

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

**KNR DEFENDANTS' PARTIAL
MOTION TO SET ASIDE
MAGISTRATES' APRIL 29, 2019
ORDER**

Now come the KNR Defendants, by and through counsel, and hereby partially move to set aside the Magistrate's April 29, 2019 Order as follows:

The Magistrate's Order partially overruled the KNR Defendants' April 15, 2019 Motion to Compel Production of Documents from Plaintiff Monique Norris as it related to the production of e-mail correspondence responsive to Defendants' written discovery requests or via *duces tecum* to her deposition notice, including but not limited to communications between Plaintiff Norris and Liberty Capital, Oasis Legal, KNR, or anyone about her accident or KNR's representation of her. (*See* 4/29/19 Order, Exhibit A). At her deposition of January 28, 2019, Plaintiff Norris identified owning two (2) email accounts, but she *never* search those accounts for responsive documents whatsoever

Q What about some of these other documents? For example, if we look at number 2, it says, "All documents relating to communications between Plaintiff and KNR at any time."

And I know that in document production you produced an email that you've had with KNR.

A Uh-huh.

Q Yes?

A Yes. Sorry.

Q Was there any other written communications you had with KNR?

A No, other than the papers that we actually signed together.

Q Okay. What about any other emails to or from?

A No. I don't have any other.

Q And then if we go down to -- if we go down to number 9, "All documents related to communications between Plaintiff and Liberty Capital at any time." Did you look in your email for those?

A No.

Q Why not?

A Because I didn't think I would have any emails from Liberty Capital.

Q Okay. What's your -- well, let me ask you this, what is your email address, ma'am? A Ms.moniquemarie269@gmail.com.

Q Okay. Ms.moniquemarie25@yahoo.com?

A 269@gmail.com.

Q Okay. Did you use to have ms.moniquemarie25@yahoo.com?

A It's possible. I've had this email that I use for -- it's been a long time.

Q Okay. Have you used both emails, do you know?

A No, I don't use the Yahoo. I don't use Yahoo. I use Gmail.

Q Okay. Have you ever had that Yahoo email?

A Not that I can remember. That's why I said it's possible.

Q If there was emails to and from an ms.moniquemarie25@yahoo.com and Ciro Cerrato, the owner of Liberty Capital, you don't remember any of those?

A No.

* * *

Q Okay. Can you go back through and check to see what your email address was and whether you had ms.moniquemarie25@yahoo.com? Is that something you can go check on?

A I don't know how I would look that up, but ...

(See, e.g. Exhibit B, pp. 169-173).

The documents at issue are the Echo-sign documents that were sent to Ms. Norris' Yahoo! account by Liberty Capital. As explained in the Motion to Compel, these are documents electronically executed by Ms. Norris which she inexplicably denies executing.

On April 13, 2019, Defendants again followed up with Plaintiffs' counsel regarding the Yahoo! Account. (Ex. A). Plaintiffs' counsel responded via email on April 15, 2019, claiming that "Ms. Norris searched her accounts and does not have any correspondence relating to KNR, Liberty Capital, or Oasis in them." (Ex. B). Therefore, Defendants moved to compel production of the Yahoo! The Magistrate issued an Order denying Defendants Motion to Compel production of the documents.

On May 6, 2019, the deposition of Ms. Norris was reconvened, and Mr. Norris testified that she had not searched her Yahoo! email account for the documents requested. This directly contradicted the representation made by Mr. Pattakos prior to the filing of Defendants' Motion to Compel. Upon request of defense counsel, the deposition was briefly recessed by agreement of all counsel to allow Ms. Norris to attempt to access her Yahoo! account. She returned and testified she was unable to do so because she could not recall her password, nor could she recall the answers to the security questions to reset her password.

Assuming Ms. Norris cannot recall the information necessary to access her email account, Defendants request that she be compelled to provide an authorization permitting Defendants to seek alternative means to access the account. The records that have been produced clearly show that Plaintiff Norris used her Yahoo email account for communications involving the loan directly at issue in her claim – a loan she claims she had no knowledge existed at any time during KNR's

representation of her despite documentary evidence to the contrary. On May 6, 2019, Plaintiff Norris again refused to acknowledge her acceptance of the loan regardless of the documents in her KNR file. This makes the documents in Norris' file highly probative. The evidence Defendants seek directly contradicts the Ms. Norris' testimony. At minimum, the evidence shows (1) KNR exchanged emails with Plaintiff regarding the loan; (2) Liberty Capital exchanged emails with Plaintiff regarding the loan; and (3) EchoSign exchanged emails with Plaintiff confirming her approval of the loan. (See Exhibits N, O, and P to Deposition of Monique Norris, attached hereto as Exhibit C).

The Magistrate's April 29, 2019 Order should be partially set aside, and Plaintiff Norris should be compelled to either access her account and provide the documents, or in the alternative, provide authorizations for Defendants to access the documents.

Respectfully submitted,

/s/ James M. Popson

James M. Popson (0072773)
SUTTER O'CONNELL CO.
1301 East 9th Street
3600 Erieview Tower
Cleveland, Ohio 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com

Thomas P. Mannion (0062551)
Lewis Brisbois
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
(216) 344-9467 phone
(216) 344-9241 facsimile
Tom.mannion@lewisbrisbois.com

Counsel for KNR Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Court on this 6th day of May, 2019. The parties may access this document through the Court's electronic docket system.

