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E 2023. 00335. COA. R3. CV

TECHNICAL RECORD

VOLUME ONE (1) (PAGES 1-150)

CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE
LARRY L. HENRY, CLERK

FILED
JUL 26 2023
Clerk of the Appellate Courts
Rec'd by Kyle E. Hedrick

Judge of the Circuit Court
Division No. IV
(Order Entered 12.05.2022)

VOL 1
TECH-2

DOCKET NO. 22C429
CIRCUIT COURT

DOCKET NO. E2023-00335-COA-R3-CV
COURT OF APPEALS

FLEXIBILITY CAPITAL, INC. VS. *SABATINO CUPELLI*
DAVID JONATHAN TULIS D/B/A
HOT NEWS TALK RADIO (NOOGA RADIO)

Appellee's

Appellant

<p>CHEADLE LAW 2404 CRESTMOORE ROAD NASHVILLE, TN 37215 JOHN CHEADLE BPR# 6053 MARY BARNARD BPR# 27084 (615) 254-1009</p>	<p>SABATINO CUPELLI, PRO-SE 8665 SUMMIT PARKWAY APARTMENT 204 OOLTEWAH, TN 37363 (423) 458-5563</p> <p>DAVID JONATHAN TULIS, PRO-SE 10520 BRICKHILL LANE SODDY DAISY, TN 37379 (423) 316-2680</p>
---	---

Attorney for Appellee's

Attorney for Appellant

FILED THIS _____ DAY OF _____, 2023.

Overnight Commercial
Carrier
Date Sent JUN 30 2023
Carrier UPS

LARRY L. HENRY, CLERK
BY: [Signature]
DEPUTY CLERK

THIS TECHNICAL RECORD TRANSMITTED TO THE CLERK, COURT OF APPEALS
THIS 30 DAY OF JUNE, 2023.

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Plaintiff(s)

To Any Lawful Officer to Execute and Return: Summon SABATINO CUPELLI and DAVID JONATHAN TULIS dba HOT NEWS TALK RADIO (NOOGA RADIO)

vs.

SABATINO CUPELLI
DAVID JONATHAN TULIS dba HOT NEWS TALK RADIO (NOOGA RADIO)

Defendant(s)

Home: 5512 Ringgold Road, Suite 216
Chattanooga TN 37412
423216-3690

CIVIL SUMMONS

To appear before the General Sessions Court of HAMILTON County, Tennessee, to be held on OCTOBER 15, 2021, at 11:00 A.M., then and there to answer in a civil action brought by FLEXIBILITY CAPITAL, INC.

For suit on a sworn account, here to the Court shown, in the amount of \$21,061.38, this amount being past due and owing, plus reasonable attorney's fees of \$5,265.35, pursuant to the contract underlying the account, for a total of \$26,326.73, plus pre-judgment interest, court costs and private process server fees.

or \$ 25,000.00 Dollars.

Judgment for FLEXIBILITY CAPITAL against SABATINO CUPELLI + DAVID JONATHAN TULIS for \$ 24,999.99, plus interest at the rate of 12 % and cost of suit, for which execution may issue. Judgment entered by: Default Agreement Trial

JUDGMENT

Dismissed: Without prejudice With prejudice

Costs taxed to: Plaintiff Defendant

This the 29th day of MARCH, 2022

Defendant(s) S. CUPELLI + DAVID JONATHAN TULIS in court and admitted to jurisdiction of court.

OR

DEFENDANTS APPEARED AND CONSENTED TO ENTRY OF DEFAULT JUDGMENT.

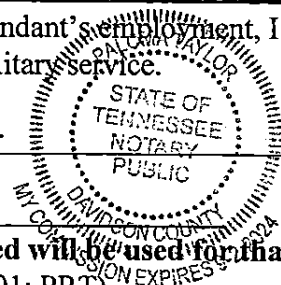
This the 29th day of MARCH, 2022.
[Signature], Judge

AFFIDAVIT

To the best of my information and belief, after investigation of Defendant's employment, I hereby make affidavit that the Defendant is/is not a member of a military service.

Attorney for Plaintiff or Plaintiff
July 21, 2021

Notary Public
My Comm. Exp.: 9-22-21



This is an attempt to collect a debt, and any information obtained will be used for that purpose. This communication is from a debt collector. (21001231; cw00.01; PRT)

CIVIL WARRANT
Court of General Sessions
MR. LARRY L. HENRY, CLERK
Deputy Clerk

Issued 8-4-21, 2021
Set for OCTOBER 15, 2021, at 11:00 A.M.
Reset for 1-18-22 @ 9 AM
3/29/22

Served Upon: All Named Defendants
 All Defendants Except:

SERVICE

8/16/21 served David Jonathan Tulis dba HOT NEWS TALK RADIO Chattanooga Radio
8/10/21 Sabatino Cupelli

Served _____, 20____
Sheriff/Constable (Process Server)

John R. Cheadle, Jr. (6053)
Attorney for Plaintiff
2404 Crestmoor Road
Nashville, Tennessee 37215
(615) 254-1009

Attorney for Defendant: _____
Telephone No.: _____

TO THE DEFENDANT(S):

NOTICE

Tennessee law provides a ten thousand dollar (\$10,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the

From the judgment on the reverse hereof, the Defendants prayed an appeal to the Circuit Court which is granted upon Pauper's Oath or Appeal Bond.

Cost of Appeal 139.25

Paid by Plaintiff 107.25

JUDGE [Signature]

DIVISION NO. IF

APPEAL

FILED IN OFFICE
2022 APR 13 AM 8:23
LARRIE HARRIS CLERK
BY MD

2022 APR 12 AM 10:34
MD

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Plaintiff(s)

3

To Any Lawful Officer to Execute and Return: Summon SABATINO CUPELLI and DAVID JONATHAN TULIS

vs.

#1: SABATINO CUPELLI
#2: DAVID JONATHAN TULIS

Defendant(s)

CIVIL SUMMONS

To appear before the General Sessions Court of HAMILTON County, Tennessee, to be held on AUGUST 27, 2021, at 10:00 A.M., then and there to answer in a civil action brought by FLEXIBILITY CAPITAL, INC.

For suit on a sworn account, here to the Court shown, in the amount of \$21,061.38, this amount being past due and owing, plus reasonable attorney's fees of \$5,265.35, pursuant to the contract underlying the account, for a total of \$26,326.73, plus pre-judgment interest, court costs and private process server fees.

for \$ 25,000.00 Dollars.

FILED IN OFFICE
MAY 21 2021
LARRY L. HENRY, CLERK

#1: 6140 Lynn Road, Harrison TN 37341
423/458-5563

#2: 10520 Brickhill Lane
Soddy Daisy, TN 37379 423/216-3690

9300 Dayton Murphy 316-2680

Carden

CIVIL WARRANT

Court of General Sessions

MR. LARRY L. HENRY, CLERK

By [Signature] Deputy Clerk

Issued 521, 2021

Set for AUGUST 27, 2021, at 10:00 A.M.

Reset for _____

Judgment for _____ against _____
for \$ _____, plus interest at the rate of _____ % and cost of suit, for which execution may issue. Judgment entered by: Default Agreement Trial

Dismissed: Without prejudice With prejudice

Costs taxed to: Plaintiff Defendant

This the _____ day of _____, 20____

JUDGMENT

_____, Judge, Div. _____

Defendant(s) _____
in court and admitted to jurisdiction of court.

ORDINANCE

This the _____ day of _____, 20____

_____, Judge

AFFIDAVIT

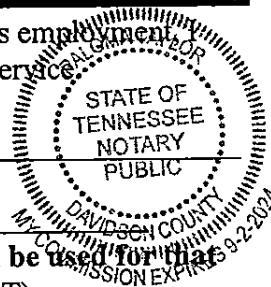
To the best of my information and belief, after investigation of Defendant's employment, hereby make affidavit that the Defendant is/is not a member of a military service.

[Signature]

Attorney for Plaintiff or Plaintiff
May 5, 2021

Notary Public

My Comm. Exp.: 9-2-21



SERVICE

Served Upon: All Named Defendants

All Defendants Except:

5/27/21 David Jonathan Tulis
*5-21-21 Search made Dept
SABATINO CUPELLI not found

Served _____, 20____

[Signature]
Sheriff/Constable (Process Server)

John R. Cheadle, Jr. (6053)

*Attorney for Plaintiff

2404 Crestmoor Road

Nashville, Tennessee 37215

(615) 254-1008

Attorney for Defendant: John Carden

Telephone No.: 12821 Old Dayton PK (423) 432-4301

This is an attempt to collect a debt, and any information obtained will be used for that purpose. This communication is from a debt collector. (21001231; cw00.01; PRT)

634122

TO THE DEFENDANT(S):

NOTICE

Tennessee law provides a ten thousand dollar (\$10,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you should have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

BY _____
DC

LARRY L. HENRY, CLERK

2021 MAY 28 AM 9:42

FILED IN OFFICE

IN THE GENERAL SESSIONS COURT OF HAMILTON COUNTY, TENNESSEE

2022 APR -8 PM 12: 02

Flexibility Capital

GENERAL SESSIONS
CASE NO.

21GS3471

mc
PLAINTIFF(S)

VS.

CIRCUIT CASE NO. _____

Sabatino Cupelli

David J. Tulis

DEFENDANT(S)

NOTICE OF APPEAL

The Appellant(s), being the Defendants in the above captioned case does hereby
(Plaintiff(s) or Defendant(s))
give notice that I We desire to appeal the decision rendered in this General Sessions case.

APPELLANT (No Attorney Representation)

APPELLANT (With Attorney Representation)

[Signature]

Appellant (signature)

8665 Summit Peakway Apt

Appellant Street Address

Ooltewah, TN 37363

Appellant City, State, Zip

423-458-5863

Appellant Phone

3-29

, 20 22

Date

Appellant (print)

By Attorney (signature)

BPR Number

Attorney Street Address

Attorney City, State, Zip

Attorney Phone _____

Date

, 20

David Tulis
10520 Pritchill Ln
Soddy-Daisy TN 37379
(423) 316 2600

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FILED IN OFFICE
2022 MAY 16 AM 9:43
LARRY L. JENNY, CLERK
BY MP DC

FLEXIBILITY CAPITAL, INC.)
)
Plaintiff,)
)
VS.) NO. 22C429
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS, d/b/a) IV
D/B/A HOT NEWS TALK RADIO)
)
Defendants.)

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Comes the plaintiff, Flexibility Capital, Inc, by and through counsel, John R. Cheadle, Jr. and Mary Barnard Cheadle, and moves the Court, pursuant to Rule 56, Tennessee Rules of Civil Procedure, for a summary judgment in favor of plaintiff, there being no genuine issue as to any material fact. Plaintiff is entitled to a judgment as a matter of law. This is a suit to recover the balance due on a future receivables sale and purchase agreement. Defendants borrowed money from plaintiff and failed to pay as promised. This is a straight-forward collection case to recover the balance due on a loan. Defendants do not offer any specific factual or legal defense to this suit for the recovery of the loan made by plaintiff to defendants. Plaintiff loaned defendants money. Defendants failed to pay the money back. The obligation is past due and payable. There are no set-offs or counter-claims.

Pursuant to Amended Rule 56.03, Tennessee Rules of Civil Procedure, the plaintiff has attached a statement of the material facts as to which plaintiff contends there is no genuine issue for trial. Also attached are plaintiff's brief in support of this

motion, plaintiff's affidavit and plaintiff's affidavit for attorney's fees.

DATED: May 12, 2022.

Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, Tennessee 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com
mcheadle@cheadlelaw.com

THIS MOTION IS EXPECTED TO BE HEARD ON JUNE 20, 2022, AT 9:00 A.M.
BY WEBEX. WEBEX ROOM NUMBER: 1337038497.

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, this 12th day of May, 2022.



JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector. (21001231)

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FILED IN OFFICE
2022 MAY 16 AM 9:44
LARRY L. HENRY, CLERK
BY MP DC

FLEXIBILITY CAPITAL, INC.)
)
Plaintiff,)
)
VS.) NO. 22C429
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS, d/b/a) IV
D/B/A HOT NEWS TALK RADIO)
)
Defendants.)

PLAINTIFF'S BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

In support of its motion for summary judgment, plaintiff, Flexibility Capital, Inc., would submit the following brief.

STATEMENT OF FACTS

Plaintiff has filed its suit herein to recover the balance due on a future receivables sale and purchase agreement.

On February 4, 2020, defendants applied for commercial funding. Attached as Exhibit 1 is a copy of the commercial funding application. On February 6, 2020, defendants executed a future receivables sale and purchase agreement with plaintiff. Attached as Exhibit 2 is a copy of the future receivables sale and purchase agreement. Plaintiff loaned defendants money. See Affidavit of Gina Monteforte. Defendants failed to pay as promised. Id. Attached as Exhibit 3 is an itemization of the obligation. The amount due plaintiff by defendants was \$21,061.38 as of August 5, 2020. Id. The agreement provides for the continuing accrual of interest and the payment by defendants of plaintiff's attorney's

fees of 25 percent of the balance due. See Exhibit 2.

This agreement is secured by a UCC-1 lien which encompasses: "As security for the payment of the Indemnified Amounts, Seller hereby grants to Flexibility a continuing lien and security interest in, and hereby assigns to Flexibility as collateral security, a first priority lien on all of Seller's tangible and intangible assets, whether now existing or hereinafter arising or acquired and wherever located and all proceeds of such assets (collectively, the 'Collateral')." A copy of the UCC-1 lien is attached as Exhibit 4. Defendants detain plaintiff's collateral and have declined to turn over possession of the collateral to plaintiff. See Affidavit of Gina Monteforte.

Plaintiff is entitled to a judgment as a matter of law. This is a suit to recover the balance due on a future receivables sale and purchase agreement. Defendants executed the agreement. Plaintiff loaned defendants money. Defendants failed to pay a promised. Payment has been demanded and refused. Defendants are justly indebted to plaintiff in the amount of \$21,061.38, plus pre-judgment interest from August 5, 2020, to date of judgment, plaintiff's attorney's fees of 25 percent of the balance due and court costs.

* *
ARGUMENT

Contractual interpretation is a matter of law. Hamblen Cnty. V. City of Morristown, 656 S.W.2d 331, 335-36 (Tenn. 1983). A court should grant a party's motion for summary judgment if the nonmoving party's evidence at the summary judgment stage is

insufficient to establish the existence of a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04; Rye v. Women's Care Center of Memphis (Tenn. 2015). If the motion for summary judgment is properly supported, then the burden shifts to the non-moving party to show that a genuine issue of material fact exists. Byrd, 847 S.W.2d at 215. At the summary judgment phase, "it is not the role of a trial or appellate court to weigh the evidence or substitute its judgment for that of the trier of fact." Martin v. Norfolk S. Ry. Co., 271 S.W.3d 76, 87 (Tenn. 2008) (citing Byrd, 847 S.W.2d at 211).

Summary judgment is appropriate when a party establishes that there is no genuine issue as to any material fact and that a judgment may be rendered as a matter of law. Tennessee Rules of Civil Procedure, 56.04; Stovall v. Clarke, 113 S.W.3d 715, 721 (Tenn. 2003). It is appropriate in virtually all civil cases that can be resolved on the basis of legal issues alone. Byrd v. Hall, 847 S.W.2d 208, 210 (Tenn. 1993); Pendleton v. Mills, 73 S.W.3d 115, 121 (Tenn.Ct.App. 2001).

T.C.A. § 20-16-101 provides:

In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:

1. Submits affirmative evidence that negates an essential element of the nonmoving party's claim; or
2. Demonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

This is a straight-forward collection case to recover the balance due on a future receivables sale and purchase agreement, to

which there is no legitimate defense. Plaintiff loan defendants money. Defendants failed to pay as promised. A balance remains due. There remains no genuine issue as to any material fact, and plaintiff is entitled to a judgment as a matter of law. Defendants have not set forth any valid legal or factual basis for not paying the amount owed to plaintiff.

CONCLUSION

Plaintiff, Flexibility Capital, Inc., respectfully requests that judgment be entered in favor of plaintiff and against defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a/ Hot News Talk Radio, in the amount of \$21,061.36, plus interest from August 5, 2020, to date of judgment, plaintiff's attorney's fees of 25 percent of the balance due and court costs.

DATED: May 12, 2022.

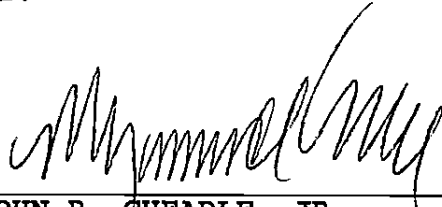
Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, Tennessee 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com
mcheadle@cheadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, this 12th day of May, 2022.



JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector. (21001231)



KAPITUS

Sales ID: _____

COMMERCIAL FUNDING APPLICATION

Please fill out the form in its entirety and return by email or fax.

By doing so, you are giving Kapitus and certain other entities permission to review your business and personal credit history.

Business Information	
Legal Business Name (Merchant): Hot News Talk Radio, LLC	Business DBA Name: NoogaRadio 92.7 FM - 95.3 HD 4
Address: 5512 Ringgold Rd., Suite 216	City, State Zip: Chattanooga, TN 37412
Phone: 423-800-8949, 423-300-6110	Fax:
Website: www.noogaradio.com	Email: Hotnewstalkradio@gmail.com
Entity: <input type="checkbox"/> Sole Prop <input checked="" type="checkbox"/> INC <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Partner <input type="checkbox"/> Other State: DEL	Federal Tax ID: _____
Industry Type (NAICS or description):	Business Start Date (current ownership): 05-17-2012
Business Location: <input type="checkbox"/> Home <input checked="" type="checkbox"/> Commercial Location	Business Description: Commercial FM Radio - 92.7 Fm - 95.3 HD 4
Financial Information	
Existing Funding Company? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Balance: \$28,000	Requested Funding Amount: \$50,000 - \$250,000
Funding Company Name: Direct Funding	Use of Funds: Hiring Sales Representatives
Gross Annual Sales (Previous year's Tax return): \$456,000.00	
Owner/Principal Information	
Owner 1 (Primary Credit Pull): Sabatino Cupelli	Owner 2: David Tulis
Address: 6140 Lynn Road	Address: 10520 Brickhill Lane
City, State Zip: Harrison, TN 37341	City, State Zip: Soddy-Daisy, TN 37379
Home Phone:	Home Phone:
Mobile: 423-458-5563	Mobile: 423-216-3690
Email: sabatinocupelli@gmail.com	Email: noogaradio@gmail.com
% of Ownership: 50	% of Ownership: 50
Date of Birth: 12-09-1957	Date of Birth: 06/08/1959
SSN#: _____	SSN#: _____
Property Information	
Property: <input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent	If owned, by who?
Landlord Name (if renting):	Landlord Contact Number (if renting):
Landlord Fax (if renting):	Landlord Email (if renting):

The Merchant and Owner(s) identified above (collectively, the "Applicant") each represent, acknowledge and agree that: (1) all information provided in connection with this application is true, accurate and complete; (2) Applicant will immediately notify Kapitus and/or its subsidiaries, affiliates or agents ("Kapitus") of any change in such information or in the Applicant's financial condition; (3) Applicant agrees that Kapitus may disclose all information and documents obtained, including credit reports (the "Application"), to financial institutions, lenders, loan servicers, purchasers of accounts receivable, factoring companies, equipment finance or leasing companies, or other similar sources of commercial financing for the purpose of considering the Applicant's request for financing; (4) Kapitus and other parties to whom the Application is provided are authorized to request and receive consumer or personal, and business or entity, credit reports from one or more credit bureaus, such as TransUnion, Experian or Equifax, investigative reports about the Applicant from third party data aggregators, and other financial information about Applicant, including credit card processor statements and bank statements, directly from credit bureaus, banks, creditors or other third parties; (5) Applicant waives and releases any claims against Kapitus or other parties to whom the Application is provided or who provide information arising from any act or omission relating to the requesting, receiving or release of information; and (6) each Owner represents that they are authorized to execute any documents on behalf of the Merchant and to bind the Merchant. Kapitus may, from time to time, notify Applicant of various promotional offers and other marketing information, or contact Applicant in connection with the servicing of any financing, or in connection with any default under any financing. Applicant expressly consents and authorizes Kapitus to call, e-mail, send text messages, and/or send other electronic messages (including prerecorded or artificial voice messages) using an automatic telephone dialing system to any telephone number provided by Applicant, and any telephone number included in any and all documents or forms submitted, including cellular phone numbers and landlines, regardless of their inclusion on any do not call list, for purposes of servicing, collections, marketing or promoting any product offered by Kapitus. Please note that you are not required to consent to be contacted for marketing or promotional purposes in order to qualify for financing or obtain any other products or services from Kapitus. If you do not agree to be called for marketing or promotional purposes please call (844) 547-9396 or email DNC@kapitus.com

DocuSigned by:

 Sabatino Cupelli
 Owner 1 Signature: _____
 Date: 2/4/2020

DocuSigned by:

 David Tulis
 Owner 2 Signature: _____
 Date: 2/4/2020



PO Box 23967 Chattanooga, TN 37422

HOT NEWS TALK RADIO LLC
5512 RINGGOLD ROAD
SUITE 216
CHATTANOOGA TN 37412

Statement Period
10/1/2019 - 10/31/2019

Account #
[REDACTED]



Statement Summary				
Deposit Accounts			Total Balance:	\$2,591.01
Account Type	Previous Balance	Deposits	Withdrawals	Ending Balance
SMALL BUSINESS CKG(SFX#10)	3,575.21	39,339.00	40,323.20	2,591.01
Loan Accounts			Total Balance:	\$12,054.62
Account Type	Previous Balance	Principal Pmt	Advances	Ending Balance
2005 HUMMER H2V8 103(SFX#01)	12,363.01	308.39	0.00	12,054.62

SMALL BUSINESS CKG (10)				PREVIOUS BALANCE:	\$3,575.21
Tran. Date	Eff. Date	Description	Amount	Balance	
					3,575.21
	10/01	PAYROLL DEDUCTION - S/E FINANCIAL	-290.04		3,285.17
	10/01	PAYROLL DEDUCTION - Funding Metrics	-176.04		3,109.13
	10/01	PAYROLL DEDUCTION - FORWARD FINANCIN	-26.75		3,082.38
	10/01	POS FROM SHARE - MAPCO 3660.6120 HIGHWAY 58 HARRISON TNUS	-38.35		3,044.03
	10/01	POS FROM SHARE - BASICTALK BASICTALK.COM NJUS	-16.38		3,027.65
	10/01	WIRE IN 36180645	18,905.00		21,932.65
	10/01	WIRE FEE 36180645	-10.00		21,922.65
	10/01	SHARE DEPOSIT	1,350.00		23,272.65
	10/01	TFR TO LOAN XXXXX3538-01	-384.60		22,888.05
	10/01	SHARE DRAFT # 2262	-600.00		22,288.05
	10/02	10/01 POS FROM SHARE - MURPHY7208ATWALMART SODDY DAISY TNUS	-35.00		22,253.05
	10/02	- Credit One Bank - Payment	-50.00		22,203.05
	10/02	PAYROLL DEDUCTION - Advantage Platfo	-204.41		21,998.64
	10/02	PAYROLL DEDUCTION - Funding Metrics	-176.04		21,822.60
	10/02	- CARDMEMBER SERV - WEB PYMT	-46.00		21,776.60
	10/02	SHARE DRAFT # 2263	-100.00		21,676.60
	10/02	SHARE DRAFT # 2193	-312.50		21,364.10
	10/02	SHARE DRAFT # 2268	-550.00		20,814.10
	10/02	SHARE DRAFT # 2192	-850.00		19,964.10
	10/02	SHARE DRAFT # 2194	-1,500.00		18,464.10

Tran. Date	Eff. Date	Description	Amount	Balance
			-6,365.33	12,098.77
	10/02	SHARE DRAFT # 2191		
10/03	10/01	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-49.23	12,049.54
10/03	10/01	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-51.73	11,997.81
10/03	10/02	POS FROM SHARE - VOLUNTEER ENERGY CO EBILL.VEC.ORG TNUS	-216.39	11,781.42
10/03	10/02	POS FROM SHARE - EPB 423-6481641 TNUS	-416.43	11,364.99
10/03		PAYROLL DEDUCTION - Advantage Platfo	-204.41	11,160.58
10/03		PAYROLL DEDUCTION - 338 HEIGHTS FINA	-67.00	11,093.58
10/03		PAYROLL DEDUCTION - Funding Metrics	-176.04	10,917.54
10/03		- CARDMEMBER SERV - WEB PYMT	-500.00	10,417.54
10/03	10/02	POS FROM SHARE - EAST RIDGE AUTO ALT CHATTANOOGA TNUS	-586.67	9,830.87
10/03		POS FROM SHARE - SPEEDWAY 07109 435 CHATTANOOGA TNUS	-57.04	9,773.83
10/03		SHARE DRAFT # 2325	-20.00	9,753.83
10/03		SHARE DRAFT # 906	-300.00	9,453.83
10/03		SHARE DRAFT # 1043	-300.00	9,153.83
10/03		SHARE DRAFT # 1044	-300.00	8,853.83
10/03		SHARE DRAFT # 1044	-500.00	8,353.83
10/03		SHARE DRAFT # 2324	-850.00	7,503.83
10/03		SHARE DRAFT # 1042		
10/04	10/03	POS FROM SHARE - WEB NETWORKSOLUTION 888-6429675 FLUS	-6.99	7,496.84
10/04		PAYROLL DEDUCTION - Straight Line So	-185.29	7,311.55
10/04		PAYROLL DEDUCTION - Advantage Platfo	-204.41	7,107.14
10/04	10/03	POS FROM SHARE - MURPHY7208ATWALMART SODDY DAISY TNUS	-40.00	7,067.14
10/04		SHARE DEPOSIT	100.00	7,167.14
10/04		- Credit One Bank - Payment	-40.00	7,127.14
10/04		PAYROLL DEDUCTION - Funding Metrics	-176.04	6,951.10
10/04		POS FROM SHARE - WM SUPERCENTER Wal-Mart Super Cent HIXON	-33.60	6,917.50
10/04		SHARE DRAFT # 2264	-200.00	6,717.50
10/04		SHARE DRAFT # 907	-211.75	6,505.75
10/04		SHARE DRAFT # 908	-300.00	6,205.75
10/04		SHARE DRAFT # 2321	-300.00	5,905.75
10/04		SHARE DRAFT # 2320	-385.00	5,520.75
10/04		SHARE DRAFT # 7	-495.00	5,025.75
10/07	10/03	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-20.00	5,005.75
10/07	10/04	POS FROM SHARE - MARSHAS BACKSTREET CHATTANOOGA TNUS	-33.84	4,971.91
10/07	10/04	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-43.00	4,928.91
10/07	10/05	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-30.00	4,898.91
10/07	10/05	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-6.00	4,892.91
10/07	10/05	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-40.00	4,852.91
10/07		PAYROLL DEDUCTION - Advantage Platfo	-204.41	4,648.50
10/07	10/05	POS FROM SHARE - ADVANCE AUTO PARTS SODDY DAISY TNUS	-18.55	4,629.95
10/07		PAYROLL DEDUCTION - Funding Metrics	-176.04	4,453.91
10/07		POS FROM SHARE - SPEEDWAY 07109 435 CHATTANOOGA TNUS	-49.65	4,404.26
10/07		SHARE DRAFT # 2323	-438.32	3,965.94
10/08	10/06	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-50.00	3,915.94
10/08		PAYROLL DEDUCTION - Advantage Platfo	-204.41	3,711.53
10/08		PAYROLL DEDUCTION - Funding Metrics	-176.04	3,535.49
10/09	10/08	POS FROM SHARE - WINTERS USA FUELS CHATTANOOGA TNUS	-40.00	3,495.49
10/09		PAYROLL DEDUCTION - Advantage Platfo	-204.41	3,291.08
10/09		PAYROLL DEDUCTION - Funding Metrics	-176.04	3,115.04
10/09		SHARE DEPOSIT	1,199.00	4,314.04



