, and close your Account.

**2. JOINT ACCOUNTS:** If the application was for more than one person, or if an application was made and accepted by Credit One Bank to add a new Cardholder to an existing Account, this is a "Joint Account." Each of you individually may use the Account to the extent of the credit limit established for the Account, and each of you is jointly and severally liable for the full outstanding balance, including, but not limited to, charges made by any Cardholder. Each of you shall also be jointly and severally liable for any charges made by any person given permission to use the Account by any Cardholder. You agree that Credit One Bank is authorized to act on the instructions of any Cardholder. Instructions from any one of you will constitute instructions from all of you. Requests from a Cardholder to terminate the privileges of another Cardholder on the Account will be deemed a request for termination of the Account.

**3. AUTHORIZED USER:** At your request, we may, at our discretion, issue an additional card in the name of an Authorized User with your credit card account number. If you allow someone to use your Account, that person will be an Authorized User. By designating an Authorized User who is at least fifteen years of age, you understand that: 1) you will be solely responsible for the use of your Account and each card issued on your Account including all charges and transactions made by the Authorized User and any fees resulting from their actions to the extent of the credit limit established for the Account; 2) the Authorized User will have access to certain account information including balance, available credit and payment information. If you provide an Authorized User with any information that enables him/her to access or use your Account, you agree to be liable for the Authorized User's use of that information, and we will have no responsibility or liability for any of the Authorized User's actions; 3) we reserve the right to terminate the Card Account privileges of an Authorized User by closing your Account and issuing you a new account number; 4) the Account may appear on the credit report of the Authorized User. If you advise us that the Authorized User is your spouse, information regarding the Account will be provided to consumer reporting agencies in your name as well as in the name of the Authorized User; 5) the Authorized User can make payments, report the card lost or stolen and remove him or herself from the Account; 6) you can request the removal of the Authorized User from your Account via mail or telephone.

**Authorized User Annual Participation Fee:** An Authorized User Annual Participation Fee of \$19.00 will be imposed for issuing a card in the Authorized User's name. This Fee will be assessed annually in the month the Authorized User was added to the Account.

**4. CONFLICTS BETWEEN CARDHOLDERS:** In the event Credit One Bank receives conflicting instructions from one or more of you, or if Credit One Bank has reason to believe there is a dispute between the Cardholders, Credit One Bank may, at its sole discretion, take one or more of the following actions: (1) refuse to act on any conflicting instructions; (2) restrict the Account and deny access to all Cardholders until the dispute is resolved; or (3) terminate the Account. In no event will Credit One Bank be liable for any delay or refusal to honor a request for an advance or any other request with respect to your Account, or for restricting or terminating the Account as provided in this section.

**5. YOUR CREDIT LIMIT:** Your Credit Limit will be established by Credit One Bank and will be disclosed to you when your Card is issued. It also will be shown on each of your billing statements. We reserve the right to modify your Credit Limit from time to time, and if we do so, we will notify you. You agree not to engage in any Card transaction that would cause your outstanding balance to exceed your Credit Limit. Credit One Bank may, but is not obligated to, extend credit to you from your Account if you are already up to your Credit Limit or if the borrowing would take you over your Credit Limit at any time. You must pay us on demand any amount by which your Account's balance exceeds your Credit Limit. If we extend credit over your Credit Limit, we will not be obligated to do so again, and such extension will not result in any waiver of our rights under this paragraph.

**6. USING YOUR CARD:** You and any Joint Cardholder or Authorized User may use your Cards: (1) to make purchases of goods or services at merchant establishments where the Card is accepted, and (2) to obtain cash advances (i.e., loans of money) at participating financial institutions. Each purchase and cash advance obtained will reduce the available credit under your credit limit until it is repaid. Cash advances are limited to 25% of your assigned credit limit. Cash advances cannot exceed two transactions or more than \$200.00 per day, as applicable. You promise to pay us, when due, the total amount of all purchases and cash advances, as well as all finance charges, and other fees and charges billed to your Card Account. You may not use your Card for any illegal purpose. You further acknowledge that the Card Account will be for personal use and may not be used for business purposes.

**7. AUTHORIZATION:** Merchants or banks may contact us on your behalf to obtain authorization for Card purchases or cash advances. You agree that we shall have no liability if: (a) any merchant or bank refuses to honor any Card issued to access the Account, (b) operational difficulties prevent authorization of a transaction, (c) authorization is declined because your Account is overlimit or delinquent, or (d) credit has been restricted pursuant to any term of this Agreement.

**8. YOUR MONTHLY STATEMENT:** Your Account will be on a monthly billing cycle. We will send you a statement each month that there is activity or an outstanding balance on your Account. The statement itemizes your Account activity, including purchases, cash advances, fees, finance charges, other charges, and payments and credits posted during the billing period. The payment coupon portion of the statement will serve as your bill. When making payment, write your Account number on your check or money order and return the coupon with your payment. You should retain the remaining portion of your statement for your records. If the Bank offers, and you elect to receive, your monthly statement electronically, paper statements will not be mailed to you. You will be responsible for making your payments by the due date, either through the Bank's website or telephone, for which a fee may apply, or by mailing your payment to the appropriate address designated for receipt of payments by mail. Credit One Bank will not be responsible for processing delays or failure to process the payment to your Account if a payment sent by mail does not contain your Account number or is not accompanied by your payment coupon. Your payment will be credited to your Account, as of the date of receipt, if the payment is received by 5:00 p.m. Pacific Time ("PT").

**9. ANNUAL MEMBERSHIP FEE:** The Annual Membership Fee for your Account in year one is \$75.00 (Introductory period) and will be billed to your Account when it is opened. The Annual Membership Fee for your Account beginning in year two is \$99.00 and will be billed to your Account in monthly installments of \$8.25 per month.

The Annual Membership Fee will be billed to your Account as long as it remains open or, if your Account is closed by you or us, the Annual Membership Fee will continue to be charged until you pay your outstanding balance in full. The Annual Membership Fee is refundable as long as you cancel your Account and have not used your card for any Purchases or Cash Advances and you have not made a payment. An Annual Membership Fee Notice, as required by regulation, will be provided to you at least once every 12 months. The Annual Membership Fee is imposed for providing services related to your Account, including but not limited to: the opportunity to use your card with participating merchants, providing renewal cards, providing availability of customer service representatives for assistance, providing credit information to credit reporting agencies, and providing the opportunity for additional credit.

**10. FINANCE CHARGES:** Your Card Account is subject to finance charges and the total Finance Charges in your monthly billing cycle are the sum of the Periodic Finance Charges, Transaction Finance Charges, and Credit Limit Increase Fees which are calculated as follows:

**(a) Periodic Finance Charges:** For purchases and cash advances, Credit Limit Increase Fees, Annual Membership Fees, Late Payment Fees and other fees and charges to your Account, the Periodic Finance Charge is calculated as follows: The **Annual Percentage Rate ("APR")** for Purchases and Cash Advances may vary and will be determined by adding **20.65%** to the U.S. Prime Rate appearing in the "Money Rates" section of any edition of *The Wall Street Journal* published on the 25th day of each month. If the *Journal* is not published on that day, then the Prime Rate on the next business day will be used. If the Prime Rate changes, the new rate will take effect on the first day of the following month. The new rate will be applied to all balances on the Account. The estimated APR for all balances is 3.25% plus 20.65%, currently **23.90%** (corresponding monthly periodic rate of 1.9916%). The APR will never be greater than **29.90%** (corresponding monthly periodic rate of 2.4916%). The most recent Annual Percentage Rate was disclosed to you when you received your credit card. There is a **Minimum Interest Charge** if you are charged interest; the minimum Interest Charge will be no less than **\$1.00** for any billing cycle in which an Interest Charge is due. Credit lines less than \$400 will not receive a minimum Interest Charge in the first year (Introductory period). Periodic Finance Charges will be assessed from the date the purchase, cash advance, fee or charge is posted to your Account until the date it is paid in full, and will be calculated by applying the monthly periodic rate to the "average daily balance" of your Account. To get the "average daily balance," we take the beginning balance of your Account each day, add any new purchases, cash advances, fees and charges, and subtract any payments or credits and unpaid periodic Finance Charges. This gives us the daily balance. Then we add up all the daily balances for the billing cycle, and divide the total by the number of days in the billing cycle. This gives us the "average daily balance." Periodic Finance Charges will be assessed on all "average daily balances" until paid in full. All purchases, cash advances, fees or charges accrue finance charges starting on the date of posting, even if the new balance from your previous statement was paid in full or even if that new balance was zero.