/s/ James M. Popson

James M. Popson (0072773)



Thomas P. Mannion
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tom.Mannion@lewisbrisbois.com
Direct: 216.586.8810

April 13, 2019

VIA ELECTRONIC MAIL ONLY

Peter Pattakos, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
E-Mail: peter@pattakoslaw.com

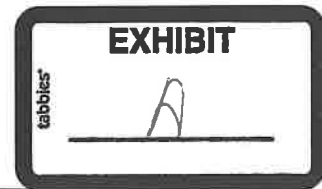
Re: Member Williams, et al. vs. Kisling Nestico & Redick, et al.
Summit County Common Pleas Case No. 2016-09-3928

Dear Mr. Pattakos:

We have not completed Ms. Norris's deposition. As you know, Ms. Norris's deposition started late due to circumstances that arose with Ms. Norris, not due to the fault of any of the Defendants or Defendants' counsel. In addition, at 4 p.m. on the day of the deposition, you unilaterally decided the deposition would conclude at 6 p.m. Ms. Norris and you also indicated outright refusal to appear the next day to finish the deposition, despite the "day to day" requirement of the Notice of Deposition *Duces Tecum*.

The Defendants did not push the issue on the day of Ms. Norris's deposition because you represented you would "work with Ms. Norris" to "resume the deposition prior to class certification briefing." Despite your representation on the record at Ms. Norris's deposition, you and your client have never provided a single proposed date to complete the deposition and failed to appear when the deposition was noticed.

Ms. Norris's other outstanding discovery obligations in separate correspondence. Please note we will be filing a Motion to Compel on the continuation deposition and the other outstanding discovery deficiencies, as we have attempted to resolve these amicably many, many times. If you reconsider your position on any of those issues, please advise immediately so we can avoid court intervention.



Peter Pattakos, Esq.
April 13, 2019
Page 2

I. PLAINTIFF MONIQUE NORRIS'S DEPOSITION WAS NOT COMPLETED DUE TO THE FAULT OF PLAINTIFF MONIQUE NORRIS AND HER COUNSEL, PETER PATTAKOS, ESQ.

Monique Norris's January 28, 2019, deposition was noticed on December 27, 2018. The deposition was noticed to continue "from day to day" until finished, just as Plaintiffs noticed their depositions. Ms. Norris's deposition was not completed on January 28, 2019, due to multiple delays caused by you and/or Ms. Norris, along with Ms. Norris's refusal to answer the questions (or even agree with her own Answers to Requests for Admissions). We were willing to stay and complete the deposition, but you unilaterally imposed a 6 p.m. deadline on how late the deposition could go that evening. Moreover, Ms. Norris and you refused to come back on January 29, 2019, or any other day to complete the deposition.

A. Delays Caused by Plaintiff and Plaintiff's Counsel

We noticed the deposition to begin at 9:30 a.m., per agreement of the parties. A copy of the Notice of Deposition Duces Tecum was marked as Exhibit FF at the deposition. However the deposition did not start until 9:52 a.m., 22 minutes late, due to Ms. Norris needing to handle an issue with her child. We understand things like this occur, and Defendants made the necessary adjustment, without complaint. However, this was still a 22-minute delay not caused by the Defendants or Defendants' counsel.

Breaks at the deposition constituted 2 hours and 23 minutes. (10:34-10:44; 11:42-11:56; 12:42-1:49; 2:44-3:00; 3:49-4:02; 4:42-4:58; 5:45-5:52). Thus, the actual deposition was 5 hours and 53 minutes. Counting approximately 15 pages of speaking objections by you, the deposition lasted approximately 5 ½ hours (see pages 160-165, 227-228, 285-291, and 399-400).

B. Plaintiff's Refusal to Appear for Continuation of Her Deposition

At approximately 4 p.m. on the day of deposition, Defendants were advised for the first time that you were imposing a 6 p.m. deadline on the deposition and that neither Norris nor you would agree to come back the next day to complete the deposition. See, for example, *Norris deposition* at p. 285, wherein your client and you stated:

Q. If you look at the last sentence of the first paragraph, do you see where it says "Said deposition will continue from day to day until completed"?

A. Yes.

Peter Pattakos, Esq.
April 13, 2019
Page 3

Q. Are you refusing to show up tomorrow if we need to continue?

A. I'm not refusing, but I do - - you guys should have told me that, because I do - I am scheduled to work.

Mr. Mannion: Peter, are you saying that depositions in this case are now limited to 7 hours?

Mr. Pattakos: We're willing to go until 6. ... So she's not going to come back tomorrow. ... She's certainly not coming back tomorrow.

You did not object to the "day to day" portion of the Notice of Deposition at any time in the 32 days prior to her deposition. Obviously, you also never explained to Ms. Norris the "day to day" requirement imposed on her by the Notice. While your client stated "you guys should have told me that", the truth is, we did - it's in the Notice itself. She claimed she read it. But you obviously did not discuss that issue with her.

Regarding the attempted 7-hour limitation, you have zero basis to unilaterally impose such a time limit on the Plaintiff's deposition. No such limitation exists in the Summit County local rules or the Ohio Rules of Civil Procedure. No such limitation was imposed by Judge Brogan or any other judge in our case. No such agreement was reached by the parties. And, you didn't even raise this issue until 4 p.m. on the day of the deposition.

C. Failure to Answer Questions

We will not highlight the multiple failures of your client to answer the question. It really was a "Who's on first" at times, as she would not even admit her initials were hers (despite admitting such in Answers to Requests for Admissions), would not admit KNR never "recommended" (as opposed to "directed") her to get a loan with Liberty Capital (despite admitting such in her Answers to Requests for Admissions), and numerous other evasive and outright fabricated answers.