Statement Period
10/1/2019 - 10/31/2019

Account #
[REDACTED]

Tran. Date	Eff. Date	Description	Amount	Balance
10/10	10/08	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-49.52	4,264.52
	10/10	PAYROLL DEDUCTION - Advantage Platfo	-204.41	4,060.11
	10/10	PAYROLL DEDUCTION - Funding Metrics	-176.04	3,884.07
	10/10	SHARE DEPOSIT	1,200.00	5,084.07
	10/10	POS FROM SHARE - SPEEDWAY 07109.435 CHATTANOOGA TNUS	-51.72	5,032.35
	10/10	POS FROM SHARE - Wal-Mart Super 1606 WAL-SAMS HIXON TNUS	-22.71	5,009.64
	10/10	SHARE DRAFT # 2332	-300.00	4,709.64
	10/10	SHARE DRAFT # 2334	-305.00	4,404.64
	10/10	SHARE DRAFT # 2333	-385.00	4,019.64
	10/10	SHARE DRAFT # 2330	-730.00	3,289.64
	10/11	10/09 POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-50.00	3,239.64
	10/11	10/10 POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-24.00	3,215.64
	10/11	PAYROLL DEDUCTION - Advantage Platfo	-204.41	3,011.23
	10/11	10/10 POS FROM SHARE - MURPHY6727ATWALMART HIXSON TNUS	-30.00	2,981.23
	10/11	PAYROLL DEDUCTION - Funding Metrics	-176.04	2,805.19
	10/11	SHARE DEPOSIT	1,600.00	4,405.19
	10/11	SHARE DEPOSIT	200.00	4,605.19
	10/11	10/10 POS FROM SHARE - SAVANNAH VALLEY UTI 423-344-8440 TNUS	-66.82	4,538.37
	10/15	10/12 POS FROM SHARE - SPECTRUM 855-707-7328 MOUS	-214.04	4,324.33
	10/15	10/11 POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-199.57	4,124.76
	10/15	10/12 POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-89.52	4,035.24
	10/15	10/12 POS FROM SHARE - MIDAS AUTO SERVICE HIXSON TNUS	-394.51	3,640.73
	10/15	10/13 POS FROM SHARE - BASICTALK BASICTALK.COM TNUS	-16.28	3,624.45
	10/15	10/13 POS FROM SHARE - MURPHY7208ATWALMART SODDY DAISY TNUS	-32.02	3,592.43
	10/15	10/14 POS FROM SHARE - BASICTALK BASICTALK.COM TNUS	-16.28	3,576.15
	10/15	10/13 POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-30.00	3,546.15
	10/15	10/14 POS FROM SHARE - WEB*NETWORKSOLUTION 888-6429675 FLUS	-1.99	3,544.16
	10/15	PAYROLL DEDUCTION - Advantage Platfo	-204.41	3,339.75
	10/15	PAYROLL DEDUCTION - Funding Metrics	-176.04	3,163.71
	10/15	PAYROLL DEDUCTION - Funding Metrics	-176.04	2,987.67
	10/15	POS FROM SHARE - GEICO *AUTO 800-841-3000 DCUS	-265.08	2,722.59
	10/15	ATM DEPOSIT - TENNESSEE VALLE 4974 HIGHWAY 58 CHATTANOOGA	300.00	3,022.59
	10/15	ATM DEPOSIT - TENNESSEE VALLE 4974 HIGHWAY 58 CHATTANOOGA	500.00	3,522.59
	10/15	SHARE DRAFT # 1041	-300.00	3,222.59
	10/16	10/14 POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-20.00	3,202.59
	10/16	10/15 POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-40.00	3,162.59
	10/16	PAYROLL DEDUCTION - Advantage Platfo	-204.41	2,958.18
	10/16	PAYROLL DEDUCTION - Funding Metrics	-176.04	2,782.14
	10/16	SHARE DEPOSIT	400.00	3,182.14
	10/16	SHARE DRAFT # 2329	-54.63	3,127.51
	10/16	SHARE DRAFT # 2328	-300.00	2,827.51
	10/17	10/15 POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-19.31	2,808.20
	10/17	PAYROLL DEDUCTION - Advantage Platfo	-204.41	2,603.79
	10/17	10/15 POS FROM SHARE - ADVANCE AUTO PARTS SODDY DAISY TNUS	-29.49	2,574.30
	10/17	SHARE DEPOSIT	1,500.00	4,074.30
	10/17	PAYROLL DEDUCTION - Funding Metrics	-176.04	3,898.26
	10/17	SHARE DEPOSIT	400.00	4,298.26

Tran. Date	Eff. Date	Description	Amount	Balance
	10/17	SHARE DRAFT # 2337	-50.00	4,248.26
	10/17	SHARE DRAFT # 2339	-250.00	3,998.26
	10/17	SHARE DRAFT # 2342	-250.00	3,748.26
	10/17	SHARE DRAFT # 2338	-300.00	3,448.26
	10/17	SHARE DRAFT # 2340	-385.00	3,063.26
	10/17	SHARE DRAFT # 2341	-1,240.00	1,823.26
	10/17	ATM DEPOSIT - TENNESSEE VALLE 4974 HIGHWAY 58 CHATTANOOGA	85.00	1,908.26
	10/18	PAYROLL DEDUCTION - Advantage Platfo	-204.41	1,703.85
10/18	10/17	POS FROM SHARE - MURPHY7208ATWALMART SODDY DAISY TNUS	-35.00	1,668.85
	10/18	PAYROLL DEDUCTION - Funding Metrics	-176.04	1,492.81
10/18	10/18	POS FROM SHARE - WAL-MART #4692 4150 MONROE ST EAST RIDGE	-45.98	1,446.83
	10/18	SHARE DEPOSIT	1,000.00	2,446.83
10/18	10/18	POS FROM SHARE - T-MOBILE 5559 LITTL OOLTEWAH TNUS	-103.57	2,343.26
10/21	10/17	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-22.00	2,321.26
10/21	10/18	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-135.74	2,185.52
10/21	10/19	POS FROM SHARE - KANKUS #3 CHATTANOOGA TNUS	-20.00	2,165.52
10/21	10/20	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-10.00	2,155.52
10/21	10/20	POS FROM SHARE - BLUEBIRD.COM 877-486-5990 GAUS	-20.00	2,135.52
10/21	10/20	POS FROM SHARE - WEB*NETWORKSOLUTION 888-6429675 FLUS	-34.90	2,100.62
	10/21	PAYROLL DEDUCTION - Advantage Platfo	-204.41	1,896.21
	10/21	PAYROLL DEDUCTION - Funding Metrics	-176.04	1,720.17
	10/21	Western Union FI San Francisco CAUS	-56.99	1,663.18
10/21	10/21	SHARE DRAFT # 2335	-1,536.38	126.80
	10/22	INSUFFICIENT FUNDS - Advantage Platfo NSF	-204.41	126.80
	10/22	NSF FEE - Advantage Platfo	-34.00	92.80
	10/22	SHARE DEPOSIT	1,000.00	1,092.80
	10/22	PAYROLL DEDUCTION - Funding Metrics	-176.04	916.76
	10/22	SHARE DEPOSIT	1,000.00	1,916.76
	10/22	POS FROM SHARE - TST* BUD S SPORTS B CHATTANOOGA TNUS	-64.65	1,852.11
	10/22	SHARE DEPOSIT	335.00	2,187.11
10/23	10/22	POS FROM SHARE - EPB 423-6481372 TNUS	-330.98	1,856.13
	10/23	PAYROLL DEDUCTION - Advantage Platfo	-204.41	1,651.72
10/23	10/22	POS FROM SHARE - MURPHY7074ATWALMART CHATTANOOGA TNUS	-35.00	1,616.72
	10/23	PAYROLL DEDUCTION - Funding Metrics	-176.04	1,440.68
	10/23	SHARE DEPOSIT	1,000.00	2,440.68
	10/23	SHARE DEPOSIT	400.00	2,840.68
	10/23	POS FROM SHARE - SPEEDWAY 07109 435 CHATTANOOGA TNUS	-30.00	2,810.68
	10/23	SHARE DEPOSIT	1,000.00	3,810.68
	10/23	SHARE WITHDRAWAL	-20.00	3,790.68
	10/23	SHARE DRAFT # 2190	-300.00	3,490.68
	10/23	SHARE DRAFT # 2344	-606.00	2,884.68
	10/24	PAYROLL DEDUCTION - Advantage Platfo	-204.41	2,680.27
	10/24	PAYROLL DEDUCTION - Funding Metrics	-176.04	2,504.23
	10/24	POS FROM SHARE - MURPHY6727ATWAL 5716 HWY. 153 CHATTANOOG	-49.93	2,454.30
	10/24	POS FROM SHARE - TMOBILE*POSTPAID TE 800-937-8997 WAUS	-376.09	2,078.21
	10/24	SHARE DRAFT # 2360	-68.00	2,010.21
	10/24	SHARE DRAFT # 801	-100.00	1,910.21
	10/24	SHARE DRAFT # 802	-100.00	1,810.21
	10/24	SHARE DRAFT # 2345	-250.00	1,560.21



Statement Period
10/1/2019 - 10/31/2019

Account #
[REDACTED]

Tran. Date	Eff. Date	Description	Amount	Balance
10/24		SHARE DRAFT # 2348	-300.00	1,260.21
10/24		SHARE DRAFT # 2346	-385.00	875.21
10/24		SHARE DRAFT # 2347	-420.00	455.21
10/25		PAYROLL DEDUCTION - Advantage Platfo	-204.41	250.80
10/25		SHARE DEPOSIT	1,200.00	1,450.80
10/25		PAYROLL DEDUCTION - Funding Metrics	-176.04	1,274.76
10/25		SHARE DEPOSIT	1,500.00	2,774.76
10/28	10/25	POS FROM SHARE - MURPHY6727ATWALMART HIXSON TNUS	-35.00	2,739.76
10/28	10/25	POS FROM SHARE - WEB*NETWORKSOLUTION:888-6429675-PLUS	-23.95	2,715.81
10/28		PAYROLL DEDUCTION - Advantage Platfo	-204.41	2,511.40
10/28		PAYROLL DEDUCTION - Funding Metrics	-176.04	2,335.36
10/28		- SQC*ID Visa Direct CAUS	500.00	2,835.36
10/28		SHARE DEPOSIT	1,215.00	4,050.36
10/28		SHARE DRAFT # 804	-100.00	3,950.36
10/29		PAYROLL DEDUCTION - Advantage Platfo	-204.41	3,745.95
10/29		PAYROLL DEDUCTION - Funding Metrics	-176.04	3,569.91
10/29		SHARE DEPOSIT	200.00	3,769.91
10/29		POS FROM SHARE - GEICO *COMMERCIAL MACON DCUS	-68.00	3,701.91
10/29		SHARE DRAFT # 803	-100.00	3,601.91
10/29		SHARE DRAFT # 2349	-100.00	3,501.91
10/29		SHARE DRAFT # 2343	-300.00	3,201.91
10/30		PAYROLL DEDUCTION - Advantage Platfo	-204.41	2,997.50
10/30		PAYROLL DEDUCTION - Funding Metrics	-176.04	2,821.46
10/30		SHARE DEPOSIT	550.00	3,371.46
10/30		POS FROM SHARE - SPEEDWAY 07109435 CHATTANOOGA TNUS	-30.00	3,341.46
10/31		PAYROLL DEDUCTION - Advantage Platfo	-204.41	3,137.05
10/31	10/30	POS FROM SHARE - MURPHY720SATWALMART SODDY DAISY TNUS	-35.00	3,102.05
10/31		- SQC*ID Visa Direct CAUS	700.00	3,802.05
10/31		PAYROLL DEDUCTION - Funding Metrics	-176.04	3,626.01
10/31		SHARE DRAFT # 2353	-250.00	3,376.01
10/31		SHARE DRAFT # 2352	-300.00	3,076.01
10/31		SHARE DRAFT # 2354	-485.00	2,591.01
ENDING BALANCE:			\$2,591.01	

Check #	Date	Amount	Trace Number	Check #	Date	Amount	Trace Number
7	10/04	495.00	765799630	1044	10/03	300.00	002477610
801*	10/24	100.00	002439720	2190*	10/23	300.00	002435440
802	10/24	100.00	002439705	2191	10/02	6,365.33	132979478
803	10/29	100.00	002450650	2192	10/02	850.00	132979480
804	10/28	100.00	133972780	2193	10/02	312.50	132970102
906*	10/03	300.00	002477985	2194	10/02	1,500.00	132970100
907	10/04	211.75	002478725	2262*	10/01	600.00	002471850
908	10/04	300.00	002481790	2263	10/02	100.00	002474725
1041*	10/15	300.00	766322064	2264	10/04	200.00	133060598
1042	10/03	850.00	002477140	2268*	10/02	550.00	132970098
1043	10/03	300.00	002477570	2320*	10/04	385.00	002481885

Check #	Date	Amount	Trace Number	Check #	Date	Amount	Trace Number
2321	10/04	300.00	133058908	2341	10/17	1,240.00	002417790
2323*	10/07	438.32	765859144	2342	10/17	250.00	133600070
2324	10/03	500.00	002477115	2343	10/29	300.00	767134408
2325	10/03	20.00	002477130	2344	10/23	606.00	133840928
2328*	10/16	300.00	766471894	2345	10/24	250.00	002439275
2329	10/16	54.63	766471896	2346	10/24	385.00	133869264
2330	10/10	730.00	002499020	2347	10/24	420.00	133870878
2332*	10/10	300.00	002499270	2348	10/24	300.00	002439295
2333	10/10	385.00	002499015	2349	10/29	100.00	134023490
2334	10/10	305.00	133327458	2352*	10/31	300.00	002457505
2335	10/21	1,536.38	766673536	2353	10/31	250.00	002457870
2337*	10/17	50.00	133600072	2354	10/31	485.00	134134918
2338	10/17	300.00	002415895	2360*	10/24	68.00	002439280
2339	10/17	250.00	002416165	TOTAL:		25,427.91	
2340	10/17	385.00	002417770				

* Indicates checks out of sequence.

	THIS STATEMENT PERIOD	YEAR TO DATE
TOTAL FEES FOR PAYING OVERDRAFTS	0.00	0.00
TOTAL FEES FOR RETURNING ITEMS UNPAID	34.00	1,054.00
DEPOSITS	39,339.00	
CHECKS CLEARED	25,427.91	
MISC DEDUCTIONS	14,895.29	
SERVICE FEES	0.00	
ASSOCIATE DESCRIPTION	ASSOCIATE NAME	
BUSINESS OWNER	DAVID TULLIS	
BUSINESS OWNER	SABATINO COPELLI	
TRUTH IN SAVINGS INFORMATION		
ANNUAL PERCENTAGE YIELD	0.00%	
REPORTING SSN	XXXXXX-XX11	
YTD DIVIDEND	0.00	

2005 HUMMER H2V8 103 (01)						PREVIOUS BALANCE:	\$12,363.01
Tran. Date	Eff. Date	Description	Tran Amt	Prin. Pmt or Adv	Interest Charge	Fees/ Charge	Balance
10/01		TFR FROM SHARES XXXXX3538-10	384.60	308.39	76.21		12,054.62
						ENDING BALANCE:	\$12,054.62
** ANNUAL PERCENTAGE RATE			5.000%				
DAILY PERIODIC RATE			0.0205479%				
YTD FINANCE CHARGE PAID			856.56				
PAYMENTS & CREDITS			308.39				
DEBITS			0.00				
** FINANCE CHARGE **			76.21				



Regions Bank
4538 Hwy 58 Chattanooga
4538 Highway 58
Chattanooga, TN 37416

HOT NEWS TALK RADIO LLC
5512 RINGGOLD RD STE 216
CHATTANOOGA TN 37412-3174

ACCOUNT #



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LIFEGREEN BUSINESS CHECKING
November 1, 2019 through November 29, 2019

SUMMARY

Beginning Balance	\$94.97	Minimum Balance	\$372-
Deposits & Credits	\$15,120.00 +	Average Balance	\$1,322
Withdrawals	\$1,016.46 -		
Fees	\$190.00 -		
Automatic Transfers	\$0.00 +		
Checks	\$13,630.83 -		
Ending Balance	\$377.68		

DEPOSITS & CREDITS

11/01	Deposit - Thank You	8,000.00
11/06	Deposit - Thank You	2,000.00
11/19	ATM Imaged Deposit	500.00
11/19	ATM Imaged Deposit	2,200.00
11/20	ATM Imaged Deposit	600.00
11/20	ATM Imaged Deposit	900.00
11/25	Merchant Service Merch Adj Noogaradio 8035218703	70.00
11/25	ATM Imaged Deposit	100.00
11/26	Deposit - Thank You	500.00
11/29	ATM Imaged Deposit	250.00
Total Deposits & Credits		\$15,120.00

WITHDRAWALS

11/01	Merchant Service Merch Fee Noogaradio 8035218703	70.00
11/06	Card Purchase Cash App*sabati 4829 8774174551 CA 94103 4292	20.00
11/08	Card Purchase Paypal *Ebay 58 5732 402-935-7733 CA 95131 4292	70.00
11/08	Card Purchase Spectrum 4899 855-707-7328 MO 63131 4292	80.00
11/12	Card Purchase Cash App*sabati 4829 8774174551 CA 94103 4292	5.00
11/13	Card Purchase Hotelscom921025 4722 Hotels.Com NV 94596 4292	168.43
11/22	Rtrn Depstd Itm # of Itm(S) 0001	500.00
11/25	Card Purchase Urban Stack 5812 Chattanooga TN 37402 4292	36.02
11/25	Card Purchase Raceway 6866 3 5541 Chattanooga TN 37408 4292	37.01
11/25	Card Purchase Cash App*sabati 4829 8774174551 CA 94103 4292	20.00

For all your banking needs, please call 1-800-REGIONS (734-4667)
or visit us on the Internet at www.regions.com. (TTY/TDD 1-800-374-5791)



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4538 Hwy 58 Chattanooga
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ACCOUNT # [REDACTED]

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Enclosures 26
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WITHDRAWALS (CONTINUED)

11/25	Card Purchase Cash App*sabati	4829 8774174551 CA 94103 4292	10.00
Total Withdrawals			\$1,016.46

FEES

11/22	Rtn Dep Itm Fee	10.00
11/25	Paid Overdraft Item Fee	180.00
Total Fees		\$190.00

CHECKS

Date	Check No.	Amount	Date	Check No.	Amount
11/25	1001	640.00	11/04	1006	312.50
11/20	1002	1,085.00	11/20	1006 *	610.00
11/20	1003	250.00	11/06	1007	1,500.00
11/04	1004	6,365.33	11/20	1007 *	400.00
11/20	1004 *	68.00	11/20	1008	450.00
11/04	1005	850.00	11/12	1041 *	500.00
11/20	1005 *	300.00	11/22	1042	300.00
Total Checks				\$13,630.83	

* Break In Check Number Sequence.

DAILY BALANCE SUMMARY

Date	Balance	Date	Balance	Date	Balance
11/01	8,024.97	11/12	322.14	11/22	380.71
11/04	497.14	11/13	153.71	11/25	372.32 -
11/06	977.14	11/19	2,859.71	11/26	127.68
11/08	827.14	11/20	1,190.71	11/29	377.68

PRICING FOR CERTAIN TREASURY MANAGEMENT SERVICES AND ANALYZED DEPOSITORY PRODUCTS IS CHANGING EFFECTIVE JANUARY 1, 2020. CHANGES WILL BE REFLECTED BEGINNING WITH THE JANUARY ANALYSIS STATEMENT YOU WILL RECEIVE IN FEBRUARY. TO VIEW ALL CHANGES VISIT REGIONS.COM/SPECIALMESSAGE. PLEASE CONTACT YOUR TREASURY MANAGEMENT OFFICER WITH QUESTIONS SPECIFIC TO YOUR ACCOUNT.

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:14 AM 05/06/2014
FILED 09:12 AM 05/06/2014
SRV 140567791 - 5528383 FILE

CERTIFICATE OF FORMATION

OF

Hot News Talk Radio LLC

The undersigned authorized person hereby certifies that:

FIRST. The name of the limited liability company (hereafter the "Company") is:

Hot News Talk Radio LLC

SECOND. The address of the Company's registered office in the State of Delaware is 3511 Silverside Road, Suite 105, Wilmington, Delaware USA 19810. The name of the registered agent at such address for service of process is *DELAWARE REGISTRY, LTD.*

THIRD. The initial member[s] of the Company is [are]:

Sabatino Cupelli
David Tulis

FOURTH. The Authority of the undersigned authorized person is limited to, and solely for the purpose of, executing and filing this Certificate of Formation.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of the company this 6th day of May, 2014.

DELAWARE REGISTRY, LTD.

By: *Doreen E. Abbott*
Doreen E. Abbott, Assistant Secretary
Authorized Person

FLEXIBILITY CAPITAL INC.

FUTURE RECEIVABLES SALE AND PURCHASE AGREEMENT

This Future Receivables Sale and Purchase Agreement (this "Agreement") dated as of February 6, 2020, is made by and between **Flexibility Capital, Inc.**, a New York corporation ("Flexibility"), and the merchant which name, address and other pertinent information appear below (the "Merchant"):

Legal Business Name: Hot News Talk Radio, LLC
D/B/A: NoogaRadio 92.7 FM-95.3 HD 4
Type of Entity: Limited Liability Company
Business Physical Address: 5512 Ringgold Rd Suite 216, Chattanooga, TN 37412
Business Mailing Address: 5512 Ringgold Rd Suite 216, Chattanooga, TN 37412
Business Phone Number: 423-800-8949 Email: hotnewstalkradio@gmail.com
Banking Information:
Bank Name: Tennessee Valley FCU Bank ABA: [REDACTED]
Bank Account Holder's Name: Hot News Talk Radio LLC
Account # [REDACTED] EIN: [REDACTED]

WHEREAS, the Merchant is desirous to sell to Flexibility, and Flexibility is desirous to purchase from Merchant, a Specified Percentage of the Merchant's Future Receipts, but only on the terms and conditions set forth in this Agreement (all capitalized terms shall have the meanings ascribed to them below).

NOW, THEREFORE, for good and valuable consideration, the mutual receipts and sufficiency of which is hereby acknowledged by both parties, Flexibility and Merchant hereby agree to the foregoing and as follows:

1. Basic Terms and Definitions.

- a. "Effective Date" shall mean the later of: (i) the date set forth in the preamble to this Agreement, and (ii) the date when Flexibility paid the Purchase Price to Merchant.
 - b. "Specified Percentage" shall mean TEN PERCENT (10.00%) of each and every sum from sale made by Merchant.
 - c. "Future Receipts" shall mean, collectively, all of Merchant's receipts of monies paid and delivered to Merchant by Merchant's customers' and/or other vendees after the Effective Date of this Agreement; which payments or deliveries of monies can be made in the form of cash, check, credit, charge, or debit card, ACH or other electronic transfer or any other form of monetary payment in the ordinary course of Merchant's business.
 - d. "Purchased Amount" shall mean the total amount of the Specified Percentage of the Future Receipts that Merchant shall be under obligation to deliver to Flexibility pursuant to this Agreement. The parties agree that the Purchased Amount shall be \$ 24,140.00.
 - e. "Purchase Price" shall mean the total amount that Flexibility agrees to pay for the Future Purchased Receipts. The parties agree that the Purchase Price shall be \$ 17,000.00.
 - f. "Daily Installment" shall mean the fixed amount that Merchant and Flexibility agree to be a good faith approximation of the Specified Percentage of Merchant's daily Future Receipts. Merchant and Flexibility further agree that, based upon the information provided by Merchant to Flexibility concerning Merchant's most recent accounts receivables, and subject to Merchant's right of adjustment/reconciliation set forth in this Agreement, as of the Effective Date the Daily Installment shall be \$ 164.22.
 - g. "Workday" shall mean Monday through Friday except on days when banking institutions are closed for the holidays and do not process ACH payments.
2. The Term. The term of this Agreement shall commence on the Effective Date and expire on the date when the Purchased Amount is received by Flexibility in full.
3. Sale of Purchased Future Receipts. Merchant hereby sells, assigns, transfers and conveys (hereinafter, the "Sale") unto Flexibility all of Merchant's right, title and interest in to the Specified Percentage of the Future Receipts until the Purchased Amount shall have been delivered by Merchant to Flexibility (the "Purchased Future Receipts"); to have and hold the same unto Flexibility, its successors and assigns, forever. This Sale of the Purchased Future Receipts is made without express or implied warranty to Flexibility of collectability of the Purchased Future Receipts by Flexibility and without recourse against Merchant except as specifically set forth in this Agreement. By virtue of this Agreement, Merchant transfers to Flexibility full and complete ownership of the Purchased Future Receipts and Merchant retains no legal or equitable interest therein.