**(b) Cash Advance Transaction Finance Charges:** The Cash Advance Transaction Fee for the first year is \$0 (Introductory period). After the first year, each time you obtain a new cash advance, we will impose a Transaction Fee **Finance Charge** of **8%** of the amount advanced or **\$5.00**, whichever is greater.

**(c) Credit Limit Increase Finance Charges:** A fee may be imposed for Credit Limit increases, as described under the "Credit Limit Increase Requests" section of this Agreement.

**(d) Foreign Transaction Finance Charges:** Each time you make a foreign transaction, we may impose a Transaction Fee **Finance Charge** of **3%** of the amount charged or **\$1.00**, whichever is greater. For additional information, see the "Foreign Transaction" section of this Agreement.

**(e) Fees Treated as Principal:** For purposes of Finance Charge calculation, Credit Limit Increase Fees, Annual Membership Fees, Late Payment Charges, and other charges, except cash advance fees, will be treated like purchase transactions, posted as principal, and accrue Finance Charges like purchases.

**(f) Periodic Statement Annual Percentage Rate:** If a finance charge imposed is required to be included in calculating the Annual Percentage Rate under the Federal Truth-in-Lending Act, the Annual Percentage Rate disclosed on your statement may exceed the corresponding Annual Percentage Rate disclosed in this Agreement for any billing period in which such finance charge is posted to your Account.

**11. LATE PAYMENT CHARGES:** If at least the Amount Due This Period (less any Late Payment Fee for the current billing cycle) and Amount Past Due are not received by 5:00 p.m. PT on the Payment Due Date shown on your statement, a Late Payment Fee of up to \$35.00 will be charged to your Account.

**12. OTHER CHARGES:** In addition to the fees and charges described above, other charges that may be imposed on your Account include the following: (1) Returned Payment Fee: If a payment is returned for any reason, a Returned Payment Fee of up to \$35.00 will be charged to your Account; (2) Duplicate Statement Fee: If you request a duplicate copy of a monthly statement, you will be charged a fee of up to \$10.00 for each statement copy requested; (3) Sales Slip Request Fee: If you request a copy of a sales slip, for any purpose other than to resolve a dispute about the charges on your Account, you will be charged a fee of \$6.00 for each sales slip copy requested; (4) Co-applicant Fee: To add an additional Cardholder to the Account after it is opened, an application must be submitted to Credit One Bank. The co-applicant fee in effect at the time of such application will be required; and (5) Replacement Card Fee: If you request a replacement card, a Replacement Card Fee of \$25.00 may be charged to your Account.

**13. MINIMUM PAYMENTS:** (a) You agree to pay either the entire outstanding balance or the Minimum Payment Due, as shown on your monthly statement. The Minimum Payment Due is 5% of your outstanding balance, rounded up to the next whole dollar, or \$25.00, whichever is greater, plus any Late Payment Fee for the current billing cycle, and any Past Due Amount. For your Account to be considered current and to avoid a Late Payment Fee, you must pay at least the Amount Due This Period (less any Late Payment Fee for the current billing cycle) and the Past Due Amount by the Payment Due Date shown on your statement. (b) Certain other service fees may be added to your minimum payment amount. When you sign up for such services, you will be notified if a fee for the service will be imposed and if it is required to be added to your minimum payment.

**14. SMALL BALANCES:** As it is uneconomical for both you and us to process payments or maintain credits that are \$1.00 or less in amount, you agree as follows: (1) In any billing cycle in which you have had no transactions and your New Balance on the billing date is \$1.00 or less, the balance will be rounded to zero and you will not receive a bill for this amount. (2) In the event that you have a credit balance of \$1.00 or less for two consecutive billing cycles, the balance will be rounded to zero and you will not receive a refund of this amount.

**15. MAKING PAYMENTS:** Your payments must be made in US currency only, drawn on a bank domiciled in the US, through paper or electronic format not to include wire transfer or electronic transactions via Credit One Bank's account at the Federal Reserve Bank. Do not send cash through the mail, as Credit One Bank cannot be responsible for cash lost in the mailing process. To the extent that a payment reduces the principal amount outstanding on your Card Account, new credit will be available (subject to your credit limit), but only after 12 calendar days after our receipt of the payment. To insure prompt posting of payments sent through the mail, your payments must be sent to the address indicated on your statement and must be received by 5:00 p.m. PT. There will be a delay in posting payments to your Account for payments not sent to the address shown on your statement. You agree that we may process any item delivered to us for payment on the day it is received, and that we are not required to honor special instructions or restrictive endorsements. As described above, if any payment is received that does not contain your Account number or is not accompanied by your payment coupon, Credit One Bank will not be liable for processing delays or failure to process the payment to your Account. Crediting of such payments may be delayed up to five business days of receipt.

**16. POSTDATED CHECKS:** You agree that we need not examine any payment check to confirm that it is not postdated, and that we may deposit any postdated check for payment to us on the day we receive it.

**17. IRREGULAR PAYMENTS:** Any payment submitted in offer of settlement of a disputed debt, including any check containing a notation such as "paid in full," must be sent to the following address: Credit One Bank, P.O. Box 95516, Las Vegas, NV 89193-5516. If you do not forward any check or other payment marked "paid in full" to

the above address, we can accept late payments or partial payments, or checks or other payments marked with similar notations, without losing any of our rights under this Agreement, including our right to seek payment of the full balance of your Account.

**18. VERIFICATION OF INFORMATION:** (a) **Credit Information:** You authorize us to obtain and/or use information about you from third parties and credit reporting agencies to: 1) verify your identity and/or conduct investigative inquiries; 2) determine your income and credit eligibility; 3) review your Account and provide renewal of credit; 4) verify your current credit standing in order to present future credit line increases or decreases; 5) qualify you for and present additional lines of credit or other offers; and 6) collect amounts owing on your Account. California residents, you agree to waive your right to keep confidential information under Section 1808.21 of the California Vehicle Code from us. (b) **Reporting Information:** We may furnish information concerning your Account or credit file to consumer reporting agencies and others who may properly receive that information. However, we are not obligated to release such information to anyone unless we are required to do so by law or a proper Power of Attorney is provided. (c) **Telephone Monitoring:** To be sure that your inquiries are handled properly, courteously and accurately, some of the telephone calls between our employees and our customers are monitored by supervisory or management personnel. Recordings may be made of such calls for your protection.