Peter Pattakos, Esq.
April 13, 2019
Page 4

II. MONIQUE NORRIS FAILED TO COMPLY WITH THE *DUCES TECUM*; DEFENDANTS HAVE A RIGHT TO QUESTION HER ON THOSE DOCUMENTS

The Notice of Deposition *Duces Tecum* was served 32 days before her deposition. In addition to multiple Requests for Production previously served on Plaintiff Norris, the deposition's *duces tecum* directed Ms. Norris to bring the following documents at deposition:

1. All documents relating to income earned by Plaintiff from January 1, 2013 to the present, including, but not limited to, Plaintiff's federal and state income tax forms, W-2 forms, 1099 forms, payroll forms, and payroll stubs.
2. All documents relating to communications between Plaintiff and KNR at any time.
3. All documents relating to communications between Plaintiff and Nestico at any time.
4. All documents relating to communications between Plaintiff and Redick at any time.
5. All documents related to communication between Plaintiff and Floros at any time.
6. All documents related to communication between Plaintiff and Ghoubril at any time.
7. All documents related to communications between Plaintiff and Akron Square at any time.
8. All documents related to communications between Plaintiff and Gunning at any time.
9. All documents related to communications between Plaintiff and Liberty Capital at any time.
10. Any and all documents you have reviewed in preparation for your deposition.

Ms. Norris did not bring a single document responsive to the above requests, despite her clear duty to so under the Ohio Rules of Civil Procedure. Ms. Norris gave several different (but all unjustified) reasons for not complying with the document request:

1. She simply "didn't remember to bring them." Ms. Norris testified:

Q. So you've seen [the *duces tecum* requests]?
A. Uh-huh.
Q. Did you bring any documents responsive to these requests?
A. No.
Q. Why not?
A. I just didn't remember to bring them. *Norris deposition* at p. 168.
2. She "didn't have time to go the bank to get them" in the 30 days she had notice. *Norris deposition* at p. 168. (And the request for these documents was actually 95 days before the deposition given the date Requests for Production of Documents were served on her).

Peter Pattakos, Esq.
April 13, 2019
Page 5

3. She did not even take the time to look for emails with Liberty Capital (or Oasis for that matter) because she "didn't think I would have any." *Norris deposition* at p. 170.

Q. Did you look in your email for those?

A. No.

Q. Why not?

A. Because I didn't think I would have any emails from Liberty Capital.
Norris deposition at p. 170.

Of course, in addition to the *duces tecum* request, the Defendants served Requests for Production of Documents on Ms. Norris on October 25, 2018. That is, 95 days before Ms. Norris's deposition. Most, if not all, of the documents requested in the *duces tecum* were also requested in the Requests for Production of documents. Thus, not having sufficient time to obtain the documents was obviously not a valid excuse.

At any rate, the Defendants have a right to question Ms. Norris re: these documents, and Defendants were unable to do so at her deposition because of the failure to comply with written discovery and the *duces tecum*.

III. DEFENDANTS HAVE SENT NUMEROUS REQUESTS FOR MS. NORRIS'S DEPOSITION

At deposition, you agreed to produce Ms. Norris for her continuation deposition:

If you need to resume this deposition prior to class certification briefing, we can try to reschedule. We can work with Ms. Norris. (*Norris deposition* at p. 286).

We have followed up with you dozens of times to obtain such a date. In addition to the numerous verbal requests for a mutually convenient date to complete Ms. Norris's deposition, we have also sent numerous written requests. Despite these requests, you have refused to provide a single proposed date for Ms. Norris's deposition. Some, but not all, of Defendants' counsel's written email requests to you for a deposition date are listed below:

- A. February 5, 2019, at 6:27 p.m.:

We need to finish Monique [Norris] and Thera [Reid]. As you know, Monique is class rep in 4 classes. We did not finish. ... With Monique, we would agree to limit to 3 hours.

Peter Pattakos, Esq.
April 13, 2019
Page 6

B. February 13, 2019, at 10:39 a.m.:

The deposition of Ms. Norris was not concluded, as Mr. Pattakos stopped it at approximately 6 p.m. Please provide some proposed [d]ates for this to be continued. ... If you refuse to produce .. Ms. Norris .. please at least produce dates – and we can address it with the Court.

C. February 13, 2019, at 12:20 p.m.:

You STILL haven't provided dates for these witnesses. ... We are not asking to re-open Monique's deposition, we are asking to continue her deposition, as it has never been closed out. Please provide dates.

D. February 13, 2019, at 2:08 p.m.:

We did not finish Ms. Norris. You state we had to leave. So, she started late due to no fault of ours and you ended the deposition before we were done. We have multiple issues that were not yet fully addressed with Ms. Norris. If the deposition was closed, we would have to give you those topics. The deposition was left open, however, and we have no such obligation. Are you refusing to produce her?

E. February 19, 2019, at 5:08 p.m.:

Why don't we use Thursday for Norris and Halsey then? [following your cancellation of Paul Steele's deposition].

F. February 22, 2019, at 8:30 a.m.:

Please provide dates for ... Norris ... as we have requested just as often or more [as you requested deposition dates].

G. February 23, 2019, at 7:26 p.m.:

You did not respond to the verification page from of Nor[ri]s, which you promised almost a month ago and that was due many months ago. I did not see propose[d] dates for the witnesses either.

Peter Pattakos, Esq.
April 13, 2019
Page 7

H. February 24, 2019, at 9:01 a.m.:

Are you providing a date for us to finish Norris's deposition?

I. February 26, 2019, at 9:12 a.m.:

Please respond. [To request for dates for Norris, et al.]