Guarantor #1: [SC]

[INITIALS]

1

Guarantor #2: [DJT]

[INITIALS]

4. **Payment of Purchase Price.** In consideration of the sale by Merchant to Flexibility, the Purchased Future Receipts pursuant to Flexibility agrees to pay to Merchant the Purchase Price; the Purchase Price shall be turned over and delivered to Merchant immediately after the Effective Date of this Agreement.
5. **Use of Purchase Price.** Merchant hereby acknowledges that it fully understands that: (i) Flexibility's ability to collect the Purchased Amount (or any portion thereof) is contingent upon Merchant's continued operation of its business and successful generation of the Future Receipts until the Purchased Amount is delivered to Flexibility in full; (ii) that in the event of decreased efficiency or total failure of Merchant's business Flexibility's receipt of the full or any portion of the Purchased Amount may be delayed indefinitely. Based upon the forgoing, Merchant agrees to use the Purchase Price exclusively for the benefit and advancement of Merchant's business operations and for no other purpose.
6. **Daily Installments of Purchased Amount.** The Purchased Amount of the Specified Percentage of Future Receipts shall be delivered to Flexibility daily on Workdays in Daily Installments.
7. **Approved Bank Account and Credit Card Processor.** During the term of this Agreement, Merchant shall: (i) deposit all Future Receipts into one (and only one) bank account which bank account shall be acceptable and preapproved by Flexibility (the "**Approved Bank Account**"), (ii) use one (and only one) credit card processor which processor shall be acceptable and preapproved by Flexibility (the "**Approved Processor**") and (iii) deposit all credit card receipts into the Approved Bank Account. In the event the Approved Bank Account or Approved Processor shall become unavailable or shall cease providing services to Merchant during the term of this Agreement, prior to the first date of such unavailability or cessation of services, Merchant shall arrange for another Approved Bank Account or Approved Processor, as the case may be.
8. **Authorization to Debit Approved Bank Account.** Merchant hereby authorizes Flexibility to initiate electronic checks or ACH debits from the Approved Bank Account in the amount of Daily Installment each Workday until Flexibility receive the full Purchased Amount; Merchant shall prove Flexibility with all access code(s) for the Approved Bank Account, by signing this authorization the merchant agrees to be bound by the NACHA Operating rules."
9. **Fees Associated with Debiting Approved Bank Account.** It shall be Merchant's exclusive responsibility to pay to its banking institution and/or Flexibility's banking institution directly (or to compensate Flexibility, in case it is charged) all fees, charges and expenses incurred by either Merchant or Flexibility due to rejected electronic checks or ACH debit attempts, overdrafts or rejections by Merchant's banking institution of the transactions contemplated by this Agreement.
10. **Merchant's Right for Reconciliation.** Merchant and Flexibility each acknowledges and agrees that:
- If any time during the term of this Agreement Merchant will experience sporadic increase or decrease in its daily receipts, Merchant shall have the right, at its sole and absolute discretion, but subject to the provisions of Section 11 below, to request retroactive reconciliation of the Merchant's actual daily receipts for one full calendar month immediately preceding the day when such request for reconciliation is received by Flexibility (each such calendar month, a "Reconciliation Month").
 - Such reconciliation (the "**reconciliation**") of the Merchant's daily receipts for a Reconciliation Month shall be performed by Flexibility within five (5) Workdays following its receipt of the Merchant's request for reconciliation by either crediting or debiting the difference back to or from the Approved Bank Account so that the total amount debited by Flexibility from the Approved Bank Account during the Reconciliation Month at issue equal the Specific Percentage of the Future Receipts that Merchant collected during the Reconciliation Month at issue.
 - One or more Reconciliation procedures performed by Flexibility may reduce the effective Daily Installment amount during the Reconciliation Month in comparison to the one set forth in Section 1 of this Agreement, and, as the result of such reduction, the term of this Agreement during which Flexibility will be debiting the Approved Bank Account may extend substantially.
11. **Request for Reconciliation Procedure.**
- It shall be Merchant's sole responsibility and the right hereunder to initiate Reconciliation of Merchant's actual receipts during any Reconciliation Month by sending a request for reconciliation to Flexibility.
 - Any such request for Reconciliation of the Merchant's daily receipts for a specific Reconciliation Month shall be in writing, shall include a copy of Merchant's bank statement and a credit card processing statement for the Reconciliation Month at issue, and shall be received by Flexibility via email to admin@Flexibilitycapital.com, with the subjection line "REQUEST FOR RECONCILIATION," within five (5) Workdays after the last day of the Reconciliation Month at issue (time being of the essence as to the last day of the period during which such demand for reconciliation shall be received by Flexibility).
 - Flexibility's receipt of Merchant's request for Reconciliation after the expiration of the 5-Workday period following the last day of the Reconciliation Month for which such reconciliation is requested nullifies and makes obsolete Merchant's request for Reconciliation for that specific Reconciliation Month.
 - Merchant shall have the right to request Reconciliation as many times during the term of this Agreement as it deems proper, and Flexibility shall comply with such request, provided that:
 - Each such request is made in accordance with the terms of this Section 11.
 If a request for Reconciliation is made after the expiration of the term of this Agreement and, as the result of such Reconciliation, the total amount actually debited by Flexibility from the Approved Bank Account will become less than the Purchased Amount, then and such event the term of this Agreement shall automatically be extended until the time when the total amount actually debited from Approved

Bank Account pursuant to this Agreement shall become equal to the Purchased Amount.

iii. In the event after the last day of the term of this Agreement Merchant will determine in good faith that the actual amount debited by Flexibility from the Approved Bank Account pursuant to this Agreement is greater than the Purchased Amount, then and in such event Merchant shall have the right to request final Reconciliation within five (5) Workdays following the expiration date of the term of this Agreement (time being of the essence) and Flexibility shall honor such request within five (5) Workdays following the day of its receipt of such request.

e. Nothing set forth in Sections 10 or 11 of this Agreement shall be deemed to provide Merchant with the right to interfere with Flexibility's right and ability to debit the Approved Bank Account while the request for Reconciliation of Merchant's receipts is pending or until the Purchased Amount is collected by Flexibility in full.

12. Adjustment of Daily Installment. Merchant and Flexibility each acknowledge and agree that:

a. If any time during the term of this Agreement Merchant will experience steady increase or decrease in its daily receipts, Merchant shall have the right, at its sole and absolute discretion, but subject to the provisions of Section 13 below, to request modification ("Adjustment") of the amount of the Daily Installment that Merchant is obligated to delivery daily to Flexibility in accordance with the provisions of Section 6 above. Such Adjustment shall become effective as of the date it is granted and the new adjusted amount of the Daily Installment (the "Adjusted Daily Installment") shall replace and supersede the amount of the Daily Installment set forth in Section 1 above.

b. The Adjustment of the Daily Installment shall be performed by Flexibility within five (5) Workdays following its receipt of the Merchant's request for Adjustment by modifying daily amounts that shall be are debited from the Approved Bank Account until the Purchased Amount is paid in full. Notwithstanding anything to the contrary set forth in Sections 12 and 13 hereof, no Adjustment shall take place until and unless Reconciliation for at least one (1) Reconciliation Month takes place resulting in reduction of the total amount debited from Merchant's Approved Bank Account during the Reconciliation Month by at least 15% in comparison to the amount that would have been debited during that month without Reconciliation.

c. One or more Adjustments performed by Flexibility may substantially extend the term of this Agreement.

13. Request for Adjustment Procedure.

a. It shall be Merchant's sole responsibility and the right to initiate the Adjustment by sending a request for Adjustment to Flexibility.

b. A request for Adjustment (an "Adjustment Request") shall be in writing, shall include copies of: (i) Merchant's three (3) consecutive bank statements of the Approved Bank Account and credit card processing statements immediately preceding the date of Flexibility's receipt of the Adjustment Request, and (ii) Merchant's bank statements and credit card processing statements previously provided by Merchant to Flexibility based upon which statements the amount of Daily Installment set forth in Section 1 above (or the then current Adjusted Daily Installment, as the case may be) was determined, and shall be received by Flexibility by email at admin@flexibilitycapital.com, with the subject line "REQUEST FOR ADJUSTMENT," within five (5) Workdays after the date that is the latest of the last day of the latest bank statement enclosed with the Adjustment Request and the last date of the latest card processing statement enclosed with the Adjustment Request (time being of the essence as to the last day of the period during which an Adjustment Request shall be received by Flexibility).

c. Flexibility's receipt of a Merchant's Adjustment Request after the expiration of the above referenced 5-Workday period nullifies and makes obsolete such Adjustment Request.

d. Merchant shall have the right to request Adjustment of the Daily Installments as many times during the term of this Agreement as it seems proper, and Flexibility shall comply with such request, provided that:

i. Each such request for Adjustment is made in accordance with the terms of this Section 13.

ii. A request for Adjustment shall not be made after the expiration of the term of this Agreement.

e. Nothing set forth in Sections 12 or 13 of this Agreement shall be deemed to provide Merchant with the right to interfere with Flexibility's right and ability to debit the Approved Bank Account while the request for Adjustment is pending or until the Purchased Amount is collected by Flexibility in full.

14. Risk Sharing Acknowledgments and Arrangements.

a. Merchant and Flexibility each hereby acknowledges and agrees that:

i. The Purchased Future Receipts represent a portion of Merchant's Future Receipts.

ii. This Agreement consummates the sale of the Purchased Future Receipts at a discount, not borrowing funds by Merchant from Flexibility. Flexibility does not charge Merchant and will not collect from Merchant any interest on the monies spent on the purchase of the Purchased Future Receipts. The period of time that it will take Flexibility to collect the Purchased Amount is not fixed, is unknown to both parties as of the Effective Date of this Agreement and will depend on the how well or not well Merchant's business will be performing following the Effective Date. As an extreme example, in the event Merchant's business ceases to exist after Flexibility's purchase of the Purchased Future Receipts for reason outside Merchant's control, Flexibility may never recover any moneys spent on such purchase.


- iii. The amount of the Daily Installment set forth in Section 1 of this Agreement is calculated based upon the information concerning an average amount of daily receipts collected by Merchant's business immediately prior to the Effective Date of this Agreement which information was provided by Merchant to Flexibility.
 - iv. The amounts of Merchant's future daily receipts may increase or decrease over time.
 - v. If, based upon the Reconciliation and/or the Adjustment procedures described above, it will be determined that the actual daily amounts of the Specified Percentage of the Future Receipts get reduced in comparison to the amount of the Daily Installment as of the Effective Date set forth in Section 1 of this Agreement, and in comparison to the amount that both Merchant and Flexibility may have anticipated or projected because Seller's business has slowed down, or if the full Purchased Amount is not remitted because Merchant's business went bankrupt or otherwise ceased operations in the ordinary course of business (but not due to Merchant's willful or negligent mishandling of its business), and Merchant shall have not breached this Agreement, Merchant would not owe anything to Flexibility and would not be in breach of or in default under this Agreement.
- b. **Flexibility's Risk Acknowledgments.** Flexibility agrees to purchase the Purchased Future Receipts knowing the risks that Merchant's business may slow down or fail, and Flexibility assumes these risks based exclusively upon the information provided to it by Merchant and related to the business operations of Merchant's business prior to the date hereof and upon Merchant's representations, warranties and covenants in this Agreement that are designed to give Flexibility a reasonable and fair opportunity to receive the benefit of its bargain. Furthermore, Flexibility hereby acknowledges and agrees that Merchant shall be excused from performing its obligations under this Agreement in the event Merchant's business ceases its operations exclusively due to the following reasons (collectively, the "Valid Excuses"):
- i. adverse business conditions that occurred for reasons outside Merchant's control and not due to Merchant's willful or negligent mishandling of its business;
 - ii. loss of the premises where the business operates (but not due to Merchant's violation of its obligations to its landlord);
 - iii. bankruptcy of Merchant;
 - iv. natural disasters or similar occurrences beyond Merchant's control.
- c. **Not a Loan.** Merchant and Flexibility agree that the Purchase Price is paid to Merchant in consideration for the ownership of the Purchased Future Receipts and that payment of the Purchase Price by Flexibility is not intended to be, nor shall it be construed as a loan from Flexibility to Merchant that requires absolute and unconditional repayment on a maturity date. To the contrary, Flexibility's ability to receive the Purchased Amount pursuant to this Agreement, and the date when the Purchased Amount is paid in full (if ever) are subject to and conditioned upon performance of Merchant's business. If, nevertheless, a court having jurisdiction over this Agreement and the parties hereto shall have determined that Merchant received a loan from Flexibility, and Flexibility has charged or received interest hereunder in excess of the highest rate allowed by law, then the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and Flexibility shall promptly refund to Merchant any interest received by Flexibility in excess of the maximum lawful rate.

REPRESENTATIONS, WARRANTIES AND COVENANTS


15. Merchant represents, warrants and covenants that as of this date and during the term of this Agreement:

- a. **Financial Condition and Financial Information.** Merchant's bank and financial statements, copies of which have been furnished to Flexibility, and future statements which may be furnished hereafter pursuant to this Agreement or upon Flexibility's request, fairly represent the financial condition of Merchant as of the dates such statements are issues, and prior to execution of the Agreement there has been no material adverse changes, financial or otherwise, in such condition, operation or ownership of Merchant. Merchant has a continuing, affirmative obligation to advise Flexibility of any material adverse change in its financial condition, operation or ownership. Flexibility may request statements at any time during the term of this Agreement and Merchant shall provide them to Flexibility within 5 business days. Merchant's failure to do so is a material breach of this Agreement.
- b. **Governmental Approvals.** Merchant is in compliance and, during the term of this Agreement, shall be in compliance with all laws and has valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.
- c. **Good Standing.** Merchant is a corporation/limited liability company/limited partnership/other type of entity that is in good standing and duly incorporated or otherwise organized and validly existing under the laws of its jurisdiction of incorporation or organization, and has full power and authority necessary to carry its business as it is now being conducted.
- d. **Authorization.** Merchant has all requisite power to execute, deliver and perform this Agreement and consummate the transactions contemplated hereunder; entering into this Agreement will not result in breach

Guarantor #1 Initials: [SC

] 

Guarantor #2 Initials: [DJT

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or violation of, or default under, any agreement or instrument by which Merchant is bound or any statute, rule, regulation, order or other law to which Merchant is subject, nor require the obtaining of any consent, approval, permit or license from any governmental authority having jurisdiction over Merchant. All organizational and other proceedings required to be taken by Merchant to authorize the execution, delivery and performance of this Agreement have been taken. The person signing this Agreement on behalf of Merchant has full power and authority to bind Merchant to perform its obligations under this Agreement.

- e. **Accounting Records and Tax Returns.** Merchant will treat receipt of the Purchase Price and payment of the Purchased Amount in a manner evidencing sale of its future receipts in its accounting records and tax returns and further agrees that Flexibility is entitled to audit Merchant's accounting records upon reasonable Notice in order to verify compliance. Merchant hereby waives any rights of privacy, confidentiality or taxpayer privilege in any litigation or arbitration arising out of this Agreement in which Merchant asserts that this transaction is anything other than a sale of future receipts.
- f. **Taxes; Workers Compensation Insurance.** Merchant will promptly pay, when due, all taxes, including without limitation, income, employment, sales and use taxes, imposed upon Merchant's business by law, and will maintain workers compensation insurance required by applicable governmental authorities.
- g. **Business Insurance.** Merchant will maintain general liability and business-interruption insurance naming Flexibility as loss payee and additional insured in the amounts and against risks as are satisfactory to Flexibility and shall provide Flexibility proof of such insurance upon request.
- h. **Electronic Check Processing Agreement.** Merchant shall not change its processor, add terminals, change its financial institution or bank account(s) or take any other action that could have any adverse effect upon Merchant's obligations or impede Flexibility's rights under this Agreement, without Flexibility's prior written consent.
- i. **No Diversion of Future Receipts.** Merchant shall not allow any event to occur that would cause a diversion of any portion of Merchant's Future receipts from the Approved Bank Account without first notifying Flexibility of such diversion.
- j. **Change of Name or Location.** Merchant shall not conduct Merchant's businesses under any name other than as disclosed to the Processor and Flexibility and will not change any of its places of business without first obtaining Flexibility's written consent.
- k. **Prohibited Business Transactions:** Merchant shall not: (i) transfer or sell all or substantially all of its assets (including without limitation the Collateral or any portion thereof) without first obtaining Flexibility's consent; or (ii) make or send notice of its intended bulk sale or transfer.
- l. **No Closing of Business.** Merchant will not sell, dispose, transfer or otherwise convey all or substantially all of its business or assets without first: (i) obtaining the express written consent of Flexibility, and (ii) providing Flexibility with a written agreement of a purchaser or transferee of Merchant's business or assets assuming all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to Flexibility. Merchant represents that it has no current plans to close its business either temporarily (for renovations, repairs or any other purpose), or permanently. Merchant agrees that until Flexibility shall have received all of the Purchased Amount, Merchant will not voluntarily close its business on a permanent or temporarily basis for renovations, repairs, or any other purposes. Notwithstanding the foregoing, Merchant shall have the right to close its business temporarily if such closing is necessitated by a requirement to conduct renovations or repairs imposed upon Merchant's business by legal authorities having jurisdiction over Merchant's business (such as from a health department or fire department, or if such closing is necessitated by circumstances outside Merchant's reasonable control. Prior to any such temporary closure of its business, Merchant shall provide Flexibility ten (10) business days advance notice.
- m. **No Pending Bankruptcy.** As of the date of Merchant's execution of this Agreement, Merchant is not insolvent, has not filed, and does not contemplate filing, any petition for bankruptcy protection under Title 11 of the United States Code and there has been no involuntary bankruptcy petition brought or pending against Merchant. Merchant represents that it has not consulted with a bankruptcy attorney on the issue of filing bankruptcy within six months immediately preceding the date of this Agreement.
- n. **Estoppel Certificate.** Merchant will at any time, and from time to time, upon at least one (1) day's prior notice from Flexibility to Merchant, execute, acknowledge and deliver to Flexibility and/or to any other person or entity specified by Flexibility in its notice, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modification(s) and stating the date(s) on which the Purchased Amount or any portion thereof has been repaid.
- o. **Working Capital Funding.** Merchant shall not further encumber the Future Receipts, without first obtaining written consent of Flexibility.
- p. **Unencumbered Future Receipts.** Merchant has and will continue to have good, complete and marketable title to all Future Receipts, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests other than by virtue of or entering into this Agreement.

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- q. **Business Purpose.** Merchant is entering into this Agreement solely for business purposes and not as a consumer for personal, family or household purposes.
- r. **No Default under Contracts with Third Parties.** Merchant's execution of and/or performance of its obligations under this Agreement will not cause or create an event of default by Merchant under any contract, which Merchant is or may become a party to.
- s. **Right of Access.** In order to ensure Merchant's compliance with the terms of this Agreement, Merchant hereby grants Flexibility the right to enter, without notice, the premises of Merchant's business for the purpose of inspecting and checking Seller's transaction processing terminals to ensure the terminals are properly programmed to submit and or batch Merchant's daily receipts to the Processor and to ensure that Merchant has not violated any other provision of this Agreement. Furthermore, Merchant hereby grants Flexibility and its employees and consultants access to Merchant's employees and records and all other items of property located at the Merchant's place of business during the term of this Agreement. Merchant hereby agrees to provide Flexibility, upon request, all and any information concerning Merchant's business operations, banking relationships, names and contact information of Merchant's suppliers, vendors and landlord(s), to allow Flexibility to interview any of those parties.
- t. **Phone Recordings and Contact.** Merchant agrees that any call between Merchant and Flexibility and its owners, managers, employees and agents may be recorded and/or monitored. Furthermore, Merchant acknowledges and agrees that: (i) it has an established business relationship with Flexibility, its managers, employees and agents (collectively, the "Flexibility Parties") and that Merchant may be contacted by any of the Flexibility Parties from time-to-time regarding Merchant's performance of its obligations under this Agreement or regarding other business transactions; (ii) it will not claim that such communications and contacts are unsolicited or inconvenient; and (iii) that any such contact may be made by any of the Flexibility Parties in person or at any phone number (including mobile phone number), email addresses, or facsimile number belonging to Merchant's office, or its owners, managers, officers, or employees.
- u. **Knowledge and Experience of Decision Makers.** The persons authorized to make management and financial decisions on behalf Merchant with respect to this Agreement have such knowledge, experience and skill in financial and business matters in general and with respect to transactions of a nature similar to the one contemplated by this Agreement so as to be capable of evaluating the merits and risks of, and making an informed business decision with regard to, Merchant entering into this Agreement.
- v. **Merchant's Due Diligence.** The person authorized to sign this Agreement on behalf of Merchant: (i) has received all information that such person deemed necessary to make an informed decision with respect to a transaction contemplated by this Agreement; and (ii) has had unrestricted opportunity to make such investigation as such person desired pertaining to the transaction contemplated by this Agreement and verify any such information furnished to him or her by Flexibility.
- w. **Arm-Length Transaction.** The person signing this Agreement of behalf of Merchant: (a) has read and fully understands content of this Agreement; (b) has consulted to the extent he/she wished with Merchant's own counsel in connection with the entering into this Agreement; (c) he or she has made sufficient investigation and inquiry to determine whether this Agreement is fair and reasonable to Merchant, and whether this Agreement adequately reflects his or her understanding of its terms.
- x. **Flexibility's Consent.** Merchant agrees that in every instance Merchant's rights under this Agreement are contingent upon first obtaining Flexibility's consent, such consent may be withheld, granted or conditioned at Flexibility's sole and absolute discretion.
- y. **No Reliance on Oral Representations.** This Agreement contains the entire agreement between Merchant and Flexibility with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by Flexibility or any of the Flexibility Parties with respect thereto (If any), whether or not relied or acted upon. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Flexibility Parties, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect Merchant's obligations pursuant to this Agreement or any rights and remedies of the parties to this Agreement.

PLEDGE OF SECURITY

16. **Pledge.** As security for the prompt and complete payment and performance of any and all liabilities, obligations, covenants or agreements of Merchant under this Agreement, now or hereafter arising from, out of or relating to this Agreement, whether direct, indirect, contingent or otherwise (hereinafter referred to collectively as the "Obligations"), Merchant hereby pledges, assigns and hypothecates to Flexibility and grants to Flexibility a continuing, perfected and first priority lien upon and security interest in, to and under all of Merchant's right, title and interest in and to the following (collectively, the "Collateral"), whether now existing or hereafter from time to time acquired:

- a. all accounts, including without limitation, all deposit accounts, accounts-receivable, and other receivables, chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are

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defined by Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by Merchant; and

b. all Merchant's proceeds, as that term is defined by Article 9 of the UCC.

17. **Termination of Pledge.** Upon the payment and performance by Merchant in full of the Obligations, the security interest in the Collateral pursuant to this Pledge shall automatically terminate without any further act of either party being required, and all rights to the Collateral shall revert to Merchant. Upon any such termination, Flexibility will execute, acknowledge (where applicable) and deliver such satisfactions, releases and termination statements, as Merchant shall reasonably request.
18. **Representations with Respect to Collateral.** Merchant hereby represents and warrants to Flexibility that: the execution, delivery and performance by Merchant of this Pledge, and the remedies in respect of the Collateral under this Pledge (i) have been duly authorized; (ii) do not require the approval of any governmental authority or other third party or require any action of, or filing with, any governmental authority or other third party to authorize same (other than the filing of the UCC-1's); (iii) do not and shall not (A) violate or result in the breach of any provision of law or regulation, any order or decree of any court or other governmental authority, (B) violate, result in the breach of or constitute a default under or conflict with any indenture, mortgage, deed of trust, agreement or any other instrument to which Merchant is a party or by which any of Merchant's assets (including, without limitation, the Collateral) are bound.
19. **Further Assurances.** Upon the request of Flexibility, Merchant, at Merchant's sole cost and expense, shall execute and deliver all such further UCC-1s, continuation statements, assurances and assignments of the Collateral and consents with respect to the pledge of the Collateral and the execution of this Pledge, and shall execute and deliver such further instruments, agreements and other documents and do such further acts and things, as Flexibility may request in order to more fully effectuate the purposes of this Pledge and the assignment of the Collateral and obtain the full benefits of this Pledge and the rights and powers herein created.
20. **Attorney-in-fact.** Merchant hereby authorizes Flexibility at any time to take any action and to execute any instrument, including without limitation to file one or more financing statements and/or continuation statements, to evidence and perfect the security interest created hereby and irrevocably appoints Flexibility as its true and lawful attorney-in-fact, which power of attorney shall be coupled with an interest, with full authority in the place and stead of Merchant and in the name of Merchant or otherwise, from time to time, in Flexibility's sole and absolute discretion, including without limitation (a) for the purpose of executing such statements in the name of and on behalf of Merchant, and thereafter filing any such financing and/or continuation statements and (b) to receive, endorse and collect all instruments made payable to Merchant.

EVENTS OF DEFAULT AND REMEDIES

21. **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" by Merchant:
 - a. Merchant shall violate any term, condition or covenant in this Agreement for any reason whatsoever other than as the result of Merchant's business ceases its operations exclusively due to any of the Valid Excuses.
 - b. Any representation or warranty by Merchant made in this Agreement shall prove to have been incorrect, false or misleading in any material respect when made.
 - c. Merchant shall default under any of the terms, covenants and conditions of any other agreement with Flexibility (if any).
 - d. Merchant uses multiple depository accounts without obtaining prior written consent of Flexibility in each instance.
 - e. Merchant fails to deposit any portion of its future Receipts into the Approved Bank Account;
 - f. Merchant changes the Approved Bank Account or Approved Processor without obtaining prior written consent of Flexibility in each instance;
 - g. Merchant interferes with Flexibility collection of Daily Installments.
 - h. Four (4) or more ACH transactions attempted by Flexibility in one calendar month are rejected by Merchant's bank.
22. **Default under the Agreement.** In case any Event of Default occurs and is not waived by Flexibility, Flexibility may declare Merchant in default under this Agreement by sending a default notice to Merchant, provided, nevertheless, that no default notice is required upon Merchant's default in performance of its obligations under Section 6 of this Agreement.
23. **Merchant's Obligations Upon Default.** Upon receipt of such default notice, Merchant shall immediately pay Flexibility the unpaid portion of the Purchased Amount. ~~In addition, Merchant shall also pay to Flexibility, as additional damages, any reasonable expenses incurred by Flexibility in connection with recovering the monies due to Flexibility from Merchant pursuant to this Agreement, including without limitation the costs of retaining collection firms and reasonable attorneys' fees and disbursements (collectively, "Reasonable Damages"). The parties agree that Flexibility shall not be required to itemize or prove its Reasonable Damages and that the fair value of the Reasonable Damages shall be calculated as twenty-five percent (25%) of the unpaid portion of the Purchased Amount.~~ Furthermore, if the amount of the unpaid portion of the Purchased Amount specified in the default notice is not paid on the fifth (5th) Business Day following the date of the default notice (the "Default Payment Date"), the entire sum due to Flexibility pursuant to this Section 23 shall bear simple interest from the Default Payment Date until its paid in full, at the rate of 12.00% per annum.

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(and such interest shall accrue daily).

24. **Remedies Upon Default.** Upon Merchant's default, Flexibility may immediately proceed to protect and enforce its rights under this Agreement and/or Guaranty by:
- Enforcing its rights as a secured creditor under the Uniform Commercial Code including, without limitation, notifying any account debtor(s) of Merchant of Flexibility's security interest;
 - Enforcing the provisions of the Personal Guarantee of Performance against the Guarantor(s) without first seeking recourse from Merchant;
 - Filing the affidavit of confession of judgment (the "Affidavit") executed by the Guarantor(s), individually and on Merchant's behalf, in connection with this Agreement in the amount of the unpaid portion of the Purchased Amount, plus the Reasonable Damages, enter the judgment with the Clerk of the Court, without notice, and execute thereon;
 - Notifying Merchant's credit card processor of the sale of Future Purchase Receipts hereunder and to direct such credit card processor to make payment to Flexibility of all or any portion of the amounts received by such credit card processor on behalf of Merchant.
 - Commencing a suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the discharge of Merchant's obligations hereunder (including the Personal Guarantee) or any other legal or equitable right or remedy including without limitation Flexibility's rights of a secured party under the UCC.
25. **Remedies are not Exclusive.** All rights, powers and remedies of Flexibility in connection with this Agreement may be exercised at any time after the occurrence of any Event of Default, and are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided to Flexibility by law or equity.
26. **Power of Attorney.** Merchant irrevocably appoints Flexibility and its representatives as its agents and attorneys-in-fact with full authority to take any action or execute any instrument or document to do the following: (A) to settle all obligations due to Flexibility from any credit card processor and/or account debtor(s) of Merchant; (B) upon occurrence of an Event of Default under Section 19 hereof, to perform any and all obligations of Merchant under this Agreement, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral; (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to Flexibility; and (v) to file any claims or take any action or institute any proceeding which Flexibility may deem necessary for the collection of any of the unpaid Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount.