**19. COMMUNICATIONS:** You are providing express written permission authorizing Credit One Bank or its agents to contact you at any phone number (including mobile, cellular/wireless, or similar devices) or email address you provide at anytime, for any lawful purpose. The ways in which we may contact you include live operator, automatic telephone dialing systems (auto-dialer), prerecorded message, text message or email. Phone numbers and email addresses you provide include those you give to us, those from which you contact us or which we obtain through other means. Such lawful purposes include, but are not limited to: obtaining information; activation of the card for verification and identification purposes; account transactions or servicing related matters; suspected fraud or identity theft; collection on the Account; and providing information about special products and services. You agree to pay any fee(s) or charge(s) that you may incur for incoming communications from us or outgoing communications to us, to or from any such number or email address, without reimbursement from us.

**20. DEFAULT:** You will be in default under this Agreement if any of the following events occur: (1) you exceed your assigned credit limit; (2) you fail to make any required payment when due; (3) you die, become insolvent, file a petition in bankruptcy or similar proceeding, or are adjudged bankrupt; (4) you provide any false or misleading financial or biographical information to Credit One Bank; (5) any representation or warranty you make to Credit One Bank is false or breached; (6) a guardian, conservator, receiver, custodian or trustee is appointed for you; (7) you are generally not paying your debts as they become due; (8) the Bank reasonably believes there has been a material adverse change in your financial condition; or (9) you violate any term of this Agreement. Upon your default, Credit One Bank can close or refuse to renew your Account, demand the return of your card(s), declare your entire balance immediately due and payable, and initiate collection activity, all without prior notice or demand. You promise to pay any collection costs and attorneys' fees, including our in-house attorneys' costs, that Credit One Bank incurs as a result of your default.

**21. TERMINATION OF ACCOUNT:** This Account may be terminated by you at any time by giving notice in writing to Credit One Bank. Credit One Bank may terminate the Account and demand payment in full if you are in default under any of the terms and conditions of this Agreement, or if there is a dispute between the Cardholders as described elsewhere in this Agreement, or if a Cardholder requests termination of the Account privileges of any other Cardholder, or without cause if Credit One Bank deems termination of the Account to be in its best interests. In the event of voluntary or involuntary Account termination, all credit privileges under the Account and Credit One Bank membership will be terminated immediately. Once we receive your final payment in full, processing of Account closure may be delayed up to 45 days, in order to ensure that all outstanding credit card charges have been received from merchants. No later than the end of the delay period Credit One Bank will send you a check for the credit balance remaining on the Card Account, if any. Credit One Bank may require the return of any Credit Cards before issuing a refund check. However, when your Account is closed, if there is: (1) a debit balance of \$1.00 or less, that balance will be rounded to zero and you will not be required to pay this amount; or (2) a credit balance of \$1.00 or less, that balance will be rounded to zero and this amount will not be refunded to you. The rounding to zero may occur after your closing statement cycles, and you may not receive a statement reflecting the rounding.

**22. SECURITY:** This is an unsecured Account, and Credit One Bank retains no security interest in your real or personal property to secure payment of your Card Account.

**23. CARD OWNERSHIP AND ACCEPTANCE:** Any credit card or other credit instrument issued to you remains the property of Credit One Bank and must be surrendered to Credit One Bank or its agent on demand. We are not liable for the refusal of Credit One Bank or any other party to honor your Card for any reason. All Cards have an expiration date. We have the right not to renew your Card for any reason.

**24. FOREIGN TRANSACTIONS:** If you make a transaction at a merchant that settles in a currency other than U.S. dollars, MasterCard Worldwide or Visa Inc. will convert that charge into a U.S. Dollar amount. That conversion will be done at a rate selected by MasterCard or Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate MasterCard or Visa itself receives, or the government-mandated rate in effect for the applicable central processing date. The currency conversion rate used on the processing date may differ from the rate that would have been used on the purchase date or on the date the transaction is posted to your Account. You agree to pay the converted amount, including any charges for the conversion that may be imposed as described above. A fee may be imposed for foreign transactions as described under the Finance Charge section of this Agreement.

**25. LOST OR STOLEN CARDS:** You may be liable for unauthorized use of your Card. If your Card is lost or stolen or you suspect that someone is using your Card without your permission, you should immediately notify Credit One Bank's Bank Card Center. You can call (877) 825-3242. You can also notify us in writing at **Bank Card Center, P.O. Box 98872, Las Vegas, NV 89193-8872**. You will not be liable for any unauthorized use that occurs after you notify us, orally or in writing, of the loss, theft or possible unauthorized use. In any event, your liability for unauthorized use will not exceed \$50. If you allow someone to use your Card to make charges to your Card Account, you can terminate this user's authority by retrieving the Card and returning it to us. Until you do, you remain liable for any use by the authorized user. You understand and agree that this Card Account may be replaced with a substitute Account if a credit card for this Account is lost or stolen, or in the event unauthorized use of the Account is reported. All terms and conditions of this Agreement and the application shall apply to any substitute Account.

**26. CREDIT LIMIT INCREASE REQUESTS:** Credit Limit Increase requests must be made in accordance with procedures established from time to time by Credit One Bank. A fee may be imposed for credit limit increases. The fee imposed will be a **Finance Charge** of between **\$0.00** and **\$49.00**, depending on how long your Account has been established and your credit history with us and others. We will advise you which fee is applicable to your Account at the time you apply for a credit limit increase. Credit limit increase requests are subject to the same credit process as your original application, including review of credit bureau information. You will be notified by mail if your request for an increase is declined. Approval will be indicated in the form of a credit limit increase on your Card Account statement. For information on Credit One Bank's procedure for applying for a credit limit increase, contact us at (877) 825-3242.

**27. WAIVER OF RIGHTS:** If we waive any of our rights under this Agreement, we will not be obligated to do so again.

**28. CUSTOMER PRIVACY:** The privacy policy for Credit One Bank is provided separately in accordance with applicable law.

**29. GOVERNING LAW:** This Agreement is governed by and interpreted in accordance with the laws applicable to national banks, and, where no such laws apply, by the laws of the State of Nevada, excluding the conflicts of law provisions thereof, regardless of your state of residence.

**30. ARBITRATION AGREEMENT:** The Arbitration Agreement provided to you with this Agreement governs the enforcement by you and us of your and our legal rights under this Agreement.

### YOUR BILLING RIGHTS - KEEP THIS NOTICE FOR FUTURE USE

**This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.**

#### **What To Do If You Find a Mistake on Your Statement**

If you think there is an error on your statement, write to us at: **Bank Card Center, P.O. Box 98872, Las Vegas, NV 89193-8872.**

In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing*. You may call us at **877-825-3242**, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

#### **What Will Happen After We Receive Your Letter**

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.
- *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within **10 days** telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us. If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

#### **Your Rights If You Are Dissatisfied With Your Credit Card Purchases**

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase. To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50 (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase. If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* at: **Bank Card Center, P.O. Box 98872, Las Vegas, NV 89193-8872.**

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

### ARBITRATION

**PLEASE READ THIS PROVISION OF YOUR CARD AGREEMENT CAREFULLY. IT PROVIDES THAT EITHER YOU OR WE CAN REQUIRE THAT ANY CONTROVERSY OR DISPUTE BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. IN ARBITRATION, A DISPUTE IS RESOLVED BY A NEUTRAL ARBITRATOR INSTEAD OF A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT. IN ARBITRATION, YOU MAY CHOOSE TO HAVE A HEARING AND BE REPRESENTED BY COUNSEL.**

#### **Agreement to Arbitrate:**

You and we agree that either you or we may, without the other's consent, require that any controversy or dispute between you and us (all of which are called "Claims"), be submitted to mandatory, binding arbitration. This arbitration provision is made pursuant to a transaction involving interstate commerce, and shall be governed by, and enforceable under, the Federal Arbitration Act (the "FAA"), 9 U.S.C. §1 et seq., and (to the extent State law is applicable), the State law governing this Agreement.