J. February 26, 2019, at 9:15 a.m.:

[W]ould you take a few moments to respond to questions we have been asking for a long time. Some of these are rather simple - verification pages, simple confirmation on whether you will produce something to avoid court intervention, etc. [attaching request: Are you providing a date for us to finish Norris's deposition?]

K. February 28, 2019, at 9:24 a.m.:

So, we have 1 witness outstanding and you have multiple. ... You, however, certainly control Norris, ... You owe us dates for at least 6 depositions. You have provided ZERO dates. ... Please provide some proposed dates for your witnesses. Even if you are going to file a MPO on Norris.. at least provide proposed dates.

L. March 12, 2019, at 9:12 a.m.:

If you don't give us dates for Norris... then we will also have "no choice" (as you put it), to file a Motion to Compel and/or just Notice them and/or just subpoena them.

M. March 30, 2019, at 11:06 a.m.:

When are we getting dates for .. Thera Reid, Monique Norris.. continuation depositions. You have utterly refused to provide dates. ... We are okay with taking the Plaintiffs' continuation depositions after April 15th [if Pattakos' and the witness's schedules did not permit beforehand], as those depositions should not impact your May 1st deadline. We've been asking for these for many months.

Peter Pattakos, Esq.
April 13, 2019
Page 8

IV. PLAINTIFF NORRIS FAILED TO COMPLY WITH TWO VALID NOTICES OF DEPOSITION

Plaintiff Monique Norris's refusal to continue her deposition "day to day" in January, 2019, and her continued refusal to appear for the completion of her deposition outright violate the duties created by the original Notice of Deposition *Duces Tecum* and the Amended Notice of Deposition *Duces Tecum*.

Plaintiff Monique Norris's failure to appear yesterday for deposition was also a failure to comply with the more recent Notice of Deposition served on her to appear on April 12, 2019, for the completion of her deposition.

You never filed a Motion for Protective Order on any of the above 3 Notices of Deposition. No legal basis exists for your client to ignore these Notices and refuse to appear for the completion of her deposition. All other parties were present, as counsel for the KNR Defendants, Dr. Ghoumbria, and Dr. Floros appeared for the deposition. You and your client did not appear for the deposition.

V. PLAINTIFF'S COUNSEL'S UNILATERAL LIMITATIONS ON CONTINUATION DEPOSITION ARE NOT ACCEPTED

On April 10, 2019, you indicated Ms. Norris "would consider answering a limited set of written deposition questions (20 or so) but I have advised her there is no need for her to reappear [for deposition]." Of course, your advice is mistaken. The need for her to appear for the completion of her deposition was created by the Ohio Rules of Civil Procedure, which imposes an obligation on her to attend, given the Notice of Deposition *Duces Tecum* and Amended Notice of Deposition *Duces Tecum* for January 28, 2019, and the subsequent Notice of Deposition for April 12, 2019,

On April 11, 2019, you indicated you "might be able to negotiate [60 minutes over the phone] with Ms. Norris" for this coming Friday, April 19, 2019. We are available to complete Ms. Norris's deposition on that date, but we will not agree to a telephonic deposition. It must be in person. We also do not agree to a 60-minute limitation.

If you are willing to produce Ms. Norris for deposition in person on April 19, 2019, we will agree to a 2-hour limitation (minus speaking objections or breaks), assuming she answers the questions forthright. If we seek court intervention, we will not agree to a 2-hour limitation. Your client is a putative class representative in 4 classes. We have the right to depose her on all issues. We also have a right to depose her on her answers to contention interrogatories and on her bank records, emails with Liberty Capital and Oasis, and other documents not produced at her deposition. (The

LEWIS BRISBOIS BISGAARD & SMITH LLP

www.lewisbrisbois.com

Peter Pattakos, Esq.
April 13, 2019
Page 9

tax records can be dealt with after class certification; we are not pushing for those records before class certification).

We look forward to you and your client hopefully reconsidering your unreasonable position and agreeing to appear in person, at a mutually convenient time, to complete Ms. Norris's deposition.

Very truly yours,

/s/ Thomas P. Mannion

Thomas P. Mannion of
LEWIS BRISBOIS BISGAARD & SMITH LLP

cc: Joshua R. Cohen, Esq.
James Popson, Esq.
Bradley Barmen, Esq.
David M. Best, Esq.
Shaun Kedir, Esq.
Nathan Studeny, Esq.
Rachel Hazelet, Esq.

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Monday, April 15, 2019 5:26 PM
To: Mannion, Tom
Subject: [EXT] Re: Norris v KNR; deficiencies in discovery and duces tecum responses

External Email

I've conferred with Ms. Norris on these issues and can report as follows:

1) Request for bank records re: Liberty Capital deposit - Ms. Norris checked with Huntington (the bank she was using at the time) and they don't keep records back to 2013 so she cannot access them. In any event, there is no dispute that Ms. Norris paid \$300 in interest from her settlement on a \$500 Liberty Capital loan which are the only salient facts from her that pertain to class certification.

2) "Identity of known community drug dealers" - Ms. Norris isn't going to put herself at risk by identifying these drug dealers and it's rather ridiculous for you to ask her to.

3) Documents Plaintiff reviewed to prepare for deposition - Tom, you are well aware that the only such documents were 1) a copy of the complaint and 2) notes of my advice that I typed up for her, which are protected by the attorney-client privilege. .

4) Prescription and/or release re: prescription - If you want Ms. Norris to sign a release to obtain this prescription, please send her one and she'll sign it. Again, this is not relevant to class-certification, though, because it doesn't matter whether Ghoubril or Gunning treated her as Ghoubril would be responsible for the fraudulent charges in any event.