ADDITIONAL TERMS

27. **Merchant Deposit Agreement.** Merchant shall execute an agreement with Flexibility that would authorize Flexibility to arrange for electronic fund transfer services and/or "ACH" payments of Daily Installments from the Approved Bank Account. Merchant shall provide Flexibility and/or its authorized agent with all information, authorizations and passwords necessary to verify Merchant's receivables, receipts and deposits into the Approved Bank Account. Merchant shall authorize Flexibility and/or its agent to deduct daily the amounts of Daily Installment to Flexibility from settlement amounts which would otherwise be due to Merchant from electronic check transactions and to pay such amounts to Flexibility by permitting Flexibility to withdraw the Daily Installments from such the account. The authorization shall be irrevocable.
28. **Financial Condition.** Merchant and its Guarantor(s) authorize Flexibility and its agents to investigate their financial responsibility and history, and will provide to Flexibility any bank or financial statements, tax returns, etc., as deems necessary prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable for release of financial information. is authorized to update such information and financial profiles from time to time as it deems appropriate.
29. **Transactional History.** Merchant shall execute written authorization(s) to their bank(s) to provide Flexibility with Merchant's banking and/or credit-card processing history.
30. **Indemnification.** Merchant and its Guarantor(s) jointly and severally indemnify and hold harmless Approved Processor, its officers, directors and shareholders against all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) incurred by Approved Processor resulting from (a) claims asserted by Flexibility for monies owed to Flexibility from Merchant and (b) actions taken by Approved Processor in reliance upon information or instructions provided by Flexibility.
31. **No Liability.** In no event shall Flexibility be liable for any claims asserted by Merchant or its Guarantor under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by Merchant and Guarantor(s).

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32. **Modifications: Agreements.** No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by both parties.
33. **Assignment.** Flexibility may assign, transfer or sell its rights or delegate its duties hereunder, either in whole or in part without prior notice to the Merchant. Merchant shall not assign its rights or obligations under this Agreement without first obtaining Flexibility's written consent.
34. **Notices.** All notices, requests, consent, demands and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement and shall become effective as of the date of receipt or declined receipt.
35. **Waiver Remedies.** No failure on the part of to exercise, and no delay in exercising, any right under this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.
36. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
37. **Governing Law, Venue and Jurisdiction.** This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York, without regards to any applicable principles of conflicts of law. Any lawsuit, action or proceeding arising out of or in connection with this Agreement shall be instituted exclusively in any court sitting in New York State, (the "Acceptable Forums"). The parties agree that the Acceptable Forums are convenient, and submit to the jurisdiction of the Acceptable Forums and waive any and all objections to inconvenience of the jurisdiction or venue. Should a proceeding be initiated in any other forum, the parties waive any right to oppose any motion or application made by either party to transfer such proceeding to an Acceptable Forum.
38. **Survival of Representation, etc.** All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.
39. **Severability.** In case any of the provisions in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein shall not in any way be affected or impaired.
40. **Entire Agreement.** Any provision hereof prohibited by law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions hereof. This Agreement and Security Agreement hereto embody the entire agreement between Merchant and Flexibility and supersede all prior agreements and understandings relating to the subject matter hereof.
41. **JURY TRIAL WAIVER.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT HEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.
42. **CLASS ACTION WAIVER.** THE PARTIES HERETO WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY, AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES HEREBY AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY); AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.
43. **ARBITRATION.** THE PARTIES ACKNOWLEDGE AND AGREE THAT, PROVIDED THAT NO SUIT, ACTION OR PROCEEDING (INCLUDING WITHOUT LIMITATION FILING OF AN AFFIDAVIT OF CONFESSION OF JUDGMENT) HAS BEEN ALREADY COMMENCED IN CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, EACH FLEXIBILITY, MERCHANT, AND ANY GUARANTOR SHALL HAVE THE RIGHT TO REQUEST THAT ALL DISPUTES AND CLAIMS ARISING OUT OF OR RELATING TO THE CONSTRUCTION AND INTERPRETATION OF THIS AGREEMENT, ARE SUBMITTED TO ARBITRATION. THE PARTY SEEKING ARBITRATION SHALL FIRST SEND A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ALL OTHER PARTIES, BY CERTIFIED MAIL. UPON SENDING OF SUCH NOTICE, A PARTY REQUESTING ARBITRATION MAY COMMENCE AN ARBITRATION PROCEEDING WITH THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR NATIONAL ARBITRATION FORUM ("NAF"). EACH MERCHANT, GUARANTOR AND FLEXIBILITY SHALL PAY THEIR OWN ATTORNEYS' FEES INCURRED DURING THE ARBITRATION PROCEEDING. THE PARTY INITIATING THE ARBITRATION SHALL PAY ANY ARBITRATION FILING FEE, ADMINISTRATION FEE AND ARBITRATOR'S FEE.
44. **Counterparts and Facsimile Signatures.** This Agreement can be signed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same agreement. Signatures

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delivered via facsimile and/or via Portable Digital Format (PDF) shall be deemed acceptable for all purposes, including without limitation the evidentially purposes.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

THE MERCHANT:


By: [Signature] 
Name: Sabatino Cupelli
Title: Owner/Agent/Manager
SSN: 173-54-1089

By: David J Tulis 
Name: David Jonathan Tulis
Title: Owner/Agent/Manager
SSN: 413-82-5029

OWNER/GUARANTOR #1:

[Signature] 
Name: Sabatino Cupelli
SSN: 173-54-1089

OWNER/GUARANTOR #2:

David J Tulis 
Name: David Jonathan Tulis
SSN: 413-82-5029

FLEXIBILITY CAPITAL, INC.

By: _____
Name:
Title:

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Guarantor #2 Initials: [DJT



PERSONAL GUARANTY OF PERFORMANCE

This Personal Guaranty of Performance (this "Guaranty") is executed as of February 6, 2020, by the undersigned individual(s) listed herein (individually and collectively, jointly and severally, "Guarantor") for the benefit of FLEXIBILITY CAPITAL, INC. ("Buyer").

WHEREAS:

A. Pursuant to that Future Receivables Sale and Purchase Agreement (the "Agreement"), dated as of February 6, 2020, between Buyer and the merchant(s) listed below ("Merchant"), Buyer has purchased Future Receipts of Merchant.

THE MERCHANT:

Legal Business Name: Hot News Talk Radio, LLC
D/B/A: NoogaRadio 92.7 FM-96.3 HD 4

B. Each Guarantor is an owner, officer, or manager of Merchant and will directly benefit from Buyer and Merchant entering into the Agreement.

C. Buyer is not willing to enter into the Agreement unless Guarantor irrevocably, absolutely and unconditionally guarantees prompt and complete performance to Buyer of all of the obligations of Merchant under the Agreement (collectively, the "Obligations").

NOW, THEREFORE, as an inducement for Buyer to enter into the Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor does hereby agree as follows:

1. **Defined Terms:** All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. **Guaranty of Obligations:** Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Buyer prompt, full, faithful and complete performance and observance of all of Merchant's Obligations; and Guarantor unconditionally covenants to Buyer that if default or breach shall at any time be made by Merchant in the Obligations, Guarantor shall well and truly pay or perform (or cause to be paid or performed) the Obligations and pay all damages and other amounts stipulated in the Agreement with respect to the non-performance of the Obligations, or any of them.

3. **Guarantor's Other Agreements:** Guarantor will not dispose, convey, sell or otherwise transfer, or cause Merchant to dispose, convey, sell or otherwise transfer, any material business assets of Merchant without the prior written consent of Buyer, which consent may be withheld for any reason, until receipt of the entire Purchased Amount. Guarantor shall pay to Buyer upon demand all expenses (including, without limitation, reasonable attorneys' fees and disbursements) of, or incidental to, or relating to the enforcement or protection of Buyer's rights hereunder or Buyer's rights under the Agreement. This Guaranty is binding upon Guarantor and Guarantor's heirs, legal representatives, successors and assigns and shall inure to the benefit of and may be enforced by the successors or assigns of Buyer. If there is more than one Guarantor, the obligations of the Guarantors hereunder shall be joint and several. The obligation of Guarantor shall be unconditional and absolute, regardless of the unenforceability of any provision of any agreement between Merchant and Buyer, or the existence of any defense, setoff or counterclaim, which Merchant may assert. Buyer is hereby authorized, without notice or demand and without affecting the liability of Guarantor hereunder, to at any time renew or extend Merchant's obligations under the Agreement or otherwise modify, amend or change the terms of the Agreement. Guarantor is hereby notified that a negative credit report reflecting on his/her credit record may be submitted to a credit-reporting agency if the Guarantor does not honor the terms of this Guaranty.

4. **Waiver; Remedies:** No failure on the part of Buyer to exercise, and no delay in exercising, any right under this Guaranty shall operate as a waiver, nor shall any single or partial exercise of any right under this Guaranty preclude any other or further exercise of any other right. The remedies provided in this Guaranty are cumulative and not exclusive of any remedies provided by law or equity. In the event that Merchant fails to perform any obligation under the Agreement, Buyer may enforce its rights under this Guaranty without first seeking to obtain performance for such default from Merchant or any other guarantor.

5. **Acknowledgment of Purchase:** Guarantor acknowledges and agrees that the Purchase Price paid by Buyer to Merchant in

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exchange for the Purchased Amount is a payment for an adequate consideration and is not intended to be treated as a loan or financial accommodation from Buyer to Merchant. Guarantor specifically acknowledges Buyer is not a lender, bank or credit card processor, and that Buyer has not offered any loans to Merchant, and Guarantor waives any claims or defenses of usury in any action arising out of this Guaranty. Guarantor acknowledges the Purchase Price paid to Merchant is good and valuable consideration for the sale of the Purchased Amount of Future Receipts.

6. Governing Law and Jurisdiction: This Guaranty shall be governed by, and constructed in accordance with, the internal laws of the State of New York without regard to principles of conflicts of law. Except as provided in Section 9 of this Guaranty, Guarantor submits to the nonexclusive jurisdiction and venue of any state or federal courts sitting in New York State or otherwise having jurisdiction over this Guaranty and Guarantor, for resolution of any claim or action arising, directly or indirectly, out of or related to this Guaranty. The parties stipulate that the venues referenced in this Agreement are convenient. The parties further agree that the mailing by certified or registered mail, return receipt requested, of any process required by any such court will constitute valid and lawful service of process against them, without the necessity for service by any other means provided by statute or rule of court, but without invalidating service performed in accordance with such other provisions.

7. JURY WAIVER: THE PARTIES WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS GUARANTY IS A PART OR ITS ENFORCEMENT, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. THE PARTIES ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

8. CLASS ACTION WAIVER: THE PARTIES WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES AGREE THAT: (I) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (II) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

9. ARBITRATION: THE PARTIES ACKNOWLEDGE AND AGREE THAT, PROVIDED THAT NO SUIT, ACTION OR PROCEEDING (INCLUDING WITHOUT LIMITATION FILING OF AN AFFIDAVIT OF CONFESSION OF JUDGMENT) HAS BEEN ALREADY COMMENCED IN CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATED TO THIS GUARANTY AND/OR THE TRANSACTION CONTEMPLATED BY THE AGREEMENT, EACH BUYER, MERCHANT AND GUARANTOR SHALL HAVE THE RIGHT TO REQUEST THAT ALL DISPUTES AND CLAIMS ARISING OUT OF OR RELATING TO THE CONSTRUCTION AND/OR INTERPRETATION OF THIS GUARANTY ARE SUBMITTED TO ARBITRATION. THE PARTY SEEKING ARBITRATION SHALL FIRST SEND A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ALL OTHER PARTIES, BY CERTIFIED MAIL. UPON SENDING OF SUCH NOTICE, A PARTY REQUESTING ARBITRATION MAY COMMENCE AN ARBITRATION PROCEEDING WITH THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR NATIONAL ARBITRATION FORUM ("NAF"). EACH MERCHANT, GUARANTOR AND BUYER SHALL PAY THEIR OWN ATTORNEYS' FEES INCURRED DURING THE ARBITRATION PROCEEDING. THE PARTY INITIATING THE ARBITRATION SHALL PAY ANY ARBITRATION FILING FEE, ADMINISTRATION FEE AND ARBITRATOR'S FEE.

12. Severability: If for any reason any court of competent jurisdiction finds any provisions of this Guaranty to be void or voidable, the parties agree that the court may reform such provision(s) to render the provision(s) enforceable ensuring that the restrictions and prohibitions contained in this Guaranty shall be effective to the fullest extent allowed under applicable law.

13. Opportunity for Attorney-Review: The Guarantor represents that he/she has carefully read this Guaranty and has, or had a reasonable opportunity to, consult with his or her attorney. Guarantor understands the contents of this Guaranty, and signs this Guaranty as his or her free act and deed.

14. Counterparts and Facsimile Signatures: This Guaranty may be signed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same agreement. Facsimile or scanned documents shall have the same legal force and effect as an original and shall be treated as an original document for evidentiary

Guarantor #1 Initials: [SC

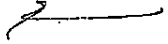
] 

Guarantor #2 Initials: [DJT

] 

purposes.

OWNER/GUARANTOR #1:


Name: Sabatino Cupelli
Address: 6140 Lynn Rd
Harrison, TN 37341
SSN: [REDACTED]

← SIGN HERE

OWNER/GUARANTOR #2:

David J Tulis
Name: David Jonathan Tulis
Address: 10520 Brickhill Ln
Soddy Daisy, TN 37379
SSN: [REDACTED]

← SIGN HERE

Guarantor #1 Initials: [SC

] ← SIGN HERE

Guarantor #2 Initials: [DJT

] ← SIGN HERE

**APPENDIX A
FEE STRUCTURE**

Pursuant to that Future Receivables Sale and Purchase Agreement (the "Agreement"), dated as of February 6, 2020, between Buyer and the merchant(s) listed below ("Merchant"),


Buyer and Merchant agree to the following fee schedule:

THE MERCHANT:

Legal Business Name: Hot News Talk Radio, LLC
D/B/A: NoogaRadio 92.7 FM-95.3 HD 4

- A. **Origination Fee:** \$ 680.00 (to cover underwriting and related expenses).
- B. **NSF Fee:** \$3500 each occurrence (up to two occurrences before a default is declared).
- C. **Rejected ACH:** \$100.00 (if a merchant directs the bank to reject our debit ACH).
- D. **Bank Change Fee:** \$50.00 (If Merchant requires a change of account to be debited requiring us to adjust our system).
- E. **Unauthorized Account Fee:** \$5,000.00 (i.e., if Merchant blocks Flexibility Capital's ACH debit of the account, bounces more than 4 debits of the Account, or simultaneously uses multiple bank accounts, or credit-card processors to process its receipts.)
- F. **Default Fee:** \$2,500.00 (i.e., if Merchant changes bank accounts or switches to another credit-card processor without Flexibility Capital's consent, or commits another default pursuant to the Agreement).
- G. **Miscellaneous Service Fees:** Merchant shall pay certain fees for services related to the origination and maintenance of accounts. Each Merchant shall receive their funding electronically to their designated bank account and will be charged \$30.00 for a Fed Wire.
- H. **UCC Fee:** \$19500


THE MERCHANT:

By: [Signature] 

Name: Sabatino Cupelli

Title: Owner/Agent/Manager

SSN: [Redacted]

By: David Tulis 

Name: David Jonathan Tulis

Title: Owner/Agent/Manager

SSN: [Redacted]

Jennifer

From: noreply@salesforce.com on behalf of Jenn <jennifer@flexibilitycapital.com>
Sent: Wednesday, August 5, 2020 2:48 PM
To: Jennifer
Subject: Summary of Debits

Flexibility Capital Inc.

Dear Sabatino,

August 5, 2020

Regarding the deal for NoogaRadio 92.7 FM paying back a total of \$24,140.00.

Please see below a list of all payments debited:

Effective Date	Settled Date	Amount	Status	Running Balance	Type	Response Code
2/6/2020	2/6/2020	\$24,140.00	Settled	\$24,140.00	Initial Funding	
2/7/2020	2/11/2020	\$164.22	Settled	\$23,975.78	Payment	
2/10/2020	2/12/2020	\$164.22	Settled	\$23,811.56	Payment	
2/11/2020	2/13/2020	\$164.22	Settled	\$23,647.34	Payment	
2/12/2020	2/14/2020	\$164.22	Settled	\$23,483.12	Payment	
2/13/2020	2/17/2020	\$164.22	Settled	\$23,318.90	Payment	
2/14/2020	2/18/2020	\$164.22	Settled	\$23,154.68	Payment	
2/17/2020	2/19/2020	\$164.22	Settled	\$22,990.46	Payment	
2/18/2020	2/20/2020	\$164.22	Settled	\$22,826.24	Payment	
2/19/2020	2/21/2020	\$164.22	Settled	\$22,662.02	Payment	
2/20/2020	2/24/2020	\$164.22	Settled	\$22,497.80	Payment	
2/21/2020	2/25/2020	\$164.22	Settled	\$22,333.58	Payment	
2/24/2020	2/26/2020	\$164.22	Settled	\$22,169.36	Payment	
2/25/2020	2/27/2020	\$164.22	Settled	\$22,005.14	Payment	
2/26/2020	2/28/2020	\$164.22	Settled	\$21,840.92	Payment	
2/27/2020	3/2/2020	\$164.22	Settled	\$21,676.70	Payment	
2/28/2020	3/3/2020	\$164.22	Settled	\$21,512.48	Payment	
3/2/2020	3/4/2020	\$164.22	Settled	\$21,348.26	Payment	
3/3/2020	3/5/2020	\$164.22	Failed	\$21,348.26	Payment	R01
3/3/2020	3/5/2020	\$35.00	Fees Applied	\$21,383.26	Fee	R01
3/4/2020	3/6/2020	\$164.22	Settled	\$21,219.04	Payment	
3/5/2020	3/9/2020	\$164.22	Settled	\$21,054.82	Payment	
3/6/2020	3/10/2020	\$164.22	Settled	\$20,890.60	Payment	
3/9/2020	3/11/2020	\$164.22	Failed	\$20,890.60	Payment	R01
3/9/2020	3/11/2020	\$35.00	Fees Applied	\$20,925.60	Fee	R01
3/10/2020	3/12/2020	\$164.22	Settled	\$20,761.38	Payment	

3/11/2020	3/13/2020	\$164.22	Failed	\$20,761.38	Payment	R08
3/11/2020	3/13/2020	\$100.00	Fees Applied	\$20,861.38	Fee	R08
3/12/2020	3/16/2020	\$164.22	Failed	\$20,861.38	Payment	R08
3/12/2020	3/16/2020	\$100.00	Fees Applied	\$20,961.38	Fee	R08
3/13/2020	3/17/2020	\$164.22	Failed	\$20,961.38	Payment	R08
3/13/2020	3/17/2020	\$100.00	Fees Applied	\$21,061.38	Fee	R08

Yours Truly,

Flexibility Funding, Inc



Lydia R. Green, M.L.I.S.



433232263

FINANCING STATEMENT

This is a representation of a document created electronically at the Tennessee Secretary of State's web site.

A. NAME & PHONE OF CONTACT AT FILER (Optional) MICHAEL (646) 461-8302			
B. EMAIL OF CONTACT AT FILER (Optional) jennifer@flexibilitycapital.com			
C. SEND ACKNOWLEDGMENT TO: (Name and Address)			
FLEXIBILITY CAPITAL INC STE 1511 1501 BROADWAY NEW YORK, NY 10036-5505			

Financing Statement Doc #: 433232263
FILED: 9/1/2020 12:56 PM

Tre Hargett, Secretary of State

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

DEBTORS

1. DEBTOR'S NAME				
OR	a. ORGANIZATION'S NAME NOOGARADIO 92.7			
	b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S) INITIAL(S)	SUFFIX
c. MAILING ADDRESS STE 512, 5512 RINGGOLD RD				
d. CITY	STATE	POSTAL CODE	COUNTRY	
CHATTANOOGA	TN	37412-3183	USA	

SECURED PARTIES

1. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY)				
OR	a. ORGANIZATION'S NAME FLEXIBILITY CAPITAL INC			
	b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S) INITIAL(S)	SUFFIX
c. MAILING ADDRESS NEW YORK, 1501 BROADWAY SUITE 1511 NONE				
d. CITY	STATE	POSTAL CODE	COUNTRY	
NEW YORK	NY	10036	USA	

COLLATERAL: This financing statement covers the following collateral:

As security for the payment of the Indemnified Amounts, Seller hereby grants to Flexibility a continuing lien and security interest in, and hereby assigns to Flexibility as collateral security, a first priority lien on all of Seller's tangible and intangible assets, whether now existing or hereinafter arising or acquired and wherever located and all proceeds of such assets (collectively, the "Collateral").

At the option of Flexibility, Seller or Flexibility shall execute, deliver, file and record (in such manner and form as Flexibility shall require), (i) all financing statements and continuation statements, (ii) all carbon, photographic or other reproductions of financing statements, continuation statements or this Agreement (which shall be sufficient as a financing statement hereunder), and (iii) all specific assignments or other papers that may be necessary or desirable, or that Flexibility may request, in order to create, preserve, perfect or validate any security interest granted hereunder or to enable Flexibility to exercise and enforce its rights hereunder with respect to any of the Collateral. In addition, in the event that any of the Collateral consists of or is represented by instruments or other evidences of ownership such as would require physical possession of same in order to perfect the security interests therein, Seller shall promptly, at its sole expense, deliver the same to Flexibility upon request, with any necessary endorsements thereon. If any account becomes evidenced by a promissory note or any other instrument for the payment of money, Seller shall immediately deliver such instruments to Flexibility upon request, appropriately endorsed. Flexibility reserves the right to obtain reimbursement from Seller of all costs associated with the filing of any financing statements, continuation statements or amendments thereto and Seller ratifies the filing of any financing statement filed by Flexibility prior to the effectiveness thereof.

B0918-0051 09/01/2020 12:56 PM Received by Tennessee Secretary of State Tre Hargett



FINANCING STATEMENT

This is a representation of a document created electronically at the Tennessee Secretary of State's web site.

A. NAME & PHONE OF CONTACT AT FILER (Optional) MICHAEL (646) 461-8302
B. EMAIL OF CONTACT AT FILER (Optional) jennifer@flexibilitycapital.com
C. SEND ACKNOWLEDGMENT TO: (Name and Address) FLEXIBILITY CAPITAL INC STE 1511 1501 BROADWAY NEW YORK, NY 10036-5505

Financing Statement Doc #: 433232263
FILED: 9/1/2020 12:56 PM

Tre Hargett, Secretary of State

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

Maximum principal indebtedness for Tennessee recording tax purposes is: \$0.00

Check only if applicable and check only one box: Collateral is held in a Trust
 being administered by a Decedent's Personal Representative

Check only if applicable and check only one box: Public Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility
Check only if applicable and check only one box: Agricultural Lien Non-UCC Filing

ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licenser

OPTIONAL FILER REFERENCE DATA:

NOTE: All information on this form is public record.

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FLEXIBILITY CAPITAL, INC.)
)
 Plaintiff,)
)
VS.) NO. 22C429
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS, d/b/a)
D/B/A HOT NEWS TALK RADIO)
)
 Defendants.)

AFFIDAVIT OF GINA MONTEFORTE

STATE OF NEW YORK)
)
COUNTY OF NEW YORK CITY)

Gina Monteforte, after having been duly sworn, deposes and states as follows:

1. I am employed by Flexibility Capital, Inc.
2. My position with Flexibility Capital is president.
3. I am an adult, over the age of 21, and competent to testify. This affidavit is made upon my personal knowledge.
4. In my capacity with Flexibility Capital I am familiar with the records of Flexibility Capital and the manner in which they are kept. The entries made to those records are made at or near the time of the transaction described, in the normal course of Flexibility Capital's business, by persons under a business duty to do so. I am custodian of records. I am familiar with this matter that is before the Court.
5. On February 4, 2020, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, applied for commercial funding.
6. On February 6, 2020, Sabatino Cupelli and David Jonathan

Tulis, d/b/a Hot News Talk Radio, executed a future receivables sale and purchase agreement with Flexibility Capital.

7. Flexibility Capital loaned Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, money.

8. Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, failed to pay as promised.

9. The amount due Flexibility Capital by Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, was \$21,061.38 as of August 5, 2020.

10. The agreement provides for the continuing accrual of interest and for the payment by Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, of Flexibility Capital's attorney's fees.

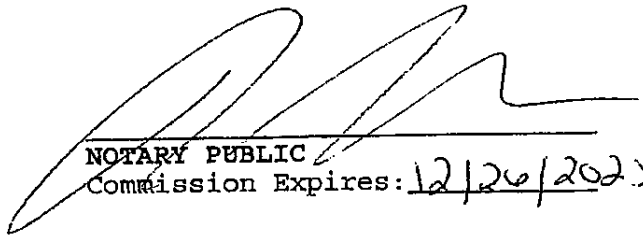
11. This agreement is secured by a UCC-1 lien which encompasses: "As security for the payment of the Indemnified Amounts, Seller hereby grants to Flexibility a continuing lien and security interest in, and hereby assigns to Flexibility as collateral security, a first priority lien on all of Seller's tangible and intangible assets, whether now existing or hereinafter arising or acquired and wherever located and all proceeds of such assets (collectively, the 'Collateral')."

12. Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, detain Flexibility Capital's collateral and have declined to turn over possession of the collateral to Flexibility Capital.

Further, affiant saith not.

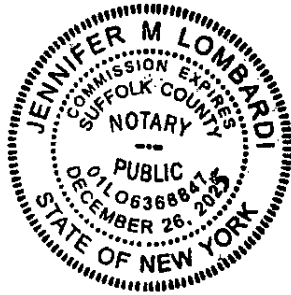

GINA MONTEFORTE

Sworn to and subscribed before me this 10 day of May,
2022.


NOTARY PUBLIC

Commission Expires: 12/26/2025

(21001231)



IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FLEXIBILITY CAPITAL, INC.)
)
Plaintiff,)
)
VS.)
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS, d/b/a)
D/B/A HOT NEWS TALK RADIO)
)
Defendants.)

NO. 22C429

IV

FILED IN OFFICE
2022 MAY 16 AM 10:40
LARRY L. HENRY, CLERK
BY HP DC

PLAINTIFF'S SPECIFICATION OF MATERIAL FACTS

Pursuant to Amended Rule 56.03, Tennessee Rules of Civil Procedure, the plaintiff and movant herein, Flexibility Capital, Inc., provides the following statement of the material facts as to which the plaintiff contends there is no genuine issue for trial:

1. On February 4, 2020, defendants applied for commercial funding. See Exhibit 1 to plaintiff's brief.

2. On February 6, 2020, defendants executed a future receivables sale and purchase agreement with plaintiff. See Exhibit 2 to plaintiff's brief.