#### **Claims Covered:**

- Claims subject to arbitration include, but are not limited to, disputes relating to the establishment, terms, treatment, operation, handling, limitations on or termination of your account; any disclosures or other documents or communications relating to your account; any transactions or attempted transactions involving your account, whether authorized or not; billing, billing errors, credit reporting, the posting of transactions, payment or credits, or collections matters relating to your account; services or benefits programs relating to your account, whether or not they are offered, introduced, sold or provided by us; advertisements, promotions, or oral or written statements related to (or preceding the opening of) your account, goods or services financed under your account, or the terms of financing; the application, enforceability or interpretation of this Agreement, including this arbitration provision; and any other matters relating to your account, a prior related account or the resulting relationships between you and us. Any questions about what Claims are subject to arbitration shall be resolved by interpreting this arbitration provision in the broadest way the law will allow it to be enforced.
- Claims subject to arbitration include not only Claims made directly by you, but also Claims made by anyone connected with you or claiming through you, such as a co-applicant or authorized user of your account, your agent, representative or heirs, or a trustee in bankruptcy. Similarly, Claims subject to arbitration include not only Claims that relate directly to us, a parent company, affiliated company, and any predecessors and successors (and the employees, officers and directors of all of these entities), but also Claims for which we may be directly or indirectly liable, even if we are not properly named at the time the Claim is made.
- Claims subject to arbitration include Claims based on any theory of law, any contract, statute, regulation, ordinance, tort (including fraud or any intentional tort), common law, constitutional provision, respondeat superior, agency or other doctrine concerning liability for other persons, custom or course of dealing or any other

legal or equitable ground (including any claim for injunctive or declaratory relief). Claims subject to arbitration include Claims based on any allegations of fact, including an alleged act, inaction, omission, suppression, representation, statement, obligation, duty, right, condition, status or relationship.

- Claims subject to arbitration include Claims that arose in the past, or arise in the present or future. Claims are subject to arbitration whether they are made independently or with other claims in proceedings involving you, us or others. Claims subject to arbitration include Claims that are made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise, and a party who initiates a proceeding in court may elect arbitration with respect to any Claim(s) advanced in the lawsuit by any other party or parties. Claims subject to arbitration include Claims made as part of a class action or other representative action, and the arbitration of such Claims must proceed on an individual basis.
- If you or we require arbitration of a particular Claim, neither you, we, nor any other person may pursue the Claim in any litigation, whether as a class action, private attorney general action, other representative action or otherwise.
- Claims are not subject to arbitration if they are filed by you or us in a small claims court, so long as the matter remains in such court and advances only an individual claim for relief.

**Initiation of Arbitration:** The party filing an arbitration must choose an arbitration administrator. Arbitration administrators are independent from us, and you must follow their rules and procedures for initiating and pursuing an arbitration. If you initiate the arbitration, you must also notify us in writing at Credit One Bank, P.O. Box 95516, Las Vegas, NV 89193-5516. If we initiate the arbitration, we will notify you in writing at your then current billing address or (if your account is closed) the last address we have on file for you. Any arbitration hearing that you attend will be held at a place chosen by the arbitrator or arbitration administrator in the same city as the U.S. District Court closest to your billing address, or at some other place to which you and we agree in writing. You may obtain copies of the current rules of the arbitration administrators, and other related materials, including forms and instructions for initiating an arbitration, by contacting the arbitration administrators as follows:

**American Arbitration Association**  
335 Madison Avenue, Floor 10  
New York, NY 10017-4605  
Web Site: [www.adr.org](http://www.adr.org)

**JAMS**  
1920 Main Street, Suite 300  
Irvine, CA 92614-7279  
Web Site: [www.jamsadr.com](http://www.jamsadr.com)

**Procedures and Law Applicable in Arbitration:** A single arbitrator will resolve Claims. The arbitrator will either be a lawyer with at least ten years experience or a retired or former judge. The arbitrator will be selected in accordance with the rules of the arbitration administrator and will be neutral. The arbitration will be conducted under the applicable procedures and rules of the arbitration administrator that are in effect on the date the arbitration is filed unless this arbitration provision is inconsistent with those procedures and rules, in which case this Agreement will prevail. These procedures and rules may limit the amount of discovery available to you or us. The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations, and will honor claims of privilege recognized at law. The arbitrator will take reasonable steps to protect customer account information and other confidential information, including the use of protective orders to prohibit disclosure outside the arbitration, if requested to do so by you or us. The arbitrator will have the power to award to a party any damages or other relief provided for under applicable law, and will not have the power to award relief to, against, or for the benefit of, any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Upon a request by you or us, the arbitrator will provide a brief statement of the reasons for the award.

**Costs:** If we file the arbitration, we will pay the initial filing fee. If you file the arbitration, you will pay the initial filing fee, unless you seek and qualify for a fee waiver under the applicable rules of the arbitration administrator. We will reimburse you for the initial filing fee if you paid it and you prevail. If there is a hearing, we will pay any fees of the arbitrator and arbitration administrator for the first day of that hearing. All other fees will be allocated in keeping with the rules of the arbitration administrator and applicable law. However, we will advance or reimburse filing fees and other fees if the arbitration administrator or arbitrator determines there is other good reason for requiring us to do so, or we determine there is good cause for doing so. Each party will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, except that the arbitrator shall apply any applicable law in determining whether a party should recover any or all expenses from another party.

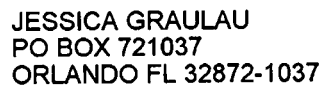
**No Consolidation or Joinder of Parties:** All parties to the arbitration must be individually named. Claims by persons other than individually named parties shall not be raised or determined. Notwithstanding anything else that may be in this arbitration provision or Agreement, no class action, private attorney general action or other representative action may be pursued in arbitration, nor may such action be pursued in court if any party has elected arbitration. Unless consented to by all parties to the arbitration, Claims of two or more persons may not be joined, consolidated or otherwise brought together in the same arbitration (unless those persons are applicants, co-applicants or authorized users on a single account and/or related accounts or parties to a single transaction or related transactions); this is so whether or not the Claims (or any interest in the Claims) may have been assigned.

**Enforcement, Finality, Appeals:** You or we may bring an action, including a summary or expedited motion, to compel arbitration of Claims subject to arbitration, or to stay the litigation of any Claims pending arbitration, in any court having jurisdiction. Such action may be brought at any time, even if any such Claims are part of a lawsuit, unless a trial has begun or a final judgment has been entered. Failure or forbearance to enforce this arbitration provision at any particular time, or in connection with any particular Claims, will not constitute a waiver of any rights to require arbitration at a later time or in connection with any other Claims. Any additional or different agreement between you and us regarding arbitration must be in writing. Within fifteen days after an award by the single arbitrator, any party may appeal the award by requesting in writing a new arbitration before a panel of three neutral arbitrators designated by the same arbitration administrator. The panel will consider all factual and legal issues anew, follow the same rules that apply to a proceeding using a single arbitrator, and make decisions based on the vote of the majority. Costs will be allocated in the same way they are allocated for arbitration before a single arbitrator. An award by a panel, or an award by a single arbitrator after fifteen days has passed, shall be final and binding on the parties, subject to judicial review that may be permitted under the FAA. An award in arbitration will be enforceable as provided by the FAA or other applicable law by any court having jurisdiction. An award in arbitration shall determine the rights and obligations between the named parties only, and only in respect of the Claims in arbitration, and shall not have any bearing on the rights and obligations of any other person, nor on the resolution of any other dispute or controversy.