5) Dates for trips to Michigan - Ms. Norris travels to Michigan with her family at least a dozen times per year, as she has a lot of relatives there, including her fiancée's parents and childrens' grandparents. She is unable to recall specific dates for this trip and doesn't have any documents that would allow her to do so.

6) Verification pages - I will get those executed for you the next time I see Ms. Norris, which will be in advance of the class-certification deadline.

7) Emails - Ms. Norris searched her accounts and does not have any correspondence relating to KNR, Liberty Capital, or Oasis in them.

This is everything covered in your letter. Please let me know if you have any further questions.

6)

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com



This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Sat, Apr 13, 2019 at 6:50 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter, Josh, and Rachel:

Please see the attached re: Ms. Norris's failure to provide discovery. Please call if you want to avoid court intervention. We are willing to be reasonable if you are.

Tom



Thomas P. Mannion

Attorney | Cleveland Managing Partner

Tom.Mannion@lewisbrisbois.com

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

My name is Monique Norris and I reside at 1362 Doty Dr, Akron, OH 44306. I am entering into this non-recourse civil litigation advance agreement ("Agreement") with Liberty Capital Funding LLC ("Company") as of 10/30/2013.

1. I accept the sum of \$500.00 from Company. I direct the funds to be distributed as follows: \$500.00 payable to Monique Norris.
2. I assign to Company an interest in the proceeds from my Legal Claim (defined below) equal to the funded amount of \$500.00 plus all other fees and costs to be paid out of the proceeds of my legal claim. I understand that the amount I owe at the end of the first six month interval shall be based upon the amount funded plus the displayed annual percentage rate of return (APRR) charge plus the below listed fees. Each six month interval thereafter shall be computed by taking prior six month balance owed and accessing the displayed six month APRR charge to that total (semi-annual compounding) plus the below listed fees. This shall continue for thirty-six months or until the full amount has been repaid.

MANDATORY DISCLOSURE STATEMENT

2. Total amount of funding received by consumer \$500.00

3. Itemized fees:

Processing	\$50.00
Delivery	\$75.00
Fee Total:	\$125.00

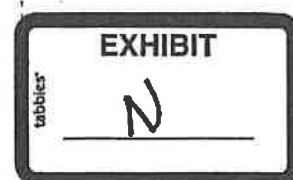
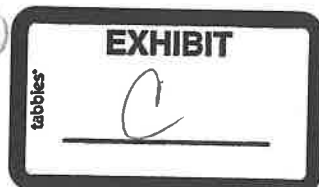
4. Total amount to be repaid by consumer - (plus itemized fees)
*(you will actually pay 24.5% based upon a 49.00% APRR with semi-annual compounding)

if at 6 months: Must be paid by 4/30/2014	\$778.13
if at 12 months: Must be paid by 10/30/2014	\$968.77
if at 18 months: Must be paid by 4/30/2015	\$1,206.11
if at 24 months: Must be paid by 10/30/2015	\$1,501.61
if at 30 months: Must be paid by 4/30/2016	\$1,869.51
if at 36 months: Must be paid by 10/30/2016	\$2,327.53

*The "if at 6 months" payment means any payment I make between the day after I get the money and 6 months from that date. The "if at 12 months" payment means any payment I make between the 6 months date and the 12 month date. This is how all the payment dates are calculated.

Seller Initials

MN
MN



1

Sandra Kurt, Summit County Clerk of Courts

Sandra Kurt, Summit County Clerk of Courts

DEFINITIONS

3. "Customer or Seller" is *Monique Norris* who receives the money.

4. "Company or LCF" is Liberty Capital Funding LLC, Liberty Capital Funding LLC who gives the money.

5. "Legal Claim" means (a) the matter which occurred on or about 7/29/2013 which is captioned Monique Norris ; (b) all applicable proceedings, proceedings on appeal or remand, enforcement, ancillary, parallel, or alternative dispute resolution proceedings and processes arising out of or relating to such case; (c) any other proceedings founded on the underlying facts giving rise to such case in which Customer is a party; and (d) any arrangements made with Customer with another party to such case which resolves any of the Customer's claims against such party.

6. "Proceeds" means all property or things of value payable on account of the Legal Claim including, without limitation, cash, negotiable instruments, contract rights, annuities and securities whether obtained by judgment, settlement, arbitration award or otherwise. Without limitation, "Proceeds" shall include a reasonable estimate of the monetary value of all non-cash benefits receivable by Customer on account of the Legal Claim.

OBLIGATION TO REPAY IS CONTINGENT

7. If my Legal Claim is lost and no money is awarded or owed to me then I do not have to repay any money to Company. If I am successful on my Legal Claim and I am awarded or owed money, Company shall receive its money before I receive any remaining monies.

FEES AND COSTS

8. I agree to pay the entire amounts listed on the schedule on page 1. I understand that all fees and costs will be added to the APRR sums that I pay company out of the proceeds of my legal claim.

9. The annual percentage rate of return (APRR) is charged starting from the date of this Agreement until the first date of the scheduled payment period(s) listed on page 1. So for example if you make a payment in month 5, you shall pay the full amount owed listed in "if at 6 months" and so on.

10. In the case of multiple fundings, each funding will be treated as a separate and independent transaction and these fees shall accrue on each funded sum from the date of each individual funding.

Seller Initials *LN*
MN

ASSIGNMENT OF PROCEEDS

11. I hereby assign to and grant to Company an assignment, lien and security interest in the proceeds of the Legal Claim in the amount listed on the last line of the Mandatory Disclosure Statement (\$2,327.53), which is the amount I would be required to repay after 36 months from today. Nonetheless, I will pay Company the amount that is due at the time of payment, which shall fully satisfy my obligation to Company under this Agreement, whether that amount is lower or higher than \$2,327.53.