3. A true and correct copy of the future receivables sale and purchase agreement is attached as Exhibit 2 to plaintiff's brief.

4. Plaintiff loaned defendants money. See Affidavit of Gina Monteforte.

5. Defendants failed to pay as promised. Id. See Exhibit 3 plaintiff's brief.

6. The amount due plaintiff by defendants was \$21,061.38 as of August 5, 2020. Id.

7. The agreement provides for the continuing accrual of interest and for the payment by defendants of plaintiff's attorney's fees of 25 percent of the balance due. See Exhibit 2 to plaintiff's brief.

8. This agreement is secured by a UCC-1 lien which encompasses: "As security for the payment of the Indemnified Amounts, Seller hereby grants to Flexibility a continuing lien and security interest in, and hereby assigns to Flexibility as collateral security, a first priority lien on all of Seller's tangible and intangible assets, whether now existing or hereinafter arising or acquired and wherever located and all proceeds of such assets (collectively, the 'Collateral')." See Exhibit 4 to plaintiff's brief.

9. Defendants detain plaintiff's collateral and have declined to turn over possession of the collateral to plaintiff. See Affidavit of Gina Monteforte.

DATED: May 12, 2022.

Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, Tennessee 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com
mcheadle@cheadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 86665 Summit Peak Way, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, this 12th day of May, 2022.



**JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE**

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector. (21001231)

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FLEXIBILITY CAPITAL, INC.)
)
Plaintiff,)
)
VS.)
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS, d/b/a)
D/B/A HOT NEWS TALK RADIO)
)
Defendants.)

NO. 22C429
IV

FILED IN OFFICE
2022 MAY 16 AM 9:43
LARRY L. HENRY, CLERK
BY HP DC

AFFIDAVIT

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

Come the affiants, John R. Cheadle, Jr. and Mary Barnard Cheadle,
and after having been duly sworn, depose and state that:

1. The loan documents underlying this cause of action obligate
defendants to pay plaintiff's attorney's fees.

2. Because defendants defaulted in the promises defendants made
to the plaintiff, plaintiff has been forced to retain counsel and file
suit with this Court.

3. The loan documents provide:

"Upon receipt of such default notice, Merchant shall immediately
pay Flexibility the unpaid portion of the Purchased Amount. In
addition, Merchant shall also pay to Flexibility, as additional
damages, any reasonable expenses incurred by Flexibility in
connection with recovering the monies due to Flexibility from
Merchant pursuant to this Agreement, including without limitation
the costs of retaining collection firms and reasonable attorneys'
fees and disbursements (collectively, "Reasonable Damages"). The
parties agree that Flexibility shall not be required to itemize or
prove its Reasonable Damages and that the fair value of the
Reasonable Damages shall be calculated at twenty-five percent
(25%) of the unpaid portion of the Purchased Amount."

4. Plaintiff will pay the affiants, plaintiff's counsel, a
contingency of all sums recovered herein. Affiants believe this to be
the fee customarily charged in this locality for similar legal services.

5. Affiants believe this fee is commensurate with the amount involved. Since the fee is contingent upon recovery, the fee will be appropriate to the results obtained.

**Rule 8, Rules of the Supreme Court, Rules of Professional Conduct,
Rule 1.5. Fees.**

- (a) A lawyer's fee and charges for expenses shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
 - (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) The fee customarily charged in the locality for similar legal services;
 - (4) The amount involved and the results obtained;
 - (5) The time limitations imposed by the client or by the circumstances;
 - (6) The nature and length of the professional relationship with the client;
 - (7) The experience, reputation, and ability of the lawyer or lawyers performing the services;
 - (8) Whether the fee is fixed or contingent;
 - (9) Prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
 - (10) Whether the fee agreement is in writing.

6. Counsel for the plaintiff have devoted certain time to this file in an initial review, and conference with the client, the drafting of the lawsuit, receipt and review of defendants' dispute, draft and send letter to defendants verifying debt, drafting alias summonses, receipt and review of defendants' "Admissions and Confessions", monitoring service of process, confirming service of process, initial court appear in General Sessions Court, preparation and court appearance for trial, review of defendants' appeal, drafting and filing plaintiff's motion for

summary judgment, supporting brief and statement of facts, preparation for the anticipated date of hearing, and the court appearance upon plaintiff's motion for summary judgment, but affiants expect that the substantial expenditure of time will be prospective, in the recovery of any judgment entered herein. Anticipated post-judgment supplementary proceedings might include the preparation and filing of garnishments and executions, the drafting and filing of post-judgment interrogatories or subpoenas to testify for a judgment-debtor examination, post-judgment discovery deposition, motions to compel, etc.

7. We have expended and will expend through the hearing on plaintiff's motion for summary judgment 12.2 hours in this case, but most of the work will be prospective; and

8. The hourly rates of \$450.00 and \$300.00 for John R. Cheadle, Jr. and Mary Barnard Cheadle, respectively, are the rates counsel for plaintiff currently charge. However, twenty-five percent of the balance due is \$5,265.35

9. Affiants respectfully request that attorney's fees prayed for in the amount of \$5,265.35 be awarded to plaintiff to partially offset the loss plaintiff has suffered as a result of defendants' default.

Further, affiants saith not.

Respectfully submitted,

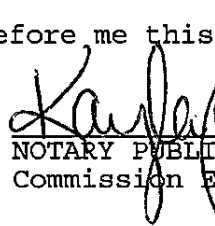
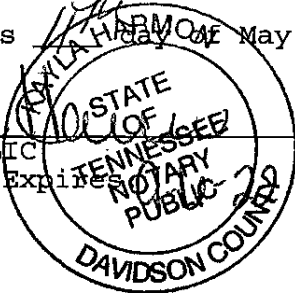


JOHN R. CHEADLE, JR. (6053)
Affiant
2404 Crestmoor Road
Nashville, Tennessee 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com



MARY BARNARD CHEADLE (27084)
Affiant
2404 Crestmoor Road
Nashville, Tennessee 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
mcheadle@cheadlelaw.com

Sworn to and subscribed before me this 17th day of May, 2022.


NOTARY PUBLIC
Commission Expires 12/28


(21001231)

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENN.

Flexibility Capital Inc.)
)
vs.)
)
Sabatino Cupelli)
8665 Summit Creek Way)
Chattanooga, TN37363)
David Jonathan Tulis)
10520 Brickhill Lane)
Soddy-Daisy TN 37379)

Case No.
22C429
IV

FILED IN OFFICE
2022 JUN -3 AM 11:34
LARRY L. HENRY, CLERK
BY DS /

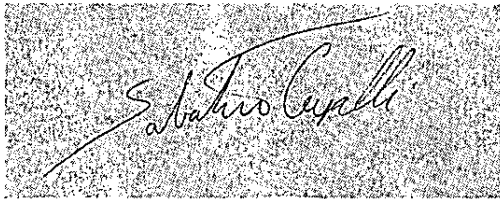
Motion for Continuance

The accused move for a continuance in the above-styled action. They have not obtained answers to a written demand for admissions and confessions sent certified U.S. mail and received by the Cheedle law firm May 21, 2022.

Accused wish to amend this demand for admissions and confessions in light of counsel. Further discovery is needed on the identity and interests of the plaintiff, which discovery accused intends to submit to the accuser forthwith.

The accused requests continuance of at least five weeks to affect this discovery, or whatever the court finds to be just. A hearing has been set June 20, 2022. /

Respectfully submitted,



By _____

Sabatino Cupelli

David J. Tulis

By _____

David Jonathan Tulis

CERTIFICATE OF SERVICE

Sabatino Cupelli and David Jonathan Tulis certify that a true and exact copy of this motion is being sent by first class mail this _____ day of June, 2022, to:

John R. Cheadle Jr.
And Mary Barnard Cheadle
2404 Crestmoor Road
Nashville, TN 37215



Sabatino Cupelli

David J. Tulis

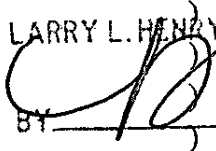
David Jonathan Tulis

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENN.

FILED IN OFFICE

2022 JUN -6 PM 12: 24

LARRY L. HENRY, CLERK

BY  DC

Case No.

22C429

DIVISION IV

Flexibility Capital Inc.

vs.

Sabatino Cupelli
8665 Summit Creek Way
Chattanooga, TN37363
David Jonathan Tulis
10520 Brickhill Lane
Soddy-Daisy TN 37379

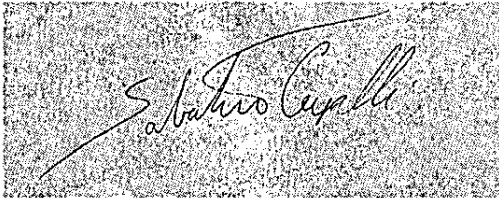
Supplemental Filing

The accused in the above-styled matter submit into the court's record the following:

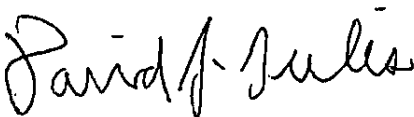
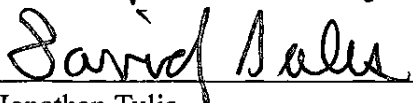
1. Notice disputing the validity of the debt, and
2. Their demand for discovery for documents and accounting of the alleged debt.

The notice and demand is attached, 5 pp.

Respectfully submitted,



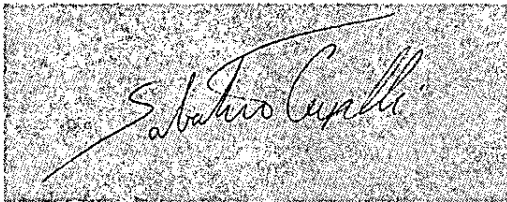
By _____
Sabatino Cupelli


By  _____
David Jonathan Tulis

CERTIFICATE OF SERVICE

Sabatino Cupelli and David Jonathan Tulis certify that a true and exact copy of this motion and the attached demand for discovery letter is being sent by certified mail, no. 7019 2970 0001 1397 5616 this _____ day of June, 2022, to:

John R. Cheadle Jr.
And Mary Barnard Cheadle
2404 Crestmoor Road
Nashville, TN 37215

A rectangular box containing a handwritten signature in cursive script that reads "Sabatino Cupelli".

Sabatino Cupelli

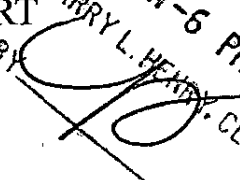
A handwritten signature in cursive script that reads "David Jonathan Tulis".

David Jonathan Tulis

IN THE CIRCUIT COURT

OF

HAMILTON COUNTY
CHATTANOOGA, TENNESSEE

FILED IN OFFICE
2022 JUN -6 PM 12:25
LARRY L. HENRY, CLERK
BY 
DC

In the matter of: FLEXIBILITY CAPITAL INC. vs. Sabatino Cupelli and David Jonathan Tulis, Case No. 22C429 Division IV

Notice: Validity of alleged debt disputed
and
Discovery request for production of documents
& accounting

Date: June 6, 2022

From: Sabatino Cupelli
8665 Summit Creek Way
Chattanooga, TN 37363

David Jonathan Tulis
10520 Brickhill Lane
Soddy-Daisy TN 37379

To:

1. Flexibility Capital Inc.
2. Attorney John R. Cheadle Jr. (6053)
3. Attorney Mary Barnard Cheadle (27084)
4. Any other attorney at Cheadle Law involved in this collection action and lawsuit

I, Sabatino Cupelli, and I, David Jonathan Tulis, the accused, dispute the validity of plaintiff's alleged debt in its entirety pursuant to T.C.A. 60-20-124(d)(2).

Further, defendants request alleged plaintiff's debt collectors and attorneys, John R. Cheadle Jr. (6053) and Mary Barnard Cheadle (27084), of Cheadle Law in Nashville to produce discovery documentary evidence of accounting and substantiation of the validity of alleged debt claimed by plaintiff, allegedly Flexibility Capital Inc., per Rule 26.01-.02 which is relevant to the subject matter involved in the pending action as follows:

1. **Electronically stored information.** Please produce any and all information beyond that supplied by plaintiff in motion for summary judgment bearing defendants' names that is stored in any and all electronic media and is retrievable in perceivable form;
2. **Personal knowledge witness information.** Please produce the identity, title and location of all natural persons having personal firsthand knowledge of any matter leading to the discovery of admissible evidence relevant to the pending action against defendant, per Tennessee evidence rule 602;
3. **Alleged original creditor.** Please provide the name and address of the original creditor if different from FLEXIBILITY CAPITAL INC., the purported plaintiff in this case;
4. **Holder in due course.** Please provide verified (sworn to by affidavit) evidence that the alleged creditor, FLEXIBILITY CAPITAL INC., is the secured party in the instant matter, i.e., holder in due course, and has a perfected security interest in the aforesaid alleged agreement and alleged debt;
5. **Alleged original agreement:** Please provide defendants a verified copy, both front and back, of the alleged original agreement and any other alleged original security instruments in their entirety, including the allonge,¹ affixed to the original alleged agreement for indorsements. Note: Said affidavit is to be sworn to be true, correct, complete, and not misleading, by a properly identified and authorized officer of the alleged creditor, who states that he or she has personal, first hand knowledge of the validity of said alleged original document(s));
6. **Custodian of document(s).** Please provide the name, title, and address of the natural person custodian of the alleged original agreement and of any other alleged original security instruments;

¹ Allonge. A piece of paper annexed to a negotiable instrument or credit card agreement, on which to write indorsements for which there is no room on the instrument itself. Such must be so firmly affixed thereto as to become a part thereof. U.C.C. § 3-202(2). Black's Law Dictionary, 6th Edition, page 76.

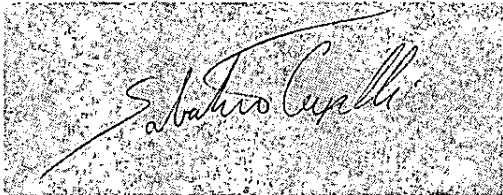
7. **Address of physical location of document(s).** Please provide the address of the physical location of the alleged original agreement and any other alleged original security instruments if different from No. 6 above;
8. **Proof of value given.** Please provide verified copies, both front and back, of all documents and records with respect to the aforesaid alleged agreement and alleged debt from the beginning, including but not limited to, any and all lender issued canceled certified checks, cashiers' checks, money equivalents or similar instruments, identified as or evidencing assets provided by the alleged creditor and/or the alleged original creditor to us — and indorsed by the accused parties;
9. **Deposit slip and wire transfer proof.** Please provide a verified copy of the deposit slip for the deposit of my alleged agreement in its entirety by the alleged creditor associated with the alleged account number ending in 8101, and a verified copy of the wire transfer issued by the alleged creditor as payor in payment for my alleged agreement in its entirety and any other alleged related security instruments;
10. **Affidavit of debt & damages.** Please provide an affidavit of debt and damages incurred, sworn to be true, correct, complete, and not misleading, by a properly identified and authorized officer of the alleged creditor, hereinafter "affiant," upon his or her personal knowledge (Evidence Rule 602) stating:
- 1) that the alleged creditor provided consideration to the alleged debtor from the assets it had on hand BEFORE the alleged consideration for future receipts was made, and incurred a financial loss under the full and complete alleged original agreement and alleged debt, and state each and every loss that the alleged creditor incurred to date under the alleged debt in issue, and
 - 2) that affiant has personal, firsthand knowledge (TRE Rule 602) regarding the facts of the alleged debt and is the original custodian of the books of entry, or directly supervises said original custodian of the records.
11. **Bookkeeping journal / account ledger entries.** Please provide a verified (sworn to by affidavit) copy of the complete set of original bookkeeping journal / account ledger entries associated with defendants' alleged agreement and alleged account number using Generally Accepted Accounting Principles per 12 U.S.C. § 1831n, showing all debits and credits and identifying the source(s) and amount of the credit loan funds/assets; Note: The verifying affidavit of journal / account ledger bookkeeping entries is to be completed

by the original custodian of the books and records, sworn to be true, correct, complete, and not misleading. Further, said affidavit shall contain positive identification of the custodian, and state that he or she has personal, firsthand knowledge (TRE Rule 602) of said entries;

12. **Assignment contract.** Please provide verified (sworn to by affidavit) proof of an assignment contract in its entirety—if applicable—of the alleged original agreement and the alleged debt in issue from an alleged original creditor, as assignor, to the alleged creditor/debt collector, as assignee;
13. **Proof of authority:** Please provide a verified copy of the contract Cheadle Law firm/debt collection agent has with the alleged original creditor which authorizes the debt collection agency/law firm to engage in debt collection activities on its behalf against the above alleged (“loan”) account, and naming Cheadle as an authorized debt collection agent(s);
14. **Certification of authority.** Please provide a verified certificate of authority, or fictitious/assumed name certificate from the State of Tennessee secretary of state authorizing Flexibility Capital and Cheadle Law to transact business;
15. **License.** Provide a verified copy of Cheadle Law’s debt collection service license pursuant to T.C.A. § 562;
16. **Surety bond.** Provide a verified copy of surety bond proving Cheadle Law compliance with T.C.A. § 62-20-106, or certificate of assignment of certificate by the State Collection Service board;
17. **Compliance proof.** Provide a verified copy of evidentiary proof submitted to Flexibility Capital Inc. that Cheadle Law is licensed to perform debt collections activities in Tennessee, per T.C.A. § 62-20-118;
18. **Law license verification.** Proof of existence of law licenses for John R. Cheadle, allegedly 6053, and Mary Barnard Cheadle, allegedly 27084, in state of Tennessee;
19. **Production request reply deadline.** Time is of the essence. Defendants ask Cheadle, Flexibility Capital and others with interest in this lawsuit produce the above-requested discovery documents within ten (10) days of receipt of this notice and request.

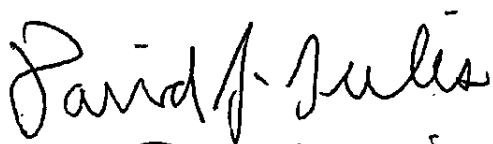
###

Respectfully yours,

A rectangular area containing a handwritten signature in cursive script, which appears to read "Sabatino Cupelli". The signature is written in dark ink on a light background.

By _____

Sabatino Cupelli

A handwritten signature in cursive script, which appears to read "David J. Tulis". The signature is written in dark ink on a light background.

By David Tulis

David Jonathan Tulis

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FILED IN OFFICE
2022 JUN 23 AM 10:08
LARRY L. HENRY, CLERK
BY MLP DE

FLEXIBILITY CAPITAL, INC.)
)
Plaintiff,)
)
VS.) NO. 22C429
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS,)
D/B/A HOT NEWS TALK RADIO)
)
Defendants.)

RESPONSE OF PLAINTIFF TO DEFENDANTS'
"ADMISSIONS AND CONFESSIONS"

Comes the plaintiff, Flexibility Capital, Inc., by and through counsel, John R. Cheadle, Jr. and Mary Barnard Cheadle, and responds to defendants' "Admissions and Confessions":

1. Admit that you received from us an expression of intent to make an offer.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

2. Admit that we made an offer of repayment.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

3. Admit that you imposed a condition on consideration of that offer.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement

discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

4. Admit that you refused to discuss an offer unless we granted you access to our bank account.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

5. Admit that negotiations ended after you imposed that requirement.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

6. Admit that you took federal pandemic paycheck protection program money in 2020 to cover for losses in your business, and that you received \$24,140 from the federal government.

RESPONSE: Plaintiff objects to this request. None of the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

7. Admit that you received more than \$24,140 from the federal government's PPP program.

RESPONSE: Plaintiff objects to this request. None of the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

DATED: June 20, 2022.

Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, TN 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com
mcheadle@cheadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, and by e-mail at davidtuliseditor@gmail.com, this 20th day of June, 2022.



JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

(p.shell; 21001231)

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENN. DIV. 4

FILED IN OFFICE

2022 JUL 14 PM 1:40

Flexibility Capital Inc.

LARRY L. HENRY, CLERK

vs.

BY [Signature] DC

Case No.
22C429

IV

Sabatino Cupelli)
8665 Summit Creek Way)
Chattanooga, TN37363)
David Jonathan Tulis)
10520 Brickhill Lane)
Soddy-Daisy TN 37379)

Motion to dismiss

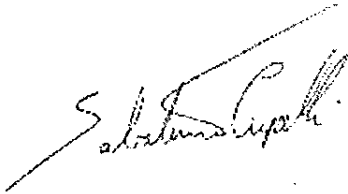
The accused have challenged the validity of the alleged debt sued over in this case, and demand dismissal of the action per Tenn. Code Ann. § 62-20-124(d)(2), by right under law. The statute says:

(2) If a debtor or codebtor files a sworn denial or otherwise raises a dispute concerning any account, bill, note or other evidence of indebtedness, the court shall dismiss the account, bill, note or other evidence of indebtedness, without prejudice. The collection service licensee may bring a separate case for any such disputed account, bill, note or other evidence of indebtedness within one (1) year of dismissal; provided, however, that the disputed account, bill, note or other evidence of indebtedness cannot be consolidated with any other account, bill, note or other evidence of indebtedness.

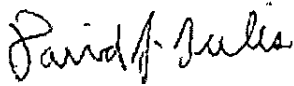
Tenn. Code Ann. § 62-20-124 (Emphasis added)

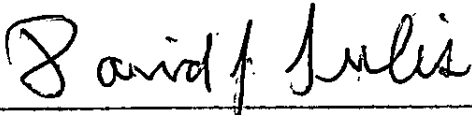
Accused have "otherwise raise[d] a dispute concerning any account, bill, note or other evidence of indebtedness," as evidenced in the case record, "supplemental filing," June 6, 2022, and demand dismissal of this cause, on these grounds.

Respectfully submitted,



By _____
Sabatino Cupelli

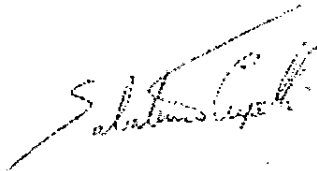


By  _____
David Jonathan Tulis

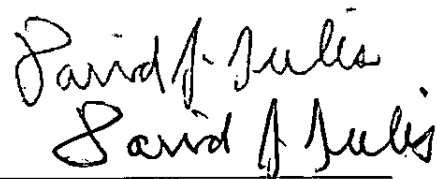
CERTIFICATE OF SERVICE

Sabatino Cupelli and David Jonathan Tulis certify that a true and exact copy of this motion is being sent by email to Mary Cheadle at mcheadle@cheadlelaw.com and by first-class mail to John R. Cheadle Jr. this 15th day of June, 2022, to:

John R. Cheadle Jr.
And Mary Barnard Cheadle
2404 Crestmoor Road
Nashville, TN 37215



Sabatino Cupelli



David Jonathan Tulis

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENN. DIV. 4

2022 JUL 14 PM 1:40

Flexibility Capital Inc.

LARRY L. HENRY, CLERK

vs.

BY  DC

Case No.
22C429

Sabatino Cupelli

8665 Summit Creek Way

Chattanooga, TN37363

David Jonathan Tulis

10520 Brickhill Lane

Soddy-Daisy TN 37379

IV

Motion for Rule 8 sanctions

Flexibility Capital attorneys are misleading the court as to the nature of the above-styled case and accused demand they be sanctioned for violation of Rule 3.3.

Attorneys are required to be candid with the court and "shall not knowingly *** make a false statement of fact or law to a tribunal."

In the statement of facts, John Cheadle and Mary Cheadle say "plaintiff loaned defendants money," p. 1, and "Plaintiff loaned defendants money," p. 2, and, "Plaintiff loan[ed] defendants money," p. 3.

'Not a loan'

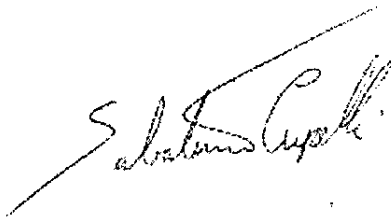
On p. 2 of the motion there is reference to "balance due on future receivables sale and purchase agreement," contradicting the insistence of the attorneys calling the transaction a loan.

A "Future receivables sale and purchase agreement" in the exhibits describes the disputed contract arrangement as "not borrowing funds by Merchant from Flexibility. Flexibility does not charge Merchant and will not collect from Merchant any interest on the monies spent on the purchase" of future receipts (p. 3, ¶ 14(a)(ii)).

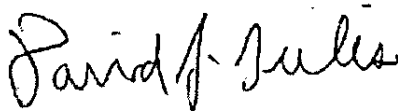
The purchase price for future receipts from Hot News Talk Radio "is not intended to be, nor shall it be construed as a loan from Flexibility to Merchant that requires absolute and unconditional repayment on a maturity date. To the contrary, Flexibility's ability to receive the Purchased Amount pursuant to this Agreement, and the date when the Purchased Amount is paid in full (*if ever*) are subject to and conditioned upon performance of the Merchant's business" (p. 4, ¶14(c) "Not a loan") (emphasis added).

Accused demand the court sanction John Cheadle and Mary Cheadle for lack of candor in presenting alleged facts.

Respectfully submitted,



By _____
Sabatino Cupelli

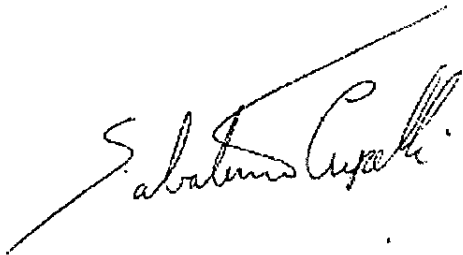


By _____
David Jonathan Tulis

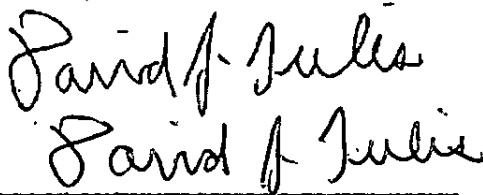
CERTIFICATE OF SERVICE

Sabatino Cupelli and David Jonathan Tulis certify that a true and exact copy of this motion is being sent by email to Mary Cheadle at mcheadle@cheadlelaw.com and by first-class mail to John R. Cheadle Jr. this 15th day of June, 2022, to:

John R. Cheadle Jr.
And Mary Barnard Cheadle
2404 Crestmoor Road
Nashville, TN 37215




Sabatino Cupelli



David Jonathan Tulis

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
 AT CHATTANOOGA
 DIVISION IV

FILED IN OFFICE
 2022 JUL 22 PM 1:04
 LARRY L. HENRY, CLERK
 BY  DC

FLEXIBILITY CAPITAL, INC.)
)
 Plaintiff,)
)
 VS.)
)
 SABATINO CUPELLI and)
 DAVID JONATHAN TULIS,)
 D/B/A HOT NEWS TALK RADIO)
)
 Defendants.)