**Severability, Survival:** This arbitration provision shall survive: (i) termination or changes in the Agreement, the account and the relationship between you and us concerning the account; (ii) the bankruptcy of any party; and (iii) any transfer or assignment of your account, or any amounts owed on your account, to any other person. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force.



**CreditOne<sup>®</sup>**  
BANK



SV00013/921108099

Ste 110 MS576  
55 Beattie Place  
Greenville, SC 29601



640220275

**RESURGENT**  
**Capital Services**

Toll Free Phone: 1-888-665-0374  
Toll Free Fax: 1-866-467-0163

<http://www.resurgent.com/>

*Hours of Operation*  
8AM-7PM EST Monday - Thursday  
8AM-5PM EST Friday

Original Creditor: Credit One Bank, N.A.  
Current Owner: LVNV Funding LLC  
Account Number: \*\*\*\*\*3545  
Account Reference Number: 640220275

February 16, 2017

FLOWNR-CS-1 1 AB \*A-03-B11-BM-02767-7



JESSICA GRAULAU  
PO BOX 721037  
ORLANDO FL 32872-1037



## Notice of Assignment

Dear Jessica Graulau:

Please be advised that effective 02-15-2017, ownership of your account has been transferred from FNBM, LLC to LVNV Funding LLC. Your account will now be serviced by Resurgent Capital Services L.P., which is the master servicer for LVNV Funding LLC. We may place your account with a sub-servicer for collections.

If we can be of further assistance, please contact one of our Customer Service Representatives toll-free at 1-888-665-0374.

Sincerely,

Customer Service Department  
Resurgent Capital Services L.P.

*This communication is from a debt collector.*

Appx J, p. 44a

## VERBATIM CITATION

### 28 U.S.C. § 654 Arbitration:

—(a) Referral of Actions to Arbitration.—Notwithstanding any provision of law to the contrary and except as provided in subsections (a), (b), and (c) of section 652 and subsection (d) of this section, a district court may allow the referral to arbitration of any civil action ---when the parties consent, except that referral to arbitration may not be made where—(1) the action is based on alleged violation of a right secured by the Constitution of the United States; (2) jurisdiction is based in whole or in part on section 1343 of this title; or (3) the relief sought consist of money damages in an amount greater than \$150,000.(b) SAFEGUARDS IN CONSENT CASES.—district court shall by local rule adopted—establish procedures to ensure that any civil in which arbitration by consent is allowed under subsection (a)—(1) consent to arbitration is freely and knowingly obtained; and (2) no party or attorney is prejudice for refusing to participate in arbitration

### Fla.Stat. § 95.11:

*(—Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows: (3) WITHIN FOUR YEARS.—(j) A legal equitable action on a contract, obligation, or liability not founded on a written instrument, including an action for the sale and delivery of goods, wares, and merchandise, and on store accounts* )

### *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974):

(—*Held*:. The commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class )

### *Artis v. District of Columbia*, 138 S.Ct. 594 (2018):

(—The Court held that the state law claims were erroneously dismissed as time-barred because 28 U.S.C.S. § 1367(d) stopped the clock...while her federal court proceeding was pending. According to the Court, tolling a statute of limitations signalled stopping the clock the day the claim was filed in federal court, and § 1367(d) was phrased as a tolling provision that suspended the statute of limitations while a claim was pending in federal court and for 30 days post-dismissal )



***Boechler, P.C. v. Commissioner of Internal Revenue*, 596 U.S. (2022):**

(—Held: Section 6330(d)(1)'s 30-day time limit to file a petition for review of a collection due process determination is a nonjurisdictional deadline subject to equitable tolling. Pp. 2–11. ... (a) Not all procedural requirements are jurisdictional. Many simply instruct —parties [to] take certain procedural steps at certain specified times— without conditioning a court's authority to hear the case on compliance with those steps. *Henderson v. Shinseki*, 562 U.S. 428, 435. The distinction matters, as jurisdictional requirements cannot be waived or forfeited, must be raised by court issue *sua sponte*, and do not allow for equitable exceptions. *Id.*, at 434–

435; *Sebelius v. Auburn Regional Medical Center*, 568

U.S. 145, 154. As such, a procedural requirement is jurisdictional only if Congress—clearly states— that it is. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515. This case therefore turns on whether Congress has clearly stated that

§ 6330(d)(1)'s deadline is jurisdictional. ... (c) Nonjurisdictional limitations periods are presumptively subject to equitable tolling. *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 95–96, and nothing rebuts the presumption here.

Section 6330(d)(1) does not expressly prohibit equitable tolling, directs its 30-day time limit at the taxpayer, not the court, and appears in a section of the Tax Code that is particularly protective of taxpayers, see *Auburn*, 568 U.S. at 160. ... Notes 1 In passing, the Commissioner briefly suggests that equitable tolling might not apply outside the realm of Article III courts. We have already applied it in other non-Article III contexts, however, and the Commissioner does not ask us to reconsider those precedents. See *Young v. United States*, 535 U.S. 43, 47 (2002) (bankruptcy court limitations period); *United States v. Kwai Fun Wong*, 575 U.S. 402, 407, 420 (2015) (deadline to present claim to agency) )

***Celotex Corp. v. Catrett*, 477 U.S. 317 (1986):**

(—Held: 1. The Court of Appeals' position is inconsistent with the standard for summary judgment set forth in Rule 56(c), which provides that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. )

***Frazier v. Citifinancial Corp.*, 604 F.3d 1313 (11th Cir. 2010):**

(—Having determined that the award was not subject to vacatur and/or modification under sections 10 or 11, we turn to Mrs. Frazier's additional arguments that the award was arbitrary and capricious, in violation of public policy, and made in manifest disregard for the law. Although our prior

precedents have recognized these three non-statutory grounds for vacatur, see *B.L. Harbert Int'l*, 441 F.3d at 910, Hall Street casts serious doubt on their legitimacy. "[T]he arbitrary and capricious ground permits courts to vacate arbitration awards when the award exhibits a wholesale departure from the law" or "when the award is not grounded in the contract which provides for the arbitration." *Brown v. Rauscher Pierce Refsnes, Inc.*, 994 F.2d 775, 781 (11th Cir. 1993). The public policy exception permits district courts to "refuse to enforce arbitration awards where enforcement would violate some explicit public policy that is well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." *Id.* at 782 (quotation marks and citation omitted). Finally, the "manifest disregard of the law" ground permits district courts to vacate an award where there is "clear evidence that the arbitrator was conscious of the law and deliberately ignored it." *B.L. Harbert Int'l, LLC*, 441 F.3d at 910 (quotation marks, alteration, and citation omitted). Although the Court does not explicitly extend its holding in Hall Street to judicial expansions of §§ 10 and 11, at least some circuits have read Hall Street as prohibiting all extra-statutory grounds for vacatur, whether judicially created or contractually agreed upon. For example, the Fifth Circuit, relying on Hall Street's "unequivocal[]" holding that the statutory grounds listed in section 10 are the exclusive means for vacatur, has held that "manifest disregard of the law is no longer an independent ground for vacating arbitration awards under the FAA." *Citi Group Global Markets Inc. v. Bacon*, 562 F.3d 349, 350, 355 (5th Cir. 2009). The court reasoned that "[i]n the light of Hall Street's repeated statements that 'We hold that the statutory grounds are exclusive,'" it could not be interpreted as applying only to contractual expansions of §§ 10 and 11. *Id.* at 356. See also *Ramos-Santiago v. United Parcel Service*, 524 F.3d 120, 124 n. 3 (1st Cir. 2008) ("We acknowledge the Supreme Court's recent holding in [Hall Street] that manifest disregard of the law is not a valid ground for vacating or modifying an arbitral award in cases brought under the [FAA].") The Second and Ninth Circuits have taken a different approach, treating manifest disregard of the law not as an additional, independent non-statutory ground for vacatur, but instead as a judicial interpretation of the district court's power under § 10(a)(4) to vacate an award where the arbitrator "exceeded [his] powers" or "so imperfectly executed them that a mutual, final, and definite award . . . was not made." 9 U.S.C. § 10(a)(4). See *Comedy Club, Inc. v. Improv West Assoc.*, 553 F.3d 1277, 1290 (9th Cir.), cert. denied, *Improv West Assoc. v. Comedy Club, Inc.*, U.S., 130 S.Ct. 145, 175 L.Ed.2d 36 (2009) (concluding that "after Hall Street Associates, manifest disregard of the law remains a valid ground for vacatur" because it is "shorthand for a statutory ground under the FAA, specifically 9 U.S.C. § 10(a)(4)"); *Stolt-Nielsen v. Animal Feeds Int'l Corp.*, 548 F.3d 85, 94 (2d Cir.