12. If this assignment and / or lien violates any law, then I agree to pay Company all of the funds due under this Agreement immediately upon the payment of the Legal Claim proceeds as a separate and independent contractual obligation.

13. I direct my attorney, and any future attorney representing me in my Legal Claim, to honor this assignment and/ or lien.

14. The amount due under this Agreement shall be deducted from any money collected as a result of my Legal Claim and will be paid immediately upon collection to Company. The only payments that will take priority over this, and be paid first, are my attorney's fees and costs, legitimate medical liens and payment to any statutory lien holders.

15. I will not receive any money from the proceeds of the Legal Claim until Company has been paid in full. I acknowledge that my receipt or use of any funds prior to the full re-payment to Company may constitute an illegal conversion.

REPRESENTATIONS AND WARNINGS

16. Company has explained to me that the cost of this transaction may be more expensive than traditional funding sources such as a bank, credit card, finance company or obtaining money from a friend or relatives.

17. I acknowledge that my attorney has not offered any tax or financial advice. My attorney has made no recommendations regarding this transaction other than the appropriate statutory disclosures.

18. Company has advised me to consult a lawyer of my own choosing before signing this Agreement. I have either received such legal advice or knowingly choose not to.

19. Company has advised me to consult a financial or tax professional of my own choosing before proceeding with this transaction. I have either received such professional advice or knowingly choose not to.

20. Because Company is taking a significant and genuine risk in giving me this funding, I understand that they expect to make a profit. However, Company will be paid only from the proceeds of my Legal Claim, and agrees not to seek money from me directly if my Legal Claim is not successful.

Seller Initials MN

21. I have every intension of pursuing my legal claim to its conclusion. I understand that if I decide not to pursue the Legal Claim, I must notify Company by writing, email or fax within FIVE (5) BUSINESS DAYS of that decision.

22. I agree that I will not knowingly create additional assignments of or liens against the proceeds of the Legal Claim without the prior written consent of Company except for those liens or assignments that naturally arise during the prosecution of any Legal Claim (e.g. medical, Medicare, etc as permitted by law). I specifically promise not to create any assignments and / or liens against the proceeds of the Legal Claim in connection with any additional fundings or loans from other companies or persons that I might receive after the date of this Agreement. Any additional unauthorized funding may be deemed a default under this agreement by Company and may result in all sums becoming immediately due and owing. Upon notification of customers desire to seek additional funding, Company may demand the name of such other funding company and seek to offer a lower cost solution to customer; seek to be "bought out" of its position; do nothing but maintain its position and await the conclusion of the legal claim.

23. Company reserves the right to decline any further advances agreed upon but not yet made under this Agreement if, in the sole discretion of Company, the circumstances of the Legal Claim have adversely changed. This shall not affect my obligations to Company regarding any funds that actually were advanced, including but not limited to fees and charges.

OTHER PROVISIONS

24. **THE COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM.**

25. I understand that I am not assigning my cause of action (the Legal Claim) to Company, but rather I am assigning a right to a portion of and granting a lien against any proceeds of my Legal Claim. Company will play no role whatsoever in the prosecution or the settlement of my legal claim.

26. I have instructed my attorney to cooperate with Company and to give Company periodic updates of the status of my Legal Claim as Company requests. I consent to the sharing of this information. If I change attorneys, I will notify Company within 48 hours of the change, and provide Company with the name, address and phone number of my new attorney.

27. I understand that the risk of me not recovering in my Legal Claim is Company's risk. If I do not recover money, I will owe Company nothing.

28. This is a non-recourse funding and is not a loan, but if a Court of competent jurisdiction determines that it is a loan, then I agree that interest shall accrue at the maximum rate permitted by law or the terms of this agreement, whichever is less.

Seller Initials

MM
MM

29. If any provision of this Agreement shall be deemed invalid or unenforceable, it shall not affect the validity or enforceability of any other provision. This written Agreement represents the entire agreement between the parties. It may only be modified in writing. No prior understandings, representations or agreements between us can change the written terms of this Agreement.

30. Company has fully explained to me the contents of this Agreement and all of its principal terms, and answered all questions that I had about this transaction. This was done in English or French or Spanish (*when appropriate*), the language I speak best.

31. Company will send any notices required under this Agreement to me at the address listed above, *and to my attorney, at the address listed in this paragraph*: If I move, I will notify Company of my new address within 72 hours.

Rob Horton
3412 West Market St.
Akron, Ohio 44333

32. I represent to Company that there are no pending tax claims, child support liens, criminal allegation(s) or charge(s) against me.

33. If there is a dispute as to the amount owed at the time that my Legal Claim is resolved, it is expressly understood that my attorney shall not disburse any proceeds to me, or to anyone else on my behalf, except for the fees and/or actual disbursements incurred by my attorney in connection with the prosecution of my Legal Claim, until such dispute is resolved. I hereby make the foregoing an irrevocable direction to my attorney, or his successors. Additionally, my attorney shall keep the proceeds in his or her client trust account while any dispute is pending. If this dispute continues beyond a 120 day period, my attorney may elect to transfer the funds from his or her client trust account and deposit the proceeds with a court of competent jurisdiction.

34. I consent to my credit report being run at any time in connection with my applying for and receiving this funding.

35. I further instruct my attorney to not attempt to assert any type of "equitable fund" or attorney's fees or costs to be paid by Company for my attorney's efforts to pay Company their proceeds.