NO. 22C429
 GENERAL SESSIONS APPEAL
 Div IV ✓

PLAINTIFF'S MOTION TO CONTINUE ALL PENDING MOTIONS

Comes the plaintiff, Flexibility Capital, Inc., by and through counsel, John R. Cheadle, Jr. and Mary Barnard Cheadle, and moves the court for an order continuing all pending motions that are currently set on the Court's docket for July 25, 2022. In support of plaintiff's motion, plaintiff would show:

1. On May 21, 2021, plaintiff filed suit to recover the balance due on a future receivables sale and purchase agreement in the Hamilton County General Sessions Civil Court.
2. On March 29, 2022, judgment was entered in favor of plaintiff against defendants for \$30,265.34. Defendants filed an appeal.
3. On May 16, 2022, plaintiff filed a motion for summary judgment with a hearing date of June 20, 2022.
4. On May 23, 2022, plaintiff's counsel received from defendants their "Admission and confessions."
5. On June 3, 2022, defendants filed a motion to continue the hearing on plaintiff's motion for summary judgment.
6. On June 6, 2022, plaintiff's counsel received from

defendants their discovery requests.

7. On June 15, 2022, nine (9) days after serving plaintiff with discovery, defendants filed a motion to compel. Defendants did eventually agree to strike the prematurely filed motion to compel.

8. On June 20, 2022, plaintiff's counsel appeared for the scheduled hearing on plaintiff's motion for summary judgment. Defendant David Tulis was also present. Plaintiff's counsel announced that there was discovery pending and requested for the motion for summary judgment to be continued to July 18, 2022. Mr. Tulis announced that he was fine with the continuance to July 18, 2022.

9. Plaintiff responded to defendants' "Admissions and confessions" on June 20, 2022. Plaintiff responded to defendant's requests for production of documents on July 6, 2022.

10. Four (4) days prior to the rescheduled hearing on plaintiff's motion for summary judgment, defendants filed a motion to dismiss, a motion to compel and a motion for Rule 8 sanctions to be heard on July 25, 2022.

11. The parties were contacted on July 15, 2022, by Ms. Parham advising that the Court had continued plaintiff's motion for summary judgment to July 25, 2022, for all motions to be heard at the same time. Plaintiff's counsel immediately let Ms. Parham know that counsel was already scheduled to be in court in other counties on July 25, 2022, could not be available.

12. Plaintiff's counsel has emailed defendants requesting to continue all motions to August 15, 2022, the next available

Monday that plaintiff's counsel can be available. Defendants have not responded to plaintiff's counsel's emails. Attached are copies of the emails. Defendant David Tulis has previously communicated with plaintiff's counsel by email.

13. Plaintiff's counsel cannot be available for the hearings on July 25, 2022, as plaintiff's counsel is already scheduled to be in Court in Knox County and Williamson County.

WHEREFORE, plaintiff respectfully requests that all pending motions be continued to August 15, 2022.

DATED: July 22, 2022.

Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, TN 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com
mcheadle@cheadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, and by e-mail at davidtuliseditor@gmail.com, this 22nd day of July, 2022.



JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

(21001231)

Mary Cheadle

From: Mary Cheadle
Sent: Thursday, July 21, 2022 12:08 PM
To: David Tulis
Cc: Parham, Catherine
Subject: FW: Flexibility Capital v. Sabatino Cupelli, et al

Mr. Tulis –

Please let me know if you are agreeable to continue the motions for hearing on August 15, 2022.

Sincerely -

Mary Barnard Cheadle

CHEADLE | Law
2404 Crestmoor Road
Nashville, TN 37215
mcheadle@cheadlelaw.com
www.cheadlelaw.com
615.254.1009 (Office)
615.254-9298 (Fax)

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector.

From: Mary Cheadle
Sent: Tuesday, July 19, 2022 5:55 PM
To: David Tulis <davidtuliseditor@gmail.com>
Cc: sabatinocupelli@gmail.com; Parham, Catherine <CatherineP@mail.HamiltonTN.gov>
Subject: Flexibility Capital v. Sabatino Cupelli, et al

Mr. Tulis –

As you are aware, the Court continued our motion for summary judgment to be heard on July 25, 2022.

We are scheduled to be in other courts on July 25, 2022.

Would you be agreeable to continue all pending motions to be heard on August 15, 2022?

Sincerely -


Mary Barnard Cheadle

CHEADLE | Law
2404 Crestmoor Road
Nashville, TN 37215
mcheadle@cheadlelaw.com
www.cheadlelaw.com

615.254.1009 (Office)
615.254-9298 (Fax)

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector.

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FILED IN OFFICE
2022 JUL 22 PM 1:05
LARRY L. HENRY, CLERK
BY  DC

FLEXIBILITY CAPITAL, INC.)
)
Plaintiff,)
)
VS.) NO. 22C429
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS,)
D/B/A HOT NEWS TALK RADIO)
)
Defendants.)

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS,
MOTION FOR RULE 8 SANCTIONS AND MOTION TO COMPEL

Comes the plaintiff, Flexibility Capital, Inc., by and through counsel, John R. Cheadle, Jr. and Mary Barnard Cheadle, and in response to defendants' motion to dismiss, motion for Rule 8 sanctions and motion to compel, and would respond:

STATEMENT OF FACTS

Plaintiff has filed its suit herein to recover the balance due on a future receivables sale and purchase agreement.

On February 4, 2020, defendants applied for commercial funding. On February 6, 2020, defendants executed a future receivables sale and purchase agreement with plaintiff. Plaintiff loaned defendants money. Defendants failed to pay as promised. The amount due plaintiff by defendants was \$21,061.38 as of August 5, 2020. The agreement provides for the continuing accrual of interest and the payment by defendants of plaintiff's attorney's fees of 25 percent of the balance due.

This agreement is secured by a UCC-1 lien which encompasses:
"As security for the payment of the Indemnified Amounts, Seller

hereby grants to Flexibility a continuing lien and security interest in, and hereby assigns to Flexibility as collateral security, a first priority lien on all of Seller's tangible and intangible assets, whether now existing or hereinafter arising or acquired and wherever located and all proceeds of such assets (collectively, the 'Collateral')." Defendants detain plaintiff's collateral and have declined to turn over possession of the collateral to plaintiff.

RESPONSE TO MOTION TO DISMISS

Defendants have filed a motion to dismiss, pursuant to T.C.A. § 60-20-124(d)(2), formally T.C.A. § 62-20-127, asserting that dismissal is proper because defendants have "challenged the validity of the alleged debt."

T.C.A. § 60-20-124 applies to debts that have been assigned to third parties. T.C.A. § 60-20-124(d) specifically applies to the consolidation of multiple debts that an individual might have into one lawsuit.

T.C.A. § 60-20-124 does not apply to this case. Plaintiff is the original creditor. The debt has not been assigned. Further, this is a suit for the one obligation owed by defendants to plaintiff, the balance due on the future receivables sale and purchase agreement.

WHEREFORE, plaintiff respectfully requests that defendants' motion to dismiss be denied.

RESPONSE TO DEFENDANTS' MOTION FOR RULE 8 SANCTIONS

Defendants have filed a motion for Rule 8 sanctions alleging that "Flexibility Capital attorneys are misleading the court as to the nature of the above-styled case." Defendants assert that the statement that "Plaintiff loaned defendants money" in plaintiff's statement of facts in supporting of its motion for summary judgment is "misleading". This is not true.

The facts are that defendants applied for commercial funding. Defendants executed a future receivables sale and purchase agreement with plaintiff. Plaintiff loaned defendants money that was to be paid back from defendant's future receivables. Defendants have not denied that they received the funds. Defendants failed to pay as promised. Defendants have not denied that they failed to pay as promised. A balance remains outstanding. Defendants have not disputed the balance.

At no time have counsel for plaintiff "misled" the Court.

WHEREFORE, plaintiff respectfully requests that defendants' motion for Rule 8 sanctions be denied.

RESPONSE TO MOTION TO COMPEL

Defendants served plaintiff with "Admissions and confessions" and requests for productions of documents. Plaintiff has timely responded to defendants' discovery requests. Attached are copies of plaintiff's responses.

Plaintiff has properly objected to those requests that call for particular form of response where an alternative form of response would provide more clear and meaningful information.

Plaintiff has also properly objected to those requests which seek items protected by attorney work product. Defendants have not set out a basis in their motion as to why these objections should be overruled.

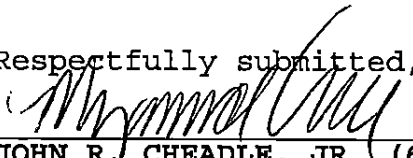
Defendants have filed a motion to compel that essentially restates their requests for production and demands that plaintiff comply with defendants frivolous demands. Plaintiff has properly objected to each request as deemed necessary.

Defendants assert that plaintiff is not being "truthful" and demand further proof that plaintiff is the "original creditor" and "the secured party." Additionally, defendants "disbelieve" that plaintiff has not assigned the debt. Further, defendants also demand more proof that plaintiff's counsel are licensed attorneys. Defendants have not assert in their motion a specific valid legal argument for alleging that plaintiff has not properly responded to the requests for production. Defendants' motion to compel is frivolous. Further, defendants did not reach out to plaintiff's counsel prior to filing the motion to compel.

WHEREFORE, plaintiff respectfully requests that defendants' motion to compel be denied.

DATED: July 22, 2022.

Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, TN 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jtheadle@theadlelaw.com
mtheadle@theadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, and by e-mail at davidtuliseditor@gmail.com, this 22nd day of July, 2022.



JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

(p.shell; 21001231)

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FLEXIBILITY CAPITAL, INC.)
)
Plaintiff,)
)
VS.) NO. 22C429
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS,)
D/B/A HOT NEWS TALK RADIO)
)
Defendants.)

RESPONSE OF PLAINTIFF TO DEFENDANTS'
"ADMISSIONS AND CONFESSIONS"

Comes the plaintiff, Flexibility Capital, Inc., by and through counsel, John R. Cheadle, Jr. and Mary Barnard Cheadle, and responds to defendants' "Admissions and Confessions":

1. Admit that you received from us an expression of intent to make an offer.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

2. Admit that we made an offer of repayment.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

3. Admit that you imposed a condition on consideration of that offer.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement

discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

4. Admit that you refused to discuss an offer unless we granted you access to our bank account.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

5. Admit that negotiations ended after you imposed that requirement.

RESPONSE: Plaintiff objects to this request in that it involves settlement discussions between the parties. Settlement discussions between parties to a lawsuit are not to be presented to the Court and are not admissible evidence.

6. Admit that you took federal pandemic paycheck protection program money in 2020 to cover for losses in your business, and that you received \$24,140 from the federal government.

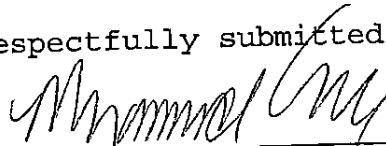
RESPONSE: Plaintiff objects to this request. None of the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

7. Admit that you received more than \$24,140 from the federal government's PPP program.

RESPONSE: Plaintiff objects to this request. None of the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

DATED: June 20, 2022.

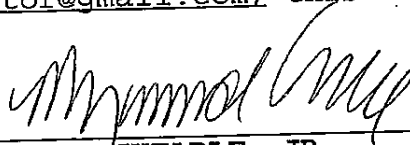
Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, TN 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jheadle@cheadlelaw.com
mheadle@cheadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, and by e-mail at davidtuliseditor@gmail.com, this 20th day of June, 2022.



JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

(p.shell; 21001231)

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA
DIVISION IV

FLEXIBILITY CAPITAL, INC.)
)
Plaintiff,)
)
VS.) NO. 22C429
)
SABATINO CUPELLI and)
DAVID JONATHAN TULIS;)
D/B/A HOT NEWS TALK RADIO)
)
Defendants.)

RESPONSE OF PLAINTIFF TO DEFENDANTS'
DISCOVERY REQUESTS FOR PRODUCTION OF DOCUMENTS AND ACCOUNTING

Comes the plaintiff, Flexibility Capital, Inc., by and through counsel, John R. Cheadle, Jr. and Mary Barnard Cheadle, and in response to defendants' discovery requests for production of documents and accounting, would respond:

OBJECTIONS

1. Plaintiff objects to those requests to the extent they call for a particular form of response where an alternative form of response would provide more clear and meaningful information.
2. Plaintiff objects to those requests which seek items protected by attorney work product.

REQUESTS

1. Electronically stored information. Please produce any and all information beyond that supplied by plaintiff in motion for summary judgment bearing defendants' names that is stored in any and all electronic media and is retrievable in perceivable form.

RESPONSE: Plaintiff objects to this Request as being overly broad and unduly burdensome. Without waiving this objection, plaintiff refers defendants to the documents attached to its motion for summary judgment, which are the germane loan documents.

2. Personal knowledge witness information. Please produce the identity, title and location of all natural persons having firsthand knowledge of any matter leading to the discovery of admissible evidence relevant to the pending action against defendant, per Tennessee evidence rule 602.

RESPONSE: Plaintiff objects to this Request as being overly broad and unduly burdensome. Without waiving this objection, Gina Monteforte, president of Flexibility Capital, has knowledge of facts relevant to the subject matter of this lawsuit. Defendants also have knowledge of facts relevant to the subject matter of this lawsuit.

3. Alleged original creditor. Please provide the name and address of the original creditor if different from Flexibility Capital Inc., the purported plaintiff in this case.

RESPONSE: Flexibility Capital is the original creditor.

4. Holder in due course. Please provide verified (sworn to by affidavit) evidence that the alleged creditor, Flexibility Capital Inc., is the secured party in the instant matter, i.e., holder in due course, and has a perfected security interest in the aforesaid alleged agreement and alleged debt.

RESPONSE: Plaintiff objects to the particular form of response requested. Without waiving this objection, plaintiff refers defendants to a the Future Receivables Sale and Purchase

Agreement executed by defendants on February 6, 2020, the UCC-1 lien and the Affidavit of Gina Monteforte, copies of which are all attached to plaintiff's motion for summary judgment.

5. Alleged original agreement. Please provide defendants with a verified copy, both front and back, of the alleged original agreement and any other alleged original security instruments in their entirety, including the allonge, affixed to the original alleged agreement for indorsements.

RESPONSE: Please refer to plaintiff's Response to Request No. 4.

6. Custodian of document(s). Please provide the name, title, and address of the natural person custodian of the alleged original agreement and of any other alleged original security instruments.

RESPONSE: Plaintiff refers defendants to the Affidavit of Gina Monteforte attached to plaintiff's motion of summary judgment.

7. Address of physical location of document(s). Please provide the address of the physical location of the alleged original agreement and any other alleged original security instruments if different from No. 6 above.

RESPONSE: Flexibility Capital's primary office is located at 1501 Broadway, Suite 1511, New York, New York 10036.

8. Proof of value given. Please provided verified copies, both front and back, of all documents and records with respect to the aforesaid alleged agreement and alleged debt from the beginning, including but not limited to, any and all lender issued canceled certified checks, cashiers' checks, money equivalents or

similar instruments, identified as or evidencing assets provided by the alleged creditor and/or the alleged original creditor to us - and indorsed by the accused parties.

RESPONSE: Plaintiff objects to the particular form of response requested. Further, plaintiff objects to this Request as being overly broad and unduly burdensome. Without waiving these objections, plaintiff refers defendants to the documents attached to plaintiff's motion for summary judgment, which are the germane loan documents.

9. Deposit slip and wire transfer proof. Please provide a verified copy of the deposit slip for the deposit of my alleged agreement in its entirety by the alleged creditor associated with the alleged account number ending in 8101, and a verified copy of the wire transfer issued by the alleged creditor as payor in payment for my alleged agreement in its entirety and any other alleged related security instruments.

RESPONSE: Plaintiff objects to this Request as the information sought is readily accessible to defendants who have access to their bank account ending in 8101. Without waiving this objection, plaintiff refers defendants to Exhibit 3 attached to plaintiff's motion for summary judgment.

10. Affidavit of debt & damages. Please provide an affidavit of debt and damages incurred, sworn to be true, correct, complete, and not misleading, by a properly identified and authorized officer of the alleged creditor, hereinafter "affiant", upon his or her personal knowledge (Evidence Rule 602) stating:

1. that the alleged creditor provided consideration to he alleged debtor from the assets it had on hand BEFORE

the alleged consideration for future receipts was made, and incurred a financial loss under the full and complete alleged original agreement and alleged debt, and state each and every loss that the alleged creditor incurred to date under the alleged debt in issue, and

2. that affiant has personal, firsthand knowledge (TRE Rule 602) regarding the facts of the alleged debt and is the original custodian of the records.

RESPONSE: Plaintiff objects to the particular form of response requested. Without waiving this objection, plaintiff refers defendants to the Affidavit of Gina Monteforte attached to plaintiff's motion for summary judgment.

11. Bookkeeping journal/account ledger entries. Please provide a verified (sworn to by affidavit) copy of the complete set of original bookkeeping journal/account ledger entries associated with defendant's agreement and alleged account number using Generally Accepted Accounting Principles per 12 U.S.C. § 1831n, showing all debts and credits identifying the source(s) and amount of the credit loan funds/assets; Note: The verifying affidavit of journal/account ledger bookkeeping entries is to be completed by the original custodian of the books and records, sworn to be true, correct, complete, and not misleading. Further, said affidavit shall contain positive identification of the custodian, and state that he or she has personal, firsthand knowledge (TRE Rule 602) of said entries.

RESPONSE: Plaintiff objects to the particular form of response requested. Further, plaintiff objects to this Request as being overly broad and unduly burdensome. Without waiving these objections, plaintiff refers defendants to Exhibit 3 to plaintiff's motion for summary judgment.

12. Assignment contract. Please provide verified (sworn to by affidavit) proof of an assignment contract in its entirety-if applicable-of the alleged original agreement and the alleged debt in issue from an alleged original creditor, as assignor, to the alleged creditor/debt collector, as assignee.

RESPONSE: There has been no assignment of the debt.

13. Proof of authority. Please provide a verified copy of the contract Cheadle Law firm/debt collection agent has with the alleged original creditor which authorizes the debtor collection agency/law firm to engage in debt collection activities on its behalf against the above alleged ("loan") account, and naming Cheadle as an authorized debt collection agent(s).

RESPONSE: Plaintiff objects to this Request as it seeks privileged attorney-client communications.

14. Certification of authority. Please provide a verified certificate of authority; or fictitious/assumed name certificate from the State of Tennessee secretary of state authorizing Flexibility Capital and Cheadle Law to transact business.

RESPONSE: Plaintiff has requested this information and will supplement its response. Attorneys are not required to register with the Tennessee Secretary of State.

15. License. Provide a verified copy of Cheadle Law's debt collection service license pursuant to T.C.A. § 562.

RESPONSE: Objection. This is not applicable to attorneys.

16. Surety bond. Provide a verified copy of surety bond proving Cheadle Law compliance with T.C.A. § 62-20-106, or certificate of assignment of certificate by the State Collection

Service board.

RESPONSE: Objection. The Tennessee Collection Service Act does not apply to attorneys, pursuant to T.C.A. § 62-20-103.

17. Compliance proof. Provide a verified copy of evidentiary proof submitted to Flexibility Capital Inc. that Cheadle Law is licensed to perform debt collections activities in Tennessee, per T.C.A. § 62-20-118.

RESPONSE: Please refer to plaintiff's Response to Request No. 16.

18. Law license verification. Proof of existence of law licenses for John R. Cheadle, allegedly 6053, and Mary Barnard Cheadle, allegedly 27084, in state of Tennessee.

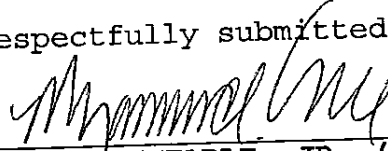
RESPONSE: Objection. Counsel for plaintiff are in good standing with the Tennessee Board of Professional Responsibility. There is no such requirement for plaintiff's counsel to provide "proof of existence of law licenses."

19. Production request reply deadline. Time is of the essence. Defendants ask Cheadle, Flexibility Capital and others with interest in this lawsuit produce the above-requested discovery documents within ten (10) days of receipt of this notice and request.

RESPONSE: Plaintiff objects to this Request, pursuant to Rule 34.02, Tennessee Rules of Civil Procedure.

DATED: July 6, 2022.

Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, TN 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com
mcheadle@cheadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, and by e-mail at davidtuliseditor@gmail.com, this 6th day of July, 2022.



JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

(p.shell; 21001231)

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENN. DIV. 4

Flexibility Capital Inc.)
)
vs.)
)
Sabatino Cupelli)
8665 Summit Creek Way)
Chattanooga, TN37363)
David Jonathan Tulis)
10520 Brickhill Lane)
Soddy-Daisy TN 37379)

Case No. 22C429
 2022 AUG 10 PM 3:41
 CLERK OF COURT
 HAMILTON COUNTY, TENN.

Motion in opposition to summary judgment motion

Accused object to plaintiff attorneys' canoodling before the court and refusing to turn over information sought in their motion to compel discovery, which motion plaintiffs decry as "frivolous" but fulfillment to which is due to accused before the court can justly rule on a motion for summary judgment that presumes facts that are not what they appear. The accused herein rebut such presumption.

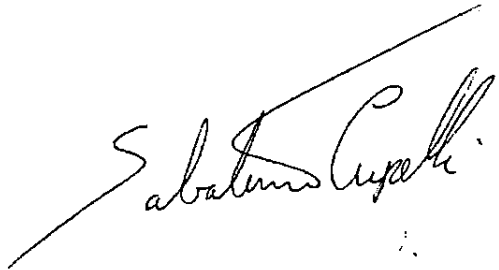
Accused object to plaintiff's specification of material facts as misleading, obscuring the existence of facts subject to their demands under right of discovery under Rule 26.02 and Rule 34.01.

1. The material fact that "defendants applied for commercial funding" misleads the court because the loan originator, by appearances, is a company separate from Flexibility Capital Inc., named as plaintiff and injured party. Kapitus Inc. is the party in view of the discovery request and motion to compel discovery, and accused ask the court to give judicial notice to the maxim, "*Fraus latet in*

generalibus. Fraud lies hid in general expressions” (*Bouvier’s Maxims*, 1858), of which such statements at plaintiff fact No. 1 are.

2. “On February 6, 2020, defendants executed [an] ***agreement with plaintiff.” This statement is not known to be true because Exhibit 1 shows a “commercial funding application” with Kapitus, a major finance company whose COO, Ben Johnson, is frequently quoted in the financial press. Kapitus at <https://kapitus.com/partner/> says it has funded 64,000 businesses and “provided \$3 billion in capital.”
3. The “true and correct copy of the future receivables sale and purchase agreement” is attached. Accused refuse to agree with this statement, subject to review of the fruits of discovery.
4. “Plaintiff loaned defendants money.” This is a false statement, per the contract in the exhibits, and subject of accuseds’ motion for sanctions.
5. “Defendants failed to pay as promised.” Hot News Talk Radio made payments until mid-March, 2020, but the balance of this asserted fact is disputed until discovery obligations of plaintiff are met..
6. The amounts due are disputed until discovery obligations are fully met.
7. The accused dispute this point until plaintiff’s yield to accuseds’ discovery rights.
8. The fact of a filing of a UCC-1 lien finance statement with the secretary of state is not disputed.
9. The statement “defendants detain plaintiff’s collateral and have declined to turn over possession of the collateral to plaintiff” is disputed, pending completion of discovery.

Respectfully submitted,



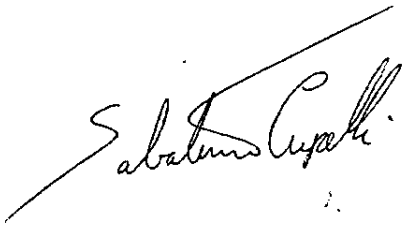
By _____
Sabatino Cupelli

By David Jonathan Tulis
David Jonathan Tulis

CERTIFICATE OF SERVICE

Sabatino Cupelli and David Jonathan Tulis certify that a true and exact copy of this motion is being sent by email to Mary Cheadle at mcheadle@cheadlelaw.com and by first-class mail to John R. Cheadle Jr. this 10th day of August 2022, to:

John R. Cheadle Jr.
And Mary Barnard Cheadle
2404 Crestmoor Road
Nashville, TN 37215



Sabatino Cupelli

David Jonathan Tulis
David Jonathan Tulis

In the circuit court of Hamilton County

Flexibility Capital Inc.)

Vs.)

Sabatino Cupelli)
& David Jonathan Tulis, d/b/a)
Hot News Talk Radio)

FILED IN OFFICE
2022 AUG 12 AM 11:06
LARRY L. HENRY, CLERK
No. 22C429
BY *[Signature]*

Affidavit and amended answer to motion for summary judgment

Comes now David Jonathan Tulis, the accused; in the alternative, to state facts to the best of his knowledge and ability, under oath, and to move the court for relief, as follows:

1. This dispute over payment of a debt arises because of unlawful interference of the agreement by third parties — namely public servants in elected and appointed office.
2. The advance on future receivables of \$18,905 was deposited by wire as of Feb. 6, 2020, to the credit union account of Hot News Talk Radio LLC. Automatic payments began the next day to Flexibility Capital at the rate of \$176 per weekday.
3. The record indicates Hot News Talk Radio LLC began having trouble paying March 5, 2020, with a \$35 fee imposed for insufficient funds. The last payment was March 10.

The record shows the last of three \$100 fees for failed payments was “applied” March 12 against the borrowers’ account. Hot News Talk Radio was in collapse that day.

Contract interference by 3rd parties

4. March 12 was an important day in Tennessee. Gov. Bill Lee imposed a state of emergency under Tenn. Code Ann. § Title 58 over SARS-CoV-2, or Covid-19, flu symptoms said by the World Health Organization to be in the nature of a global pandemic. A government- and media-caused panic collapsed the Tennessee economy and put tens of thousands of people out of work and shuttered thousands of businesses. **EXHIBIT No. 1, Executive Order No. 14, March 12, 2020, “Suspending provisions of certain statutes and rules”**
5. The situation worsened on April 2, 2020. The governor imposed a “safer at home” emergency declaration that put the state’s inhabitants under effective house arrest in what is today called a “lockdown,” a measure long used in Tennessee prisons in time of riot, affray and breaches of the peace. Gov. Lee effectively imposed martial law on the state’s inhabitants. **EXHIBIT no. 2, Executive Order No. 23, “Stay at home”**
6. In Hamilton County, the shutdown of the economy was secured by threats upon the public by officials such as Chattanooga police chief David Roddy and deputies of Sheriff Jim Hammond. The county secured the economic shutdown by two erstwhile directives, which inhibited members of the public from conducting business. Directive No. 1 was July 10, 2020, and No. 2 was effective Sept. 8, 2020. **EXHIBITS No. 3, and No. 4.**
7. City of Chattanooga, among other municipal governments, acted to prevent the transaction of business. Mayor Andy Berke issued numerous executive orders such as

E.O. 2020-02, March 19, 2020, declaring an emergency, **EXHIBIT No. 5**, and E.O. 2020-04, “regarding additional safety precautions and business restrictions,” March 23, 2020, **EXHIBIT No. 6**.