2008), cert. granted, *Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp.*, U.S., 129 S.Ct. 2793, 174 L.Ed.2d 289 (2009) (holding that "manifest disregard," reconceptualized as a judicial gloss on the specific grounds for vacatur enumerated in section 10 of the FAA, remains a valid ground for vacating arbitration awards"). Finally, the Sixth Circuit has concluded in an unpublished opinion that while *Hall Street* "significantly reduced the ability of federal courts to vacate arbitration awards for reasons other than those specified in 9 U.S.C. §10, ... it did not foreclose federal courts' review for an arbitrator's manifest disregard of the law" because it held only that the FAA prohibits private parties from supplementing by contract the FAA's statutory grounds for vacatur, without expressly addressing whether those grounds may be supplemented judicially. *Coffee Beanery, Ltd. v. WW, L.L.C.*, 300 Fed. Appx. 415, 418-19 (6th Cir. 2008), cert. denied, *Coffee Beanery, Ltd. v. WW, LLC*, U.S., 130 S.Ct. 81, 175 L.Ed.2d 28 (2009). ... We hold that our judicially-created bases for vacatur are no longer valid in light of *Hall Street*. In so holding, we agree with the Fifth Circuit that the categorical language of *Hall Street* compels such a conclusion. See *Hall Street*, 552 U.S. at 586, 128 S.Ct. at 1404 ("the text compels a reading of the §§10 and 11 categories as exclusive"); *id.* at 589, 128 S.Ct. at 1406 ("the statutory text gives us no business to expand the statutory grounds"); *id.*, at 590, 128 S.Ct. at 1406 ("§§ 10 and 11 provide exclusive regimes for the review provided by the statute").

*Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008):

(—*Hall Street* makes two main efforts to show that the grounds set out for vacating or modifying an award are not exclusive, taking the position, first, that expandable judicial review authority has been accepted as the law since *Wilko v. Swan*, 346 U.S. 427 (1953). This, however, was not what *Wilko* decided, which was that §14 of the Securities Act of 1933 voided any agreement to arbitrate claims of violations of that Act, see *id.*, at 437–438, a holding since overruled by *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). ... The *Wilko* Court was explaining that arbitration would undercut the Securities Act's buyer protections when it remarked (citing *FAA §10*) that—[p]ower to vacate an [arbitration] award is limited, 346 U.S. at 436, and went on to say that—the interpretation of the law by the arbitrators in contrast to manifest disregard [of the law] are not subject, in the federal courts, to judicial review for error in interpretation, id., at 436–437. *Hall Street* reads this statement as recognizing—manifest disregard of the law—as a further ground for vacatur on top of those listed in §10, and some Circuits have read it the same way. See, e.g., *McCarthy v. Citigroup Global Markets*,

*Inc.*, 463 F.3d 87, 91 (CA12006); *Hoefv. MVL Group, Inc.*, 343 F.3d 57, 64 (CA22003); *Prestige Ford v. Ford Dealer Computer Servs., Inc.*, 324 F.3d 391, 395–396 (CA52003); *Scott v. Prudential Securities, Inc.*, 141 F.3d 1007, 1017 (CA111998). ---

Then there is the vagueness of Wilko's phrasing. Maybe the term —manifest disregard— was meant to name a new ground for review, but maybe it merely referred to the §10 grounds collectively, rather than adding to them.

See, e.g., *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 656 (1985) (Stevens, J., dissenting) (—Arbitration awards are only reviewable for manifest disregard of the law, 9 U.S.C. §§10, 207—); *I/S Stavborg v. National Metal Converters, Inc.*, 500 F.2d 424, 431 (CA21974). Or, as some courts have thought, —manifest disregard— may have been shorthand for §10(a)(3) or §10(a)(4), the subsections authorizing vacatur when the arbitrators were —guilty of misconduct— or —exceeded their powers.— See, e.g., *Kyocera*, supra, at 997. We, when speaking as a Court, have merely taken the Wilko language as we found it, without embellishment, see *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942 (1995), and now that its meaning is implicated, we see no reason to accord it the significance that Hall Street urges. --- There was never any question about meeting the FAA §2 requirement that the leases from which the dispute arose be contracts—involving commerce.— 9 U.S.C. §2; see *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277 (1995) (§2 —exercise[s] Congress' commerce power to the full—). Nor is there any doubt now that the parties at least had the FAA in mind at the outset; the arbitration agreement even incorporates FAA §7, empowering arbitrators to compel attendance of witnesses. App. to Pet. for Cert. 13a.— )

***Izquierdo v. Easy Loans Corp.***, Case No. 2:13-cv-1032-MMD-VCF, 7 (D. Nev. Jun. 18, 2014):

(—Federal courts must apply the choice of law rules of the forum state—Nevada follows the *Restatement (Second) of Conflict of Laws* (1971) in determining choice of law questions involving contract—Under the *Restatement (Second) of Conflict of Laws* an action will be maintained if it is not barred by the statute of limitations of the forum—The borrowing statute limits actions that arise in another state to the limitations period of that state. *NRS §11.020*— )

***Klay v. All Defendants***, 389 F.3d 1191 (11th Cir. 2004):

(—Our decision in *Armada Coal Exp., Inc. v. Interbulk, Ltd.*, 726 F.2d 1566, 1567–68 (11th Cir. 1984), in which we refused to compel arbitration of claims that arose after a contract with a valid arbitration agreement had been breached— Moreover, the Supreme Court has since found in the collective bargaining

context that arbitration cannot be mandated for a grievance which arose after the expiration of an arbitration agreement even when the parties bargained for a "broad arbitration provision." *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 193-201, 111 S.Ct. 2215, 2219-2223, 115 L.Ed. 2d 177 (1991); see District No. 1—*Marine Eng'rs Beneficial Ass'n v. GFC Crane Consultants, Inc.*, 331 F.3d 1287, 1291 (11th Cir. 2003) ("grievance arbitration obligations end upon expiration of the CBA unless the parties have agreed otherwise")

*S. Commc'ns Servs., Inc. v. Thomas*, 720 F.3d 1352, 1357-60 (11th Cir. 2013):

(—Congress enacted the Federal Arbitration Act, 9 U.S.C. § 10(a)(4), to supplant the judiciary's distaste for arbitration—Section 10(a), upon which we focus, provides four grounds for vacatur:

- (1) where the award was procured by corruption, fraud, or other means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrator exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.---

The Supreme Court in *Hall Street* held that—§§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification. *Id.* at 584, 128 S.Ct. at 1403. In light of the Court's decision in *Hall Street*---

In *Sutter*, the Supreme Court rejected Oxford's effort to find support in *Stolt-Nielsen*. The Court noted that the—unusual stipulation that [the parties] had never reached an agreement on class arbitration—*in Stolt-Nielsen* meant necessarily that—the arbitral decision there...lacked any contractual basis for ordering class procedures, *Id.* at 2069;—[s]o in setting aside the arbitrators' decision, we found not that they had misinterpreted the contract, but that they had abandoned their interpretive role, *Id.* at 2070.