MISSTATEMENTS, FRAUD, CRIMINAL ACTS

36. I will be liable to Company for all sums advanced, together with outstanding fees and charges, and regardless of the outcome of my Legal Claim, if and only if I make a material misstatement in this application or in connection with my Legal Claim, or commit a fraudulent or criminal act either in connection with this transaction or in a matter that would adversely and significantly impact on my Legal Claim or the ability of Company to recover from the proceeds under this agreement.

Seller Initials

[Signature]
MN

CONSUMER'S RIGHT TO CANCELLATION:

37. YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE (5) BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM COMPANY.

To cancel this agreement you must either return to the company the full amount of disbursed funds by delivering the company's uncashed check to the company's offices in person, within five business days of the disbursement of funds, or mail a notice of cancellation and include in that mailing a return of the full amount of the disbursed funds in the form of the company's uncashed check, or a registered or certified check or money order, by insured, registered or certified United States mail, postmarked within five business days of receiving funds from the company, at the address specified in the contract for the cancellation.

CHOICE OF LAW, VENUE AND FEES/COSTS FOR DISPUTE RESOLUTION

38. I agree that any disputes that may arise out of this Agreement shall be adjudicated in Florida. This Agreement will be interpreted in accordance with the laws of the State of Florida.

39. I understand that if Company does not receive payment as required by this Agreement and Company needs to take action to pursue such payment, Company may collect, in addition to the amount due and owing, reasonable attorney's fees and costs incurred in enforcing its rights. I agree that an amount equal to one third (33 1/3%) of the amount due and owing is a reasonable attorney's fee. More generally, I and Company agree that the prevailing party in any legal action arising out of this Agreement shall be entitled to reasonable attorney's fees and costs, and one-third (33_%) of the sum at issue is a reasonable attorney's fee. Additionally, either party may demand that such dispute be heard under the rules of the American Arbitration Association before a single arbitrator with his or her decision being considered final and non-appealable by either party.

40. I understand that if a dispute arises between myself and the company concerning this agreement, that the responsibilities of my attorney, representing me in my legal claim, shall not be any greater than my attorneys responsibilities under the Florida Rules of Professional Conduct.

Seller Initials MM

INSTRUCTIONS

41. This Agreement may be executed in separate counterparts. A signature transmitted by FAX or Email shall be effective with the same force and effect as an original signature.

42. I will instruct my attorney to mail all payments to:

Liberty Capital Funding LLC
8276 Calabria Lakes Dr.
Boynton Beach, FL 33473

The payment instructions set forth herein are irrevocable and are not subject to modification in any manner, except by Company or any successor to Company so identified by them and only by written notice to me canceling or modifying the payment instructions contained herein. A copy of this contract shall be provided to both me and my attorney. I hereby accept funding from Company under the terms of this Agreement, grant Company a Security Interest and Lien under the terms hereof, and assign the proceeds of my Legal Claim as specified in this Agreement on 10/30/2013.

DO NOT SIGN THIS CONTRACT BEFORE YOU HAVE READ IT COMPLETELY, OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.


Seller (Oct 30, 2013)

Seller Initials 

ATTORNEY ACKNOWLEDGMENT OF ASSIGNMENT OF PROCEEDS OF CLAIM

I, Rob Horton of Kisling, Nestico & Redick, am counsel to Monique Norris in the Legal Claim which arose on or about 7/29/2013 in which Monique Norris is expected to receive proceeds from its resolution. I hereby acknowledge the assignment and/or placement of a lien upon the proceeds of the above Legal Claim by my client and granted to Liberty Capital Funding LLC pursuant to a Funding Agreement between both parties. I understand that I am instructed to follow Monique Norris's Irrevocable direction and authorization to pay such sums that shall be due and owing at the time of the resolution of the above Legal Claim. At such time that the above Legal Claim is ready for disbursement, I shall contact the above Company for a proper pay-off amount I shall at disbursement time send said check made payable to Liberty Capital Funding LLC located at 8276 Calabria Lakes Dr. Boynton Beach, FL 33473.

If any dispute arises over the amount owed LCF, it is expressly understood that I shall pay LCF the non-disputed amount owed by Monique Norris. I shall not disburse any proceeds to Monique Norris or to anyone else on Monique Norris's behalf, except for my attorney's fees (not to exceed 40%) and/or actual disbursements incurred by me in connection with the prosecution of this Legal Claim, until such dispute is resolved. I shall keep the proceeds in my client trust account while any dispute is pending. If the dispute continues beyond 120 days, I may notify LCF and Monique Norris and then transfer the funds from my client trust account and deposit the proceeds with a court of competent jurisdiction. I am being paid per a written contingent fee agreement and all proceeds of the civil claim or action will be disbursed via my client trust account or settlement fund established to receive proceeds from the defendant on behalf of Monique Norris. I further represent that to the best of my knowledge Monique Norris has **NOT** taken any other fundings, advances, loans or any funding encumbrances on the above Legal Claim other than LCF herein. I agree to notify LCF if at any time I am no longer counsel on this Legal Claim, or I have joined additional co-counsel to also work on this Legal Claim. While I am not endorsing or recommending this transaction, I have reviewed the contract and all costs and fees have been disclosed to my client, including the annualized rate of return applied to calculate the amount to be repaid by my client. This document is part of the contract between Customer and Company.