8. Government intimidation went beyond mere words. The county sued Ed’s Supply over its refusal to obey the purported “mask mandate” Aug. 28, 2020. **EXHIBIT no. 7, “Petition for the enforcement of a health directive,” 1 p.**
9. On Dec. 21, 2020, Gov. Lee issued EO No. 70, continuing the emergency and saying “Tennesseans should work from home where possible,” continuing the economic depression. **EXHIBIT No. 8 “Limiting gatherings and spectator events and urging working from home.”**
10. On Jan. 16, 2021, the county issued Directive No. 5 commanding people to wear chin diapers outdoors and in, with exceptions. **EXHIBIT No. 9.**
11. The shutting down of the state economy by penal means destroyed business and confidence among owners. For affiant, it was impossible to generate sales, pay rent and to maintain accounts among small business owners — its chief advertising customer base.
12. Accused endured the state of emergency, with harm done against his rights in five ways, chiefly his right to make a living and pursue an occupation.
13. Actions in violation of state law by Gov. Bill Lee and health department administrator Becky Barnes of the Hamilton County health department interfered with the free market economy statewide and in local economy, molesting the contract between the parties. Accused delineates five harms in an affidavit that is part of a Hamilton County chancery court petition in equity and for writ of mandamus against Mr. Lee and Mrs. Barnes. The

exhibit in *State ex rel David Tulis v. Bill Lee, governor, et al*, case No. E2021-00436-COA-R3-CV, certifies his standing to sue as he has an interest in public servants' obedience to state law. It also establishes the extent of harms imposed upon him personally by these interfering third parties as against the contract. **EXHIBIT No. 10, "Affidavit of David Jonathan Tulis in evidence for the petition in equity and for writ of mandamus"**

14. Respondents in *State ex rel Tulis* violated state law at Tenn. Code Ann. § 68-5-104, the communicable disease law that requires respondents to determine the diagnosis, source or cause of an epidemic in Hamilton County in the interest of public health. The governor imposed his Title 58 state of emergency without warrant, without lawful or legal cause or reason and without a nonfraudulent exigency. Martial law is absolutely forbidden in Tenn. Const. Art. 1 sect. 25, as "inconsistent with the principles of free government." Any breach by an official that escapes notice under the Tennessee bill of rights is forbidden in a catchall provision in Tenn. Const. Art. 1, sect. 16, that states,

The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and **shall never be violated on any pretense whatever**. And to guard against transgression of the high powers we have delegated, we declare that **everything in the bill of rights** contained, is excepted out of the general powers of the government, and **shall forever remain inviolate**. [emphasis added]

The respondents have admitted acts of felony official misconduct in legal proceedings in Hamilton County chancery court. They have argued they are not under "*any duty*" to obey the law (Lee, italics in original) or were exercising "discretion" in disobeying it (Barnes).

15. Relator is petitioning for a hearing in the supreme court after a negative ruling May 23, 2022, case No. E2021-00436-SC-R11-CV.

Contract: Flexibility accepts failure risk

16. Accused refused to participate in the federal government's paycheck protection program for reasons of honor and integrity, unwilling to put his financial distress upon other members of the public.
17. He has demanded if Flexibility Capital took free money from the federal government to reimburse it for shortfalls from Hot News Talk Radio. The Cheadle business received \$122,278 in April 2020 from Pinnacle Bank for 9 jobs covered by the federal paycheck protection program.
<https://www.federalpay.org/paycheck-protection-program/john-chedle-jr-dba-chedle-l-aw-nashville-tn>
18. Hot News Talk Radio as of June 2022 is dissolved for not being in good standing.
19. The owners attempted to negotiate with Flexibility Capital, but found its operators anything but flexible.
20. Flexibility Capital's lawsuit against ostensible personal guarantors appears based on the belief that nonpayment is caused by bad faith, rather than by lack of means in accused's good-faith operation of his radio business. Flexibility Capital wants to be paid now, no matter what.
21. The contract recognizes business rises and falls, and that it is possible the business may fail and generate no future receipts. The contract, at 14.a.ii., p. 3, under "Risk sharing acknowledgements and arrangements," states,

The period of time that it will take Flexibility to collect the purchased amount is not fixed, is unknown to both parties as of the effective date of

this agreement and will depend on how well or not well merchant's business will be performing following the effective date. As an extreme example, in the event merchant's business ceases to exist after Flexibility's purchase of the purchased future receipts for reason outside merchant's control, Flexibility may never recover any moneys spent on such purchase.

22. Flexibility by contract assumes risk involved with accused's business.

[O]r if the full purchased amount is not remitted because the merchant's business went bankrupt or otherwise ceased operations in the ordinary course of business (but not due to Merchant's wilful or negligent mishandling of its business), and merchant shall not have breached this agreement, merchant would not owe anything to Flexibility and would not be in breach of or in default under this agreement.

P. 4, 14(a)(v)

Flexibility agrees to purchase the purchased future receipts knowing the risk that merchant's business may slow down or fail, and Flexibility assumes these risks based exclusively upon the information provided to it by merchant ***.

P. 4, 14(b)

Furthermore, Flexibility hereby acknowledges and agrees that merchant shall be excused from performing its obligations under this agreement in the event merchant's business ceases its operations exclusively due to the following reasons (collectively, the "valid excuses"). (i) [A]dverse business conditions that occurred for reasons outside merchant's control and not due to merchant's willful or negligent mishandling of its business. *** [N]atural disasters or similar occurrences beyond merchant's control.

P. 4, 14(b)

23. The agreement is "not a loan," and "the purchase price is paid to merchant in consideration for the ownership of the purchased future receipts and that payment of the purchase price by Flexibility is not intended to be, or shall it be construed as a loan *** that **requires absolute and unconditional repayment** on a maturity date."

To the contrary, Flexibility's ability to receive the purchased amount *** and the date when the purchased amount is paid in full (if ever) are subject to and conditioned upon performance of merchant's business ***

[emphasis added]

14(c)

24. *Lex non cogit impossibilia*. The law requires nothing impossible. Co. Litt. 231, b; 1 Bouv. Inst. n. 951. No law, no order or summary judgment from the court ordering accused men to pay to cover an alleged debt has power to bring satisfaction to the plaintiff, given third-party interference with the contract.

25. Flexibility Capital extended credit to Hot News Talk Radio LLC knowing that it risked not getting paid. But it took that risk; too, the borrower took the risk of the obligation, intending to fulfill the terms, its owners and managers operating in good faith.

26. Illicit acts by third parties are the proximate cause of the breach between the parties, and did violence to the service of this contract. The accused pleads for relief and protection of the honorable court. He demands the court dismiss the motion for summary judgment and look favorably upon this affidavit and pleading.

Further affiant sayeth naught.

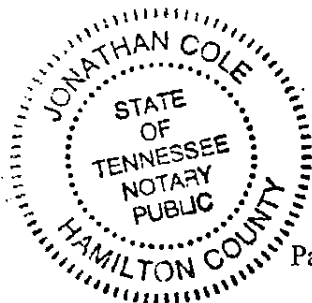
Respectfully submitted,

David Jonathan Tulis
David Jonathan Tulis

FILED IN OFFICE
2022 AUG 12 AM 11:08
LARRY L. HENRY, CLERK
BY JHR DC

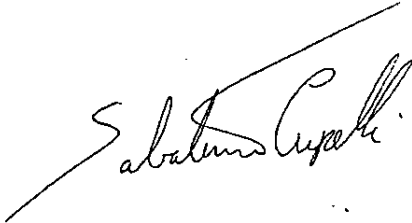
STATE OF TENNESSEE, COUNTY OF HAMILTON — I, the undersigned Notary Public, do hereby affirm that David Jonathan Tulis personally appeared before me on the 12th day of July 26, 2022, and signed this affidavit as his free and voluntary act and deed.
August

Jonathan Cole
Notary Public



Commission Expires,
11-13-2023

This document, as motion, respectfully submitted,

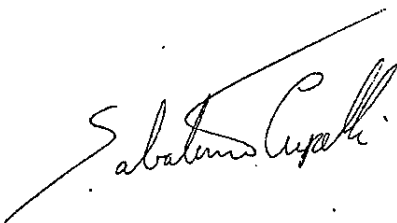


By _____
Sabatino Cupelli

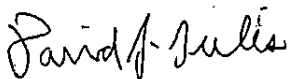
CERTIFICATE OF SERVICE

Sabatino Cupelli and David Jonathan Tulis certify that a true and exact copy of this motion is being sent by email this 12th day of August, 2022, to Mary Cheadle at mcheadle@cheadlelaw.com.

John R. Cheadle Jr.
And Mary Barnard Cheadle
2404 Crestmoor Road
Nashville, TN 37215



Sabatino Cupelli



David Jonathan Tulis

Ex. 1



STATE OF TENNESSEE
EXECUTIVE ORDER
BY THE GOVERNOR

No. 14

**AN ORDER SUSPENDING PROVISIONS OF CERTAIN STATUTES AND
RULES IN ORDER TO FACILITATE THE TREATMENT AND CONTAINMENT OF
COVID-19**

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the SARS-CoV-2 virus that can result in mild or severe symptoms, including fever, cough, and shortness of breath, and can lead to serious illness or death, particularly in the case of older adults and persons with serious chronic medical conditions; and

WHEREAS, COVID-19 is frequently spread through close contact between persons and respiratory transmission; and

WHEREAS, in late 2019, a significant outbreak of COVID-19 was identified in China, and this disease has since spread to many other countries; and

WHEREAS, to date, according to the Centers for Disease Control and Prevention (CDC), there have been 938 cases of COVID-19 identified in the United States, which have resulted in 29 deaths; and

WHEREAS, on January 16, 2020, the Tennessee Department of Health activated the State Health Operations Center (SHOC), and on January 21, 2020, following CDC guidance, the Department designated COVID-19 as a reportable disease in Tennessee; and

WHEREAS, on March 4, 2020, I announced the formation of a Coronavirus Task Force to enhance Tennessee's coordinated efforts to prevent, identify, and treat potential cases of COVID-19, and that task force convened its first meeting a few days later; and

WHEREAS, on March 4, 2020, the first case of COVID-19 in the State of Tennessee was identified, and several additional confirmed or presumptively positive cases of COVID-19 have since been identified in Tennessee; and

WHEREAS, on March 11, 2020, the World Health Organization declared the outbreak a global pandemic; and

WHEREAS, on January 31, 2020, the U.S. Secretary of Health and Human Services declared a public health emergency to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, several states, including Kentucky, Florida, North Carolina, Colorado, Connecticut, New Jersey, New York, and others, have declared states of emergency to facilitate their responses to COVID-19; and

WHEREAS, the spread and identification of additional cases of COVID-19 in Tennessee is likely to continue, and therefore, taking proactive steps to prevent a substantial risk to public health and safety is paramount; and

WHEREAS, public and private health care, emergency, and other entities are engaged in efforts throughout the state to treat and prevent the additional spread of COVID-19, and the provisions of this Order are necessary to maximize those efforts to protect the health and safety of Tennesseans; and

WHEREAS, Tennessee Code Annotated, Section 58-2-107(e)(1), provides that during a state of emergency, the Governor is authorized to "[s]uspend any law, order, rule or regulation prescribing the procedures for conduct of state business or the orders or rules or regulations of any state agency, if strict compliance with any such law, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;" and

WHEREAS, pursuant to this authority and the general emergency management powers of the Governor under law, the temporary suspension of selected state laws and rules is necessary to facilitate the response to the current public health situation.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, do hereby declare a state of emergency exists to facilitate the response to COVID-19 and order the following:

1. The Commissioner of Health or her designee, in conjunction with the Director of the Tennessee Emergency Management Agency (TEMA) or his designee, shall implement the Tennessee Emergency Management Plan (TEMP) and all applicable annexes to coordinate the State's response to COVID-19.
2. The relevant provisions of Tennessee Code Annotated, Titles 63 and 68, and related rules are hereby suspended to the extent necessary to give the Commissioner of Health the discretion to allow a health care professional who is licensed in another state, and who would otherwise be subject to licensing requirements under Title 63 or Title 68, to engage in the practice of such individual's profession in Tennessee,

if such individual is a health care professional who is assisting in the medical response to COVID-19.

3. The provisions of Tennessee Code Annotated, Section 63-10-207(a) and (c), are hereby suspended to allow a pharmacist to dispense an extra 30-day supply of maintenance prescriptions without proper authorization to persons as is necessary to respond to and prevent the spread of COVID-19 in Tennessee, subject to all other provisions of Tennessee Code Annotated, Sections 63-10-207 and 63-1-164.
4. The provisions of Tennessee Code Annotated, Section 68-11-201(20), are hereby suspended to the extent necessary to allow health care professionals who would otherwise be subject to licensing requirements to provide localized treatment of patients in temporary residences.
5. The provisions of Tenn. Comp. R. & Regs. 1200-06-03-.16 are suspended to allow testing for COVID-19 at alternate testing sites without prior approval by the Medical Laboratory Board; provided, that laboratories shall notify the Medical Laboratory Board of any such alternate testing sites.
6. The provisions of Tennessee Code Annotated, Section 68-11-202(c)(1)-(8), are hereby suspended to allow for the construction of temporary structures, the plans for which would otherwise be subject to review for new construction, additions, or substantial alterations, as directed by the Commissioner of Health and the Director of TEMA in response to COVID-19; provided, that there shall be inspections of such structures to ensure safety, as necessary.
7. In accordance with Tennessee Code Annotated, Section 47-18-5103, it is hereby declared that in Tennessee an abnormal economic disruption exists, and therefore, persons are prohibited from charging any other person a price for medical supplies or emergency supplies, as listed in Tennessee Code Annotated, Section 47-18-5103(a)(1)(C) and (D), that is grossly in excess of the price generally charged for the same or similar goods or services in the usual course of business. Paragraph 7 of this Order shall remain in effect until 12:01 a.m., Central Daylight Time, on March 27, 2020.
8. The provisions of Tennessee Code Annotated, Section 55-4-401, through Tennessee Code Annotated, Section 55-4-413, Tennessee Code Annotated, Section 55-7-201, through Tennessee Code Annotated, Section 55-7-209, and Tenn. Comp. R. & Regs. 1680-07-01-.01 through Tenn. Comp. R. & Regs. 1680-07-01-.25 that set forth maximum height, length, and width limitations are hereby suspended in the case of vehicles participating in the response to COVID-19, subject to the following conditions:
 - a. A vehicle must be transporting emergency supplies, equipment, or mobile structures to affected areas.

- b. A vehicle shall be permitted only to travel on (1) Interstate Highways; (2) highways on the National Highway System; and (3) other state-maintained roads as may be required to obtain access to needed services off of the aforementioned highways, without any restrictions on their time of movement except as may otherwise be provided in this Order.
 - c. A vehicle may transport a divisible or non-divisible load up to a maximum gross vehicle weight of 95,000 pounds and a maximum axle weight of 20,000 pounds, except on any bridge or overpass with a lower posted weight limit.
 - d. The outer bridge span of any five-axle truck tractor/semi-trailer combination shall be no less than fifty-one feet (51').
 - e. The overall dimensions of a vehicle and load shall not exceed:
 - i. One hundred feet (100') in length;
 - ii. Fourteen feet, four inches (14' 4") in height on the Interstate Highway System, except on Interstate 55, and thirteen feet, six inches (13' 6") in height on Interstate 55 and any other highway on the National Highway System; or
 - iii. Fourteen feet, six inches (14' 6") in width.
 - f. Vehicles that do not exceed ten feet (10') in width may travel seven (7) days per week during daylight or nighttime hours without any time restrictions.
 - g. Any person, firm, company, corporation, or other entity that undertakes the movement of any overweight and/or overdimensional article and/or commodity on the highways of Tennessee shall hold Tennessee and its officers and employees harmless from any claims for damages resulting from the exercise of any of the privileges granted under this Order and, to this end, shall carry liability insurance with an insurer, acceptable to the Tennessee Department of Transportation's Oversize and Overweight Permit Office, in the amount of not less than three hundred thousand dollars (\$300,000) for each claimant and one million dollars (\$1,000,000) per occurrence. The transporter shall carry the certificate of insurance in the vehicle at all times.
 - h. Paragraph 8(c) of this Order shall take effect only upon the issuance of and in accordance with an appropriate declaration by the President of the United States.
9. In accordance with 49 C.F.R. § 390.23, as adopted by Tenn. Comp. R. & Regs. 1340-06-01-.08, there is hereby provided a temporary exception from the federal rules and regulations in 49 C.F.R. Part 395 limiting the hours of service for the

operator of a commercial motor vehicle providing supplies, equipment, personnel, and other provisions to assist persons affected by COVID-19, subject to the following conditions:

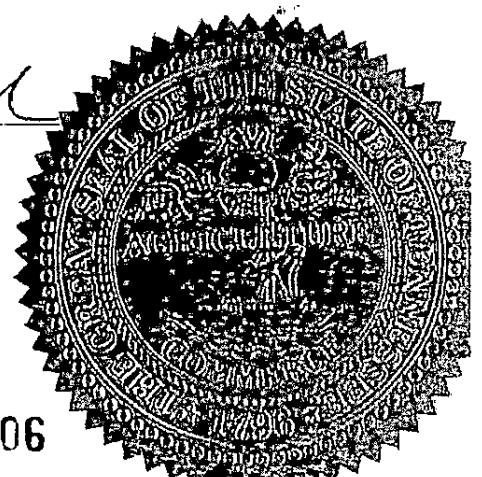
- a. Nothing in this Order shall be construed as an exemption from the Commercial Driver's License requirements in 49 C.F.R. § 383, the financial requirements in 49 C.F.R. § 387, or applicable federal size and weight limitations.
 - b. No motor carrier operating under the terms of this Order shall require or allow an ill or fatigued driver to operate a motor vehicle. A driver who notifies a motor carrier that he or she needs immediate rest shall be given at least ten (10) consecutive hours off-duty before the driver is required to return to service.
10. The relevant provisions of Tennessee Code Annotated, Title 71, Chapter 3, Part 5, and related rules are hereby suspended to the extent necessary to give the Commissioner of Human Services the discretion to waive the child care licensure requirements, including requirements concerning capacity, care categories, grouping, license transfers, and drop-in centers, if necessary to respond to the effects of COVID-19.
 11. The Division of TennCare is hereby authorized to create policies or modify existing policies as is necessary to ensure that members of the TennCare and CoverKids programs continue to receive medically necessary services without disruption during this state of emergency.
 12. Pursuant to Tennessee Code Annotated, Section 58-2-107(e)(2), I hereby direct the Tennessee Department of Health and the Tennessee Department of Commerce and Insurance to continue working with health insurance plans operating in the state to identify and remove any burdens to responding to COVID-19 and improve access to treatment options and medically necessary screening and testing for COVID-19.
 13. This Order shall remain in effect until 12:01 a.m., Central Daylight Time, on May 11, 2020, at which time the suspension of any state laws and rules shall cease and be of no further force or effect.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 12th day of March, 2020.


GOVERNOR

ATTEST

SECRETARY OF STATE



EX-2

RECEIVED

2020 APR 02 PM 4:27

SECRETARY OF STATE
PUBLICATIONS



STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 23

AN ORDER AMENDING EXECUTIVE ORDER NO. 22, REQUIRING TENNESSEANS TO STAY HOME UNLESS ENGAGING IN ESSENTIAL ACTIVITY OR ESSENTIAL SERVICES

WHEREAS, on March 30, 2020, I issued Executive Order No. 22; and

WHEREAS, it is beneficial to clarify and strengthen Executive Order No. 22 in order to contain the spread of COVID-19;

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law in light of the continuing state of emergency to facilitate the response to COVID-19, do hereby amend Executive Order No. 22, dated March 30, 2020, by deleting in its entirety Paragraph No. 1 and substituting the following language instead:

1. Safer at home. Because staying at home as much as possible for a temporary period of time will protect the health and safety of Tennesseans by limiting the spread of COVID-19 and preserving health care resources, all persons in Tennessee are required to stay at home, except for when engaging in Essential Activity or Essential Services as defined in this Order.

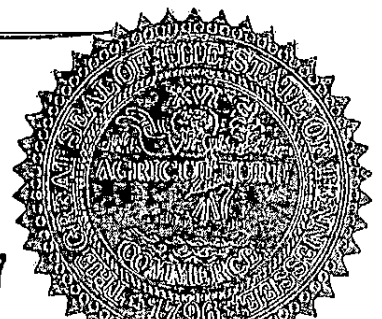
All remaining provisions of Executive Order No. 22 remain in full force and effect.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 2nd day of April, 2020.

GOVERNOR

ATTEST:

SECRETARY OF STATE



Ex-3

**DIRECTIVE NO. 1 OF THE HAMILTON COUNTY HEALTH OFFICER
EFFECTIVE JULY 10, 2020**

WHEREAS, Hamilton County is currently experiencing the effects of the worldwide COVID-19 pandemic, and

WHEREAS, Hamilton County is empowered to protect the health and lives of Hamilton County citizens, and

WHEREAS, Hamilton County began reopening businesses beginning over two months ago requesting and expecting voluntary compliance with appropriate non-pharmaceutical interventions, such as wearing facial coverings, maintaining social distancing and personal hygiene as recommended by the CDC and required for safely opening those businesses, and

WHEREAS, such voluntary recommendations have not been adequate to slow the spread of COVID-19, and

WHEREAS, protecting the economy of Hamilton County is also essential to the health of our citizens, and any provisions to protect both our county's health and economy are important to consider, and

WHEREAS, simple measures enacted to prevent the spread of COVID-19 will greatly help to prevent more stringent measures such as stay at home orders and closure of businesses, and

WHEREAS, CDC recommends all persons 2 years of age and older wear a cloth face covering in public settings and when around persons outside their household, especially when other social distancing measures are difficult to maintain, and

WHEREAS, COVID-19 can be spread by people who do not have symptoms and do not know that they are infected, and

WHEREAS, there is clear clinical and scientific evidence that masks or cloth facial coverings which cover the mouth and nose, along with social distancing and proper hygiene can decrease the spread of COVID-19, and

WHEREAS, Hamilton County has seen a rise in new COVID-19 cases and hospitalizations, and immediate action is needed to minimize this increase.

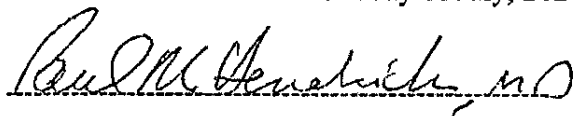
NOW, THEREFORE, I, Dr. Paul Hendricks, MD, Hamilton County Health Officer, pursuant to the laws of the State of Tennessee, do hereby issue the following Health Directive:

1. Effective at 12:01 a.m. on July 10, 2020, all persons in Hamilton County shall wear a facial covering or mask which covers the mouth and nose at all times when indoors in all public and private buildings and when outdoors except under the following exceptions:
2. Face coverings are not required for:

- a. Children under 12 years of age
 - b. Anyone with documented medical contraindications to facial covers such as active asthma or COPD
 - c. Anyone who is acutely short of breath or incapacitated such that they would be unable to remove the covering on their own.
 - d. Persons who are deaf or hard of hearing – or those who care for or interact with a person who is hearing impaired if they rely on lip reading to communicate. In this situation, consider using a clear face covering. If a clear face covering is not available, consider whether you can use written communication, use closed captioning or decrease background noise to make communication possible while wearing a cloth face covering that blocks your lips.
 - e. Persons with intellectual and developmental disabilities, mental health conditions or other sensory sensitivities, who may have challenges wearing a cloth face covering. Those persons are encouraged to consult with their healthcare provider for advice about wearing cloth face coverings.
 - f. Persons in a house of worship unless required by that house of worship, but wearing a face covering in such locations is strongly encouraged.
 - g. Persons who are outdoors unless the person cannot substantially maintain appropriate social distancing from others outside of the person's household. Facial coverings should, however, be kept accessible in the event of encountering a larger group.
 - h. Persons in cars, trucks, or other private or commercial vehicles either alone or with household members. However, all occupants in vehicles transporting more than one coworker, carpooling or carrying other non-household passengers, shall wear facial coverings.
 - i. Persons working under conditions where appropriate social distancing from others outside of the person's household can be maintained. A facial covering should be kept accessible in the event that others enter the area.
 - j. Office workers and any other employee working alone in an area (such as a private office) where the public or other workers are not present or do not usually enter. A facial covering should be kept accessible in the event others enter that area.
 - k. Persons who are exercising, such as jogging, bicycling, or swimming, etc, either alone or in small groups where physical distancing of 6 feet or greater can be maintained. A facial covering should be kept accessible in the event of encountering a larger group.
 - l. Private residences are exempt, but hallways, elevators and other common areas of apartment buildings, condominiums and other medium or high density residential structures are not exempt.
 - m. Persons seated for the purpose of dining in any restaurant or business that provides food and/or drink for on premises consumption.
3. Facial coverings shall fit snugly and securely against the side of the face. Cloth facial coverings are preferred and should include multiple layers of fabric. Surgical and other medical masks (e.g. N95) are not required and should be preserved for healthcare personnel.
4. Businesses shall not allow anyone to enter or remain in their establishment unless they are wearing a facial covering. No business shall serve anyone without a facial cover unless seated and eating or drinking consumables served by the establishment.
5. Any business failing to enforce this Directive or person refusing to leave an establishment when requested due to no facial covering will be subject to civil citations for their violation of this Directive as well as criminal sanctions.

6. All businesses shall post signage in a place visible to those entering to remind customers of this requirement. Sample wording will be provided in digital format by the Hamilton County Health Department.
7. Weddings and funerals held on private property are exempt from the requirement, but highly encouraged to abide by appropriate public health measures such as masks, social distancing and recommended personal hygiene. Routine business activities of funeral and wedding businesses shall not be exempt.
8. Voting sites for the purpose of voting or administering an election are exempt but encouraged to abide by appropriate public health measures such as masks, social distancing and recommended personal hygiene.
9. Properties belonging to and under the jurisdiction of the Hamilton County Department of Education and properties belonging to private schools (levels K-12), will be exempt and allowed to follow their own policies.
10. Violations of this Directive by businesses and/or individuals shall be punishable by citation issued by the Hamilton County Health Department and/or criminally by local law enforcement as a Class C misdemeanor.
11. This Directive shall remain in effect until Tuesday, September 8, 2020.

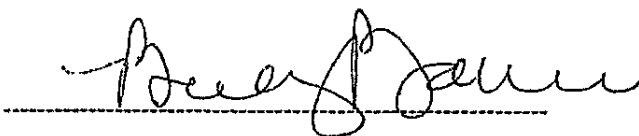
AS DECLARED on this 6th day of July, 2020, and AMENDED on the 3rd day of August, 2020



Dr. Paul Hendricks, MD.