Because the parties in *Sutter*—bargained for the arbitrator's construction of their agreement, *Id.* the Court opined, —an arbitral decision—*even arguably construing or applying the contract*—must stand, regardless of a court's view of its (de)merits. *Id.* at 2068 (quoting *E. Associated Coal*, 531 U.S. at 62, 121 S.Ct. at 466). Thus,—the sole question—*a court should ask under the exacting standards of § 10(a)(4)*—is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong. *Id.* at 2068. The

Supreme Court noted in *Sutter* that this would not be the case if Oxford had argued below that the availability of class arbitration is a so-called —question of arbitrability. Those questions—which include certain gateway matters, such as whether parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy—are presumptively for courts to decide. [T]his Court has not yet decided whether the availability of class arbitration is a question of arbitrability. But this case gives us no opportunity to do so because Oxford agreed that the arbitrator should determine whether its contract with Sutter authorized class procedures. *Oxford Health Plans LLC v. Sutter*, 569 U.S. —, 133 S.Ct. 2064, 2069 n.2, 186 L.Ed.2d 113 (2013) (citations omitted). Like the Supreme Court, we also have not decided whether the availability of class arbitration is a question of arbitrability. However, as in *Sutter*, this case does not give us the opportunity to consider the question, because here Southern LINC gave the question of whether the contract allowed for class arbitration to the arbitrator through its choice of rules and by failing to —dispute the [e] [a]rbitrator's jurisdiction to decide this threshold issue. Record, no. 1–2, at 3. --- we held that the —judicially-created bases for vacatur that we had formerly recognized, such as where an arbitrator behaves in manifest disregard of the law,—are no longer valid. Frazier, 604 F.3d at 1324. Nor is an —incorrect legal conclusion... grounds for vacating or modifying an award. White Springs, 660 F.3d at 1280. Given that, in our circuit, we recognize neither an —incorrect legal conclusion, White Springs, 660 F.3d at 1280, nor a —manifest disregard of the law, Frazier, 604 F.3d at 1323, as grounds for vacating or modifying an award, we are left, under § 10(a)(4), with a single question: did the arbitrator —exceed [his] powers, or so imperfectly execute [them] that a mutual, final, and definite award upon the subject matters submitted was not made? 9 U.S.C. § 10(a)(4). The answer to that question is no. )

***Stimpson v. Midland Credit Mgmt.*, 944 F.3d 1190 (9th Cir. 2019):**

(—After receiving the letter, Stimpson brought this action against Midland in Idaho state court on behalf of himself and a purported class of similarly situated individuals. The complaint alleged that Midland violated the FDCPA by attempting to collect "time-barred debts without disclosure of that fact. ... Stimpson has not identified anything false, deceptive, or misleading in Midland's letter, so his FDCPA claim fails. The district court did not err in granting summary judgment in Midland's favor. )

***Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp.*, 559 U.S. 662 (2010):**

(—The parties entered into a supplemental agreement providing for the question of class arbitration to be submitted to a panel of three arbitrators who were to follow and be bound by Rules 3 through 7 of the American Arbitration Association's Supplementary Rules for Class Arbitrations (as effective Oct. 8, 2003). || App. to Pet. for Cert. 59a. These rules (hereinafter Class Rules) were developed by the American Arbitration Association (AAA) after our decision in ***Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003)**—While the interpretation of an arbitration agreement is generally a matter of state law, see ***Arthur Andersen LLP v. Carlisle*, 556 U.S. (2009)** (slip op., at 6); ***Perry v. Thomas*, 482 U.S. 483, 493, n. 9 (1987)**, the FAA imposes certain rules of fundamental importance, including the basic precept that arbitration—is a matter of consent, not coercion, || ***Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)**.—In 1925, Congress enacted the United States Arbitration Act, as the FAA was formerly known, for the express purpose of making—valid and enforceable written provisions or agreements for arbitration of disputes arising out of contracts, maritime transactions, or commerce among the States or Territories or with foreign nations. || 43 Stat. 883. Reenacted and codified in 1947, see 61 Stat. 669, [Footnote 9] the FAA provides, in pertinent part, that a—written provision in any maritime transaction || calling for the arbitration of a controversy arising out of such 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. Under the FAA, a party to an arbitration agreement may petition a United States district court for an order directing that—arbitration proceed in the manner provided for in such agreement. || §4. Consistent with these provisions, we have said on numerous occasions that the central or—primary || purpose of the FAA is to ensure that—private agreements to arbitrate are enforced according to their terms. || ***Volt*, supra**, at 479; ***Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57, 58 (1995)**; see also ***Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 688 (1996)**. See generally 9 U.S.C. §4.

Whether enforcing an agreement to arbitrate or construing an arbitration clause, courts and arbitrators must—give effect to the contractual rights and expectations of the parties. || ***Volt*, supra**, at 479. In this endeavor,—as with any other contract, the parties' intentions control. || ***Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985)**. This is because an arbitrator derives his or her powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution. See ***AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 648–649 (1986)** (—[A]rbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievance to arbitration || ); ***Mitsubishi Motors*, supra**, at

628 (—By agreeing to arbitrate ..., [a party] trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration. See also *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 581 (1960) (an arbitrator—has no general charter to administer justice for a community which transcends the parties but rather is—part of a system of self-government created by and confined to the parties (internal quotation marks omitted)).

Underscoring the consensual nature of private dispute resolution, we have held that parties are —generally free to structure their arbitration agreements as they see fit. See *Mastrobuono*, supra, at 57; see also *AT&T Technologies*, supra, at 648–649. For example, we have held that parties may agree to limit the issues they choose to arbitrate, see *Mitsubishi Motors*, supra, at 628, and may agree on rules under which any arbitration will proceed, *Volt*, supra, at 479. ...

In certain contexts, it is appropriate to presume that parties that enter into an arbitration agreement implicitly authorize the arbitrator to adopt such procedures as are necessary to give effect to the parties' agreement. Thus, we have said that —procedural questions which grow out of the dispute and bear on its final disposition are presumptively not for the judge, but for an arbitrator, to decide. See *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) (quoting *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964)). This recognition is grounded in the background principle that—[w]hen the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court. See *Restatement (Second) of Contracts* §204 (1979). ...

Footnote 3 We do not decide whether — manifest disregard survives our decision in *Hall Street Associates, L. L. C. v. Mattel, Inc.*, 552 U.S. 576, 585 (2008), as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. §10. Animal Feeds characterizes that standard as requiring a showing that the arbitrators—knew of the relevant [legal] principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it. See *Brief for Respondent 25* (internal quotation marks omitted). Assuming, arguendo, that such a standard applies, we find it satisfied for the reasons that follow. See )

*Wilkins v. United States*, U.S. 427 (1953):

(—Held: Section 2409a(g) is a non-jurisdictional claims-processing rule. Pp. 3–12.