Dated: 10/30/2013

Kisling, Nestico & Redick

By: Robert P. Horton, Esq.
Attorney SignatureSeller Initials LN
LN

CV-2016-09-3928

MICHAEL, KATHRYN

04/15/2019 20:47:54 PM

DPEL

Page 166 of 168

From: Rob Horton
Sent: Wednesday, October 30, 2013 2:36 PM
To: Jenna
Subject: FW: Monique Norris Contract (between RObert P. Horton, Esq., monique Norris and Ciro Cerrato) is Signed and Filed!
Attachments: Monique Norris Contract - signed.pdf

Regards,



Robert P. Horton

Kisling, Nestico & Redick

Attorney At Law

3412 W. Market St., Akron, Ohio 44333

Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati,
Columbus, Dayton, Toledo & Youngstown



From: Ciro Cerrato [mailto:echosign@echosign.com]

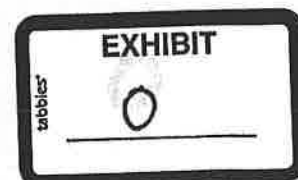
Sent: Wednesday, October 30, 2013 3:36 PM

To: Rob Horton; monique Norris

Subject: Monique Norris Contract (between RObert P. Horton, Esq., monique Norris and Ciro Cerrato) is Signed and Filed!

 Adobe® EchoSign®

	
---	--



My name is Monique Norris and I reside at 1302 Oak Dr, Akron, OH 44306. I am hereby signing this document as the authorized signatory of Liberty Capital Funding, LLC (Company) as of 12/29/2018.

1. I agree that the sum of \$100.00 from Company I agree to be deducted as follows: \$100.00 per year to Monique Norris.

2. I agree to Company an amount to the proceeds from my Legal Claims (Monique Norris) equal to the stated amount of \$100.00 plus all other fees and costs to the end of the year when it is legal claim is withdrawn and the amount I owe at the end of the first six months after that shall be paid upon the amount I owe plus the delayed annual percentage rate of 10% (APR) charge from the time I have been. Each six months interest rate shall be computed by using the sum of the interest rate and the delayed annual percentage rate of 10% (APR) charge to the end of the term of the agreement plus the sum of the interest rate. The total amount to be paid to me shall be the sum of the interest rate and the delayed annual percentage rate of 10% (APR) charge.

MONIQUE NORRIS'S STATEMENT

1. Total amount of money received by company: \$500.00

Item	Amount
Principal	\$500.00
Interest	\$175.00
Fee Total	\$675.00

2. Total amount to be repaid by company: (after interest fees)
Total to be repaid: \$675.00 (after interest fees) + 10% APR = \$742.50 (after interest fees)

Item	Amount
1st 6 months: \$100.00 paid by 12/29/2018	\$175.00
2nd 6 months: \$100.00 paid by 06/29/2019	\$175.00
3rd 6 months: \$100.00 paid by 12/29/2019	\$175.00
4th 6 months: \$100.00 paid by 06/29/2020	\$175.00
5th 6 months: \$100.00 paid by 12/29/2020	\$175.00
6th 6 months: \$100.00 paid by 06/29/2021	\$175.00

Monique Norris is hereby signing this document as the authorized signatory of Liberty Capital Funding, LLC (Company) as of 12/29/2018.

Monique Norris

Monique Norris Contract (between Robert P. Horton, Esq., monique Norris and Ciro Cerrato) is Signed and Filed!

From: **Ciro Cerrato** (Liberty Capital Funding)
To: **Robert P. Horton, Esq. and monique Norris**

Attached is a final copy of Monique Norris Contract.

Copies have been automatically sent to all parties to the agreement.

You can view a copy in your EchoSign account.

Why use EchoSign:

- Exchange, Sign, and File Any Document. In Seconds!
- Set-up Reminders. Instantly Share Copies with Others.
- See All of Your Documents, Anytime, Anywhere.

To ensure that you continue receiving our emails, please add echosign@echosign.com to your address book or safe list.









Monique Norris Contract

EchoSign Document History

October 30, 2013

Created:	October 30, 2013
By:	Ciro Cerrato (lcfunding1@gmail.com)
Status:	SIGNED
Transaction ID:	X24NCNB3JXF2N7F

"Monique Norris Contract" History

-  Document created by **Ciro Cerrato (lcfunding1@gmail.com)**
October 30, 2013 - 2:58 PM EDT - IP address: 70.148.8.222
-  Document emailed to **RObert P. Horton, Esq. (rhorton@knrlegal.com)** for signature
October 30, 2013 - 2:56 PM EDT
-  Document viewed by **RObert P. Horton, Esq. (rhorton@knrlegal.com)**
October 30, 2013 - 2:56 PM EDT - IP address: 198.24.120.66
-  Document signed by **RObert P. Horton, Esq. (rhorton@knrlegal.com)**
Signature Date: October 30, 2013 - 2:57 PM EDT - Time Source: server - IP address: 198.24.120.66
-  Document emailed to **monique Norris (ms.moniquemarie25@yahoo.com)** for signature
October 30, 2013 - 2:57 PM EDT
-  Document viewed by **monique Norris (ms.moniquemarie25@yahoo.com)**
October 30, 2013 - 3:01 PM EDT - IP address: 209.73.183.19
-  Document signed by **monique Norris (ms.moniquemarie25@yahoo.com)**
Signature Date: October 30, 2013 - 3:36 PM EDT - Time Source: server - IP address: 172.56.22.208
-  Signed document emailed to **Ciro Cerrato (lcfunding1@gmail.com)**, **monique Norris (ms.moniquemarie25@yahoo.com)** and **RObert P. Horton, Esq. (rhorton@knrlegal.com)**
October 30, 2013 - 3:36 PM EDT

 Adobe EchoSign