(a) Jurisdiction is a word of many meanings. This Court has emphasized the



distinction between—the classes of cases a court may entertain (subject-matter jurisdiction) and —nonjurisdictional claim-processing rules, which seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times. || *Fort Bend County v. Davis*, 587 U. S. . . Nonjurisdictional claim-processing rules generally include a range of —threshold requirements that claimants must complete, or exhaust, before filing a lawsuit. || *Reed Elsevier, Inc. v. Muchnick*, 559 U. S. 154, 166. Jurisdictional bars—which may be raised by any party at any time during the proceedings and which are required to be raised by a court sua sponte—run the risk of disrupting the —orderly progress of 2 WILKINS v. UNITED STATES Syllabus litigation || that procedural rules often —seek to promote. || *Henderson v. Shinseki*, 562 U. S. 428, 435. Given the risk of disruption and waste that accompanies the jurisdictional label, a procedural requirement will be construed as jurisdictional only if Congress —clearly states || that it is. *Boechler v. Commissioner*, 596 U. S. . . To determine whether the statutory text —plainly show[s] that Congress imbued a procedural bar with jurisdictional consequences, || courts apply —traditional tools of statutory construction. || *United States v. Kwai Fun Wong*, 575 U. S. 402, 410. ---

This Court has made clear that it will not undo a —definitive earlier interpretation || of a statutory provision as jurisdictional without due regard for the principles of stare decisis. *John R. Sand & Gravel Co. v. United States*, 552 U. S. 130, 138. Yet the mere fact that this Court previously described something as jurisdictional is not dispositive, as—[c]ourts, including this Court, have more than occasionally misused the term ‘jurisdictional’ to refer to nonjurisdictional prescriptions. || *Fort Bend*, 587 U. S., at —, n. 4. To separate —definitive || interpretation of jurisdiction from those in which the term—jurisdictional || has been used imprecisely, the Court asks if a prior decision addressed whether a provision is —‘technically jurisdictional,’ || i.e., whether it truly operates as a limit on a court’s subject-matter jurisdiction, and whether anything in the decision—turn[ed] on that characterization. || *Arbaugh v. Y&H Corp.*, 546 U. S. 500, 512 (quoting *Steel Co. v. Citizens for a Better Environment*, 523 U. S. 83, 91). A decision that simply states that —the court is dismiss-Cite as: U. S. (20)3 Syllabus using ‘for lack of jurisdiction’ when some threshold fact has not been established || is understood as a —drive-by jurisdictional ruling || and receives—no precedential effect. || *Arbaugh*, 546 U. S., at 511. || )

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It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: March 19, 2024

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: April 18, 2024

App A, p. 2a

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 23-13168

Non-Argument Calendar

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JESSICA GRAULAU,

Plaintiff-Appellant,

*versus*

CREDIT ONE BANK, N.A.,  
a foreign corporation,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 6:19-cv-01723-WWB-EJK

App B, p. 3a

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Before JORDAN, NEWSOM, and LAGOA, Circuit Judges.

PER CURIAM:

Jessica Graulau, proceeding pro se,<sup>1</sup> appeals the district court's denial of (1) her motion to vacate an arbitration award and (2) her motion to correct or modify the award on defendant Credit One Bank, N.A.'s counterclaim, pursuant to 9 U.S.C. §§ 10 and 11 of the Federal Arbitration Act.<sup>2</sup>

I.

Sections 10 and 11 of the FAA provide its exclusive grounds for vacatur and modification of arbitration awards. *Hall St. Assocs.*,

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<sup>1</sup> While we construe pro se pleadings liberally, such liberal construction “does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.” *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (quotation marks omitted). Additionally, even pro se litigants will be deemed to have abandoned a claim by making only passing reference to it, raising it in a perfunctory manner without supporting arguments and authority, or referring to it only in the “statement of the case” or “summary of the argument,” or where the references to the issue are mere background to the appellant’s main arguments. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681–82 (11th Cir. 2014).

<sup>2</sup> In reviewing the district court’s denial of a motion to vacate or modify an arbitration award, we review the district court’s findings of fact for clear error and its legal conclusions de novo. *Frazier v. CitiFinancial Corp., LLC*, 604 F.3d 1313, 1321 (11th Cir. 2010). “There is a presumption under the FAA that arbitration awards will be confirmed, and federal courts should defer to an arbitrator’s decision whenever possible.” *Id.* (quotation marks omitted). As such, “a court’s confirmation of an arbitration award is usually routine or summary.” *Cat Charter, LLC, v. Schurtenberger*, 646 F.3d 836, 842 (11th Cir. 2011) (quotation marks omitted).

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*L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584 (2008). Section 10 of the FAA allows a district court to vacate an arbitration award only in the following narrow circumstances:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). We have held that, in light of *Hall Street*, the “judicially-created bases for vacatur” formerly recognized, such as where an arbitrator behaved in manifest disregard of the law, are no longer valid. *Frazier*, 604 F.3d at 1321, 1323–24; *see also Southern Commc’ns Servs., Inc. v. Thomas*, 720 F.3d 1352, 1358 (11th Cir. 2013) (“In light of the [Supreme] Court’s decision in *Hall Street*, we held that the ‘judicially-created bases for vacatur’ that we had formerly recognized, such as where an arbitrator behaves in manifest disregard of the law, ‘are no longer valid.’ Nor is an ‘incorrect legal

conclusion . . . grounds for vacating or modifying an award.”) (citations omitted).

Here, the district court did not err in denying Graulau’s motion to vacate because she fails to establish any of the four narrow circumstances justifying vacatur as provided by FAA § 10. *See* 9 U.S.C. § 10(a)(1)–(4). While she argues that the arbitrator exceeded his powers under FAA § 10(a)(4) by disregarding applicable federal and state law, that argument is untenable, as we have repeatedly held post-*Hall Street* that manifest disregard of the law is a judicially-created basis for vacatur, and that such judicially-created bases are no longer valid grounds for vacating or modifying an arbitration award in cases brought under the FAA. *Frazier*, 604 F.3d at 1323–24; *Southern Commc’ns Servs.*, 720 F.3d at 1358. She also mentions the arbitrator’s “misconduct/misbehavior” and “clear partiality with bias” against her in what appears to be an attempt to assert an entitlement to relief under FAA § 10(a)(2) and (3). But she cites no authority and makes no argument as to why she would be entitled to relief on those grounds and has thus abandoned any argument as to them. *Sapuppo*, 739 F.3d at 681–82. Because Graulau failed to raise any valid challenges to the arbitrator’s decision, we affirm the district court’s denial of her motion to vacate.

## II.

Section 11 of the FAA, in turn, provides that a district court may correct or modify an arbitration award in three circumstances:

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the

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description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

9 U.S.C. § 11.

Here, the district court also did not err in denying Graulau's motion to correct or modify the arbitration award on Credit One's counterclaim. As the court found and the record makes clear, Graulau's argument that the arbitrator awarded upon a matter not submitted to him is untenable because Credit One's counterclaim was expressly submitted to him. *See* 9 U.S.C. § 11(b). And, as already explained, her argument that the arbitrator's award was "imperfect" based on his disregard of applicable laws remains meritless and is also likely abandoned based on her failure to cite any authority in support of that position. *Sapuppo*, 739 F.3d at 681–82; 9 U.S.C. § 11(c).

### III.

Because Graulau can establish no valid bases upon which to vacate or modify of the arbitration award, we affirm.

**AFFIRMED.**