Health Officer

Hamilton County, Tennessee Department of Health



Becky Barnes

Regional Director

Hamilton County, Tennessee Department of Health



Ex. 4

HAMILTON COUNTY, TENNESSEE
OFFICE OF THE COUNTY MAYOR
JIM M. COPPINGER

DIRECTIVE NO. 2 OF THE HAMILTON COUNTY HEALTH OFFICER
EFFECTIVE SEPTEMBER 8, 2020

WHEREAS, Hamilton County is currently experiencing the effects of the worldwide COVID-19 pandemic, and

WHEREAS, Hamilton County is empowered to protect the health and lives of Hamilton County citizens, and

WHEREAS, Hamilton County began reopening businesses beginning over two months ago requesting and expecting voluntary compliance with appropriate non-pharmaceutical interventions, such as wearing facial coverings, maintaining social distancing and personal hygiene as recommended by the CDC and required for safely opening those businesses, and

WHEREAS, such voluntary recommendations have not been adequate to slow the spread of COVID-19, and

WHEREAS, protecting the economy of Hamilton County is also essential to the health of our citizens, and any provisions to protect both our county's health and economy are important to consider, and

WHEREAS, simple measures enacted to prevent the spread of COVID-19 will greatly help to prevent more stringent measures such as stay at home orders and closure of businesses, and

WHEREAS, CDC recommends all persons 2 years of age and older wear a cloth face covering in public settings and when around persons outside their household, especially when other social distancing measures are difficult to maintain, and

WHEREAS, COVID-19 can be spread by people who do not have symptoms and do not know that they are infected, and

WHEREAS, there is clear clinical and scientific evidence that masks or cloth facial coverings which cover the mouth and nose, along with social distancing and proper hygiene can decrease the spread of COVID-19, and

**DIRECTIVE NO. 2 OF THE HAMILTON COUNTY HEALTH OFFICER
EFFECTIVE SEPTEMBER 8, 2020**

WHEREAS, there has been evidence of decrease in the average number of new cases and hospitalizations since Health Directive No. 1 was put into effect on July 10, 2020, and continued efforts are needed to maintain this decrease.

NOW, THEREFORE, I, Dr. Paul Hendricks, MD, Hamilton County Health Officer, pursuant to the laws of the State of Tennessee, do hereby issue the following Health Directive No. 2:

1. Effective at 12:01 a.m. on September 8, 2020, all persons in Hamilton County shall wear a facial covering or mask which covers the mouth and nose at all times when indoors in all public and private buildings and when outdoors except under the following exceptions:
2. Face coverings are not required for:
 - a. Children under 12 years of age
 - b. Anyone with documented medical contraindications to facial covers such as active asthma or COPD.
 - c. Anyone who is acutely short of breath or incapacitated such that they would be unable to remove the covering on their own.
 - d. Persons who are deaf or hard of hearing – or those who care for or interact with a person who is hearing impaired if they rely on lip reading to communicate. In this situation, consider using a clear face covering. If a clear face covering is not available, consider whether you can use written communication, use closed captioning or decrease background noise to make communication possible while wearing a cloth face covering that blocks your lips.
 - e. Persons with intellectual and developmental disabilities, mental health conditions or other sensory sensitivities, who may have challenges wearing a cloth face covering. Those persons are encouraged to consult with their healthcare provider for advice about wearing cloth face coverings.
 - f. Persons attending a religious service or religious ceremony unless required by that house of worship, but wearing a face covering in such locations is strongly encouraged.
 - g. Persons who are outdoors and can maintain a minimum of six (6) feet distance from others not a member of the person's household except for brief periods of time of less than 15 minutes. Facial coverings should, however, be kept accessible in the event of encountering a larger group.
 - h. Up to two (2) persons who are not household members in cars, trucks, or other private or commercial vehicles. However, all occupants in vehicles transporting more than two (2) persons who are not household members shall wear facial coverings.
 - i. Persons working under conditions where appropriate social distancing from others outside of the person's household can be maintained. A facial covering should be kept accessible in the event that others enter the area.

**DIRECTIVE NO. 2 OF THE HAMILTON COUNTY HEALTH OFFICER
EFFECTIVE SEPTEMBER 8, 2020**

- j. Office workers and any other employee working alone in an area (such as a private office) where the public or other workers are not present or do not usually enter. A facial covering should be kept accessible in the event others enter that area.
 - k. Persons who are exercising, such as jogging, bicycling, or swimming, etc, either alone or in small groups where physical distancing of 6 feet or greater can be maintained. A facial covering should be kept accessible in the event of encountering a larger group.
 - l. Private residences are exempt, but hallways, elevators and other common areas of apartment buildings, condominiums and other medium or high density residential structures are not exempt. All gatherings in private residences with non-household members are strongly encouraged to follow recommended social distancing and mask wearing guidelines.
 - m. Persons seated for the purpose of dining in any restaurant or business that provides food and/or drink for on premises consumption.
3. Facial coverings shall fit snugly and securely against the side of the face. Cloth facial coverings are preferred and should include multiple layers of fabric. Surgical and other medical masks (e.g. N95) are not required and should be preserved for healthcare personnel.
4. Businesses shall not allow anyone to enter or remain in their establishment unless they are wearing a facial covering and no business shall serve anyone without a facial cover unless seated and eating or drinking consumables served by the establishment or unless that person expressly notifies the business that they have an aforementioned exemption.
5. Any business failing to enforce this Directive or person refusing to leave an establishment when requested due to no facial covering will be subject to civil citations for their violation of this Directive as well as criminal sanctions.
6. All businesses shall post signage in a place visible to those entering to remind customers of this requirement. Sample wording will be provided in digital format by the Hamilton County Health Department.
7. Wedding and funeral religious services held on private property are exempt from the requirement, but highly encouraged to abide by appropriate public health measures such as masks, social distancing and recommended personal hygiene. Routine business activities and non-religious portions of funerals and weddings, such as receptions and viewings shall not be exempt.
8. Voting sites for the purpose of voting or administering an election are exempt but encouraged to abide by appropriate public health measures such as masks, social distancing and recommended personal hygiene.

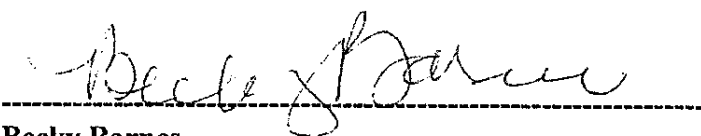
**DIRECTIVE NO. 2 OF THE HAMILTON COUNTY HEALTH OFFICER
EFFECTIVE SEPTEMBER 8, 2020**

9. Properties belonging to and under the jurisdiction of the Hamilton County Department of Education and properties belonging to private schools will be exempt and allowed to follow their own policies.
10. Violations of this Directive by businesses and/or individuals shall be punishable by citation issued by the Hamilton County Health Department and/or criminally by local law enforcement as a Class C misdemeanor.
11. In all cases where individual exemptions from this ordinance are allowed, businesses and organizations may require other conditions such as those which would enhance social distancing and diminish risks to other patrons.
12. This Directive shall remain in effect until Thursday, October 8, 2020.

DECLARED this 3rd day of September, 2020



**Dr. Paul Hendricks, MD.
Health Officer
Hamilton County, Tennessee Department of Health**



**Becky Barnes
Regional Director
Hamilton County, Tennessee Department of Health**



Ex-5

City of Chattanooga
Mayor Andy Berke

**CITY OF CHATTANOOGA CIVIL EMERGENCY PROCLAMATION AND ORDER BY
MAYOR ANDY BERKE**

EXECUTIVE ORDER 2020-02

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that appears to occur through respiratory transmission and presents with similar symptoms to those of influenza; and

WHEREAS, as of March 18, 2020, COVID-19 has spread throughout China and to 150 other countries and territories, including 7,038 cases and 97 deaths within the United States; and

WHEREAS, the Centers for Disease Control and Prevention has recommended that all states and territories implement aggressive measures to slow and contain transmission of COVID-19 in the United States; and

WHEREAS, on January 30, 2020, the World Health Organization declared a public health emergency of international concern related to COVID-19; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services declared that a public health emergency exists nationwide as a result of confirmed cases of COVID-19 in the United States; and

WHEREAS, as of March 18, 2020, there were 98 positive tests in Tennessee and three (3) Hamilton County residents have tested presumptively positive for COVID-19; and

WHEREAS, implementation of basic precautions of infection control and prevention, including staying at home when ill and practicing respiratory and hand hygiene, are necessary to slow or prevent the spread of COVID-19; and

WHEREAS, COVID-19 is a communicable disease with significant morbidity and mortality, and presents a severe danger to public health; and

WHEREAS, pursuant to City of Chattanooga Charter, Article 2.1, the City of Chattanooga has the power by ordinance to make regulations to secure the general health of the inhabitants, and to prevent, abate and remove nuisances, and to make regulations to prevent the

introduction of contagious disease in the City; to make quarantine laws for that purpose, and to enforce same within the corporate limits and within the City's police jurisdiction; and

WHEREAS, pursuant to Tennessee Code Ann. § 38-9-102 the Mayor may proclaim in writing the existence of a civil emergency as defined in Tenn. Code Ann. § 38-9-101, which will be filed with the clerk of the municipality; and

WHEREAS, after proclamation of a civil emergency, the Mayor, in the interest of public safety and welfare, pursuant to Tenn. Code Ann. § 38-9-104, may order the closure of certain establishments and issue such orders as are necessary for the protection of life and property due to the current civil emergency and

WHEREAS, on March 12, 2020 the Governor signed and caused the Great Seal of the State of Tennessee to be affixed to Executive Order No. 14 declaring that a state of emergency exists to facilitate the response to COVID-19.

NOW, THEREFORE, the Mayor of the City of Chattanooga, by virtue of Tennessee Statutes and the City Charter, does hereby proclaim that a public health civil emergency exists in the City of Chattanooga, Tennessee.

In order to respond to this civil emergency, the Mayor issues the following **ORDERS** for the City of Chattanooga:

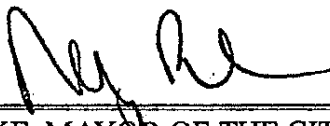
Section 1. In response to this civil emergency, the Mayor finds it is necessary to advise people in Chattanooga, Tennessee who have traveled to an area for which the Centers for Disease Control and Prevention has issued Warning Level 3 or Alert Level 2 Travel Health Notice, or have been in close contact with a person who has traveled to such an area, and who develop symptoms of fever, cough, shortness of breath, or difficulty breathing within 14 days of such travel or close contact, that they should immediately contact their health care provider and self-isolate until advised otherwise.

Section 2. Based upon the proclaimed civil emergency, the Mayor Orders those establishments whose primary business is alcohol service or food service (other than pick-up, delivery, or drive-through service) within the City of Chattanooga to close for on-site consumption, effective at midnight on March 19, 2020 and shall remain in effect until this Order is withdrawn. Nothing in this order shall be intended to prevent pick-up, delivery, or drive-through service.

Section 3. Based upon the proclaimed civil emergency, the Mayor Orders all gyms and exercise and fitness facilities within the City of Chattanooga to close effective at midnight on March 19, 2020 and shall remain in effect until this Order is withdrawn.

Section 4. The Building Official, the Chattanooga Police Department and the Chattanooga Fire Marshall are authorized by this Order to enforce and close those businesses in violation of this Civil Emergency Order in our City until this Order is withdrawn.

Issued this 19th day of March 2020, pursuant to Tenn. Code Ann. §§ 38-9-101, et seq. and 58-8-104 and 58-2-110 (3) by the Mayor of the City of Chattanooga, Tennessee.



ANDY BERKE, MAYOR OF THE CITY OF CHATTANOOGA



Ex-6

City of Chattanooga
Mayor Andy Berke

CIVIL EMERGENCY PROCLAMATION AND EXECUTIVE ORDER
REGARDING ADDITIONAL SAFETY PRECAUTIONS AND BUSINESS RESTRICTIONS
BY MAYOR ANDY BERKE FOR THE CITY OF CHATTANOOGA

No. 2020-04

WHEREAS, Coronavirus Disease 2019 (“COVID-19”) is a communicable respiratory disease that can lead to serious illness or death, particularly in the case of elderly adults and persons with serious chronic medical conditions; and

WHEREAS, on January 21, 2020, following the guidance of Centers for Disease Control and Prevention, the Tennessee Department of Health designated COVID-19 as a reportable disease in Tennessee; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic; and

WHEREAS, on March 12, 2020, the Governor for the State of Tennessee issued an Executive Order to facilitate the treatment and containment of COVID-19, pursuant to Tennessee Code Annotated § 58-2-107(e)(1); and

WHEREAS, on March 13, 2020, the President of the United States declared a national state of emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 19, 2020, I declared a state of emergency for the City of Chattanooga, pursuant to Tennessee Code Annotated § 38-9-101 et seq. and § 58-2-101 et seq. and City of Chattanooga Code §§ 9-8-4 and 2-58-7 in response to the COVID-19 pandemic; and

WHEREAS, pursuant to the authority invested in the Mayor under Tennessee Code Annotated § 38-9-101, et seq. and 58-8-104 and 58-2-110 (3) and City of Chattanooga Code § 20-41, et. seq., the Mayor may proclaim in writing the existence of a civil emergency, as defined therein; and

WHEREAS, after proclamation of a civil emergency, the Mayor, in the interest of public safety and welfare, may make all orders necessary for the protection of life and property, including but not limited to, the closure of certain establishments; and

WHEREAS, on March 19, 2020, the Governor for the State of Tennessee issued Executive No. 15 and declared that “a state of emergency and major disaster exists to facilitate the response to COVID-19”; and issued Executive Order No. 16 on March __, 2020; and issued Executive Order No. 17 on March 22, 2020 limiting social gatherings, dine-in service, and gym use, and exposure at nursing and retirement homes, and providing flexibility for restaurants regarding the sale of alcohol; and

WHEREAS, on March 20, 2020, pursuant to the authority invested in the Mayor under Tennessee Code Annotated § 38-9-101, et seq. and City of Chattanooga Code §20-41, et seq., I issued Civil Emergency Proclamation and Executive Order No. 2020-03 (“Executive Order No. 2020-03”) closing restaurants and bars for on-site consumption as well as closing gyms and exercise facilities; and

WHEREAS, as of March 23, 2020, the Hamilton County Health Department has reported _____ confirmed cases of COVID-19 in Hamilton County and that community transmission may be occurring; and

WHEREAS, as of March 22, 2020, there were at least 505 positive COVID-19 tests reported in the state of Tennessee; and

WHEREAS, COVID-19 continues to present a severe danger to public health.

NOW, THEREFORE, I, ANDY BERKE, MAYOR OF THE CITY OF CHATTANOOGA, by virtue of the powers vested in me, do hereby proclaim that a civil emergency continues to exist in the City of Chattanooga, Tennessee and I hereby direct and order the following:

1. Mass Gatherings Prohibited. All public and private gatherings of more than ten people occurring outside a single household or living unit are prohibited, except for the limited purposes as expressly permitted by this Order. Nothing in this Order prohibits the gathering of members of a household or living unit.
2. Additional Business closures. All businesses with a facility in the City, which are defined as Non-Essential Businesses, are required to cease all activities at facilities located within the City except Minimum Basic Operations, as defined in this Order. For clarity, businesses may continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). To the greatest extent feasible, all Essential Activities shall comply with Social Distancing Requirements as defined in this Order, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line. **All businesses which continue in daily operation are requested and urged to comply with CDC guidelines on employee temperature recording two times daily to determine that they do not have a fever and sending any employees home who maintain a temperature range outside CDC recommended guidelines until such time as such employees have returned to a normal temperature range for fourteen (14) days.**

For the purposes of this Order, “Additional Business closures” shall mean:

- i. All Restaurants and Bars will follow Governor Bill Lee's Executive Order No 17.
- ii. Any Retail business whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces.
- iii. All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services. The on-premises consumption of alcohol and food is prohibited.

- iv. All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as this order remains in effect:
 - a. Gyms and fitness centers and classes in accordance with Executive Order No. 17 by Governor Bill Lee
 - b. Entertainment centers, including but not limited to, movie theaters, country clubs, performing arts centers, concert venues, and nightclubs.
 - c. All indoor portions of retail shopping malls. Restaurants and other stores located within shopping malls that have their own external entrances open to the public, separate from the general mall entrance, may remain open pursuant to the Order. All entrances and exits to the common area portions of retail shopping malls must remain closed.
 - d. Facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines, including but not limited to cosmetology shops; barber shops; beauty salons; spas, at which solely elective and cosmetic medical procedures are performed, massage parlors, tanning salons, tattoo parlors.
- v. This Order does not prohibit an employee, contractor, vendor, or supplier of subject establishments from entering, exiting, using, or occupying that establishment in their professional capacity.
- vi. All Funerals, Celebrations of Life, Cremation Services, and Memorial Services should only be attended by close family OR less than 10 people per venue in accordance with Governor Bill Lee's Executive Order #17
- vii. The Chattanooga Police Department is authorized to enforce and close those businesses not in compliance of Governor Lee's Executive Order #17 or this Order.
- viii. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public.
- ix. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way access to essential services for low-income residents, including but not limited to food banks.
- x. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.
- xi. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of law enforcement agencies.
- xii. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of manufacturing or critical infrastructure sectors as defined by the Department of Homeland Security.
- xiii. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of Child Care Facilities. They should continue to follow guidelines provided by the Tennessee Department of Human Services; and
- xiv. Any other business that the Mayor determines is non-essential for the safety and public health of the City.

3. **Essential Activities.** For purposes of this Order, individuals may perform any of the following “Essential Activities.”
- i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
 - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others.
 - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Order, such as, by way of example and without limitation, walking, and hiking, dog walking, or running.
 - iv. To perform work providing products and services at a Non-Essential Business or to otherwise carry out activities which are not specifically prohibited in this Order, including Minimum Basic Operations.
 - v. To care for a family member or pet in another household.

However, people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care. All businesses and activities, including those that are designated as Essential under this Order, are required to practice Social Distancing. For purposes of this order Social Distancing Requirements refers to the CDC issued guidelines for COVID-19 prevention measures, which includes: screening of employees for symptoms; maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

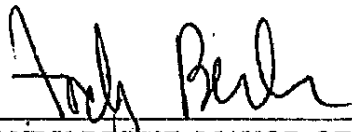
4. **Healthcare Operations.** For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, medical supply companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, *companies and institutions involved in the research and development, manufacture, distribution, warehousing, and supplying of pharmaceuticals, clinical laboratories, biotechnology therapies, consumer health products, and medical devices, diagnostics, equipment, services and any other healthcare related supplies or services.* or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.
5. **Essential Infrastructure.** For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways,

public transportation, solid waste collection and removal, grass mowing, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Order, to the extent possible.

6. Essential Governmental Functions. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, law enforcement personnel, and local, state and federal agencies located within City limits are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing Essential Governmental Functions. "Essential Governmental Functions" means all services needed to ensure the continuing operation of the government agencies and provide for the health, safety and welfare of the public as determined by the Mayor of the City of Chattanooga, even if not explicitly described herein. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined this Order, to the extent possible.
7. Minimum Basic Operations. For the purposes of this Order, "Minimum Basic Operations" include the following, provided that employees comply with Social Distancing Requirements as defined this Order, to the extent possible, while carrying out such operations:
 - i. The minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions.
 - ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
8. Social Distancing Requirements. All businesses and activities, including those that are designated as Essential under this Order, are required to practice Social Distancing. For purposes of this order Social Distancing Requirements refers to the CDC issued guidelines for COVID-19 prevention measures, which includes: screening of employees for symptoms; maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.
9. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.
10. City parks shall remain open subject to the social distancing rules in this Order.
11. This Order does not apply to employees of the City of Chattanooga. Employees of the City shall follow all current and future directives and orders issued by the Mayor of Chattanooga that are specifically directed at them.
12. The Chattanooga Police Department is authorized to enforce this Order within the City of Chattanooga.
13. A determination that any provision of this Order is invalid will not affect the enforceability of any other provision of this Order. The remaining provisions shall remain in full force and effect. Any invalid provision will be modified to the extent necessary for enforceability.

14. This Order shall be effective at Midnight on Wednesday, March 25, 2020 and shall remain in effect until withdrawn.

Issued this 23rd day of March 2020, pursuant to Tenn. Code Ann. §§ 38-9-101, et seq. and 58-8-104 and 58-2-110 (3) by the Mayor of the City of Chattanooga, Tennessee.



ANDY BERKE, MAYOR OF THE CITY OF CHATTANOOGA

EX-7

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

PAUL HENDRICKS, M.D., in his)
capacity as HEALTH OFFICER)
FOR THE HAMILTON COUNTY)
HEALTH DEPARTMENT OF)
HAMILTON COUNTY, TENNESSEE, and)
BECKY BARNES, in her capacity as)
REGIONAL DIRECTOR OF THE HAMILTON)
COUNTY HEALTH DEPARTMENT OF)
HAMILTON COUNTY, TENNESSEE)

NO. 20-0585

PETITIONERS)

PART 2

VS.)

ERNIE SANDERS and)
ED'S SUPPLY COMPANY, INC.,)

RESPONDENTS)

PETITION FOR THE ENFORCEMENT OF A HEALTH DIRECTIVE

Come the Petitioners, Paul Hendricks, M.D., and Becky Barnes, in their respective positions as Chief Health Officer and Chief Health Director of the Hamilton County Health Department, by and through the Hamilton County Attorney's Office, and brings this cause of action against Ernie Sanders and Ed's Supply Company, Incorporated, and for their cause of action would represent to the Court the following:

2020 AUG 28 AM 11:32

HAMILTON COUNTY CLERK & MASTER

AO *86*

EX-8



STATE OF TENNESSEE
EXECUTIVE ORDER
BY THE GOVERNOR

No. 70

AN ORDER TO REDUCE THE SPREAD OF COVID-19 AND PRESERVE HEALTH CARE CAPACITY BY LIMITING GATHERINGS AND SPECTATOR EVENTS AND URGING WORKING FROM HOME

WHEREAS, Tennessee has recently experienced record numbers of new COVID-19 cases and COVID-19 hospitalizations, and limiting large social gatherings and spectator sports and athletic events will reduce the potential for events that lead to substantial spread and further diminish our health care capacity, while also allowing our economy to remain open and Tennesseans employed; and

WHEREAS, each Tennessean has a personal responsibility to protect themselves and others by following health guidelines to slow the spread of this virus, and therefore, all venues, employers, businesses, and organizations are strongly encouraged and expected to operate in accordance with, and to fulfill the spirit of, applicable operational guidance issued by the Governor's Economic Recovery Group (i.e., the Tennessee Pledge), which are available at the following web address and may be periodically updated: <https://www.tn.gov/governor/covid-19/economic-recovery.html>; and

WHEREAS, in addition to the other powers granted by law, Tennessee Code Annotated, Section 58-2-107, provides, among other things, that during a state of emergency, the Governor is authorized to suspend laws and rules if necessary to cope with an emergency, utilize all available state and local resources needed to combat an emergency, and take measures concerning the conduct of civilians; and

WHEREAS, pursuant to this authority and the general emergency management powers of the Governor under law, such measures, including the measures contained herein, are necessary to facilitate the response to the ongoing effects of COVID-19.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, do

hereby declare a continuing state of emergency and major disaster in order to facilitate the response to COVID-19 and accordingly order the following:

1. Tennesseans should work from home where possible. Given the current spread of COVID-19 throughout the State and the resulting strain on health care resources, persons are encouraged to work remotely or via telework from home, where possible, and all employers and businesses are strongly urged to take steps to the greatest extent practicable to equip, encourage, allow, or require employees to work remotely or via telework from home.
2. Social distancing and social gatherings.
 - a. Social distancing remains imperative. CDC guidance states that “COVID-19 is thought to spread mainly through close contact from person to person, including between people who are physically near each other (within about 6 feet).” Therefore, every person is strongly urged to maintain at least six (6) feet of separation from persons outside their household to the greatest extent practicable.
 - b. Social gathering limitations. To ensure appropriate social distancing for the purposes of social gatherings, persons in the State of Tennessee should to the greatest extent practicable maintain at least six (6) feet of separation from persons outside their household, and shall not in any event be in a group of ten (10) or more persons in an indoor public place for the purposes of social gatherings, activities, or events; provided, that this limitation does not necessarily prohibit ten (10) or more total persons from gathering in a single place or venue for an activity or event if they are in separate, otherwise permissible smaller groups that substantially maintain six (6) feet or more of separation from other persons or separate groups.
 - c. Places of worship, weddings, and funerals. Worship services, weddings, funerals, and events related thereto are not social gatherings under Paragraph 2.b. Nevertheless, places of worship are strongly encouraged to continue to utilize virtual or online services and gatherings and strongly encouraged to follow the Guidance for Gathering Together in Houses of Worship issued by the Governor’s Office of Faith-Based and Community Initiatives regarding in-person services that can be conducted safely. Likewise, persons at weddings and funerals are strongly encouraged to follow the Health Guidelines and maintain appropriate social distancing as provided for herein to the greatest extent practicable, although it is further strongly encouraged that any large public celebration component of weddings and funerals be postponed or attended only by close family members.
3. Spectator sports and athletic activities. Local education agencies and schools shall, notwithstanding any orders or provisions to the contrary, have the authority to

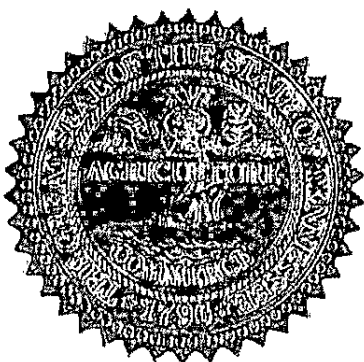
permit, but are not required to permit, school sponsored sporting events and activities, provided that all such activities, including practices and games or competition, must be conducted in a manner consistent with COVID-19-related guidance and rules adopted by the Tennessee Secondary Schools Athletic Association. Non-school-sponsored athletics, including practices, games, and competition, must be conducted in a manner consistent with guidance from either the Tennessee Economic Recovery Group (i.e., Tennessee Pledge) or Tennessee Secondary Schools Athletic Association.


With respect to school-sponsored and other youth athletics, schools, organizers, and facilities shall not permit spectators to attend practices, games, or competition; provided, that game, school, and facility administrators, athletics officials, coaching and team personnel, parents, guardians, or other immediate household members of athletes practicing or competing at the venue on that date, media and athletic scouting personnel attending the event in their professional capacity, and first responders may be present within the facility, but must to the greatest extent practicable comply with applicable health protocols, including maintaining at least six (6) feet of separation from persons outside their household. Schools, facilities, organizers, and governing bodies may further limit physical capacity as deemed necessary to protect public health.

Collegiate and professional sporting events and activities are subject to the rules, protocols, or guidelines of their respective institutions and governing bodies.

4. Suspension of laws that would limit application of this Order. Any law, order, rule, or regulation that would otherwise limit the enforceability of this Order is hereby suspended, pursuant to Tennessee Code Annotated, Section 58-2-107.
5. Severability. If any provision of this Order or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Order which can be given effect without the invalid provision or application, and to that end the provisions of this Order are declared to be severable.
6. Term and effective date. This Order shall be effective and enforceable as of 11:59 p.m., Central Standard Time, on December 20, 2020, and shall remain in effect until 11:59 p.m., Central Standard Time, on January 19, 2021.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 20th day of December, 2020.




GOVERNOR

EXECUTIVE ORDER 70 - ATTESTATION

**AN ORDER TO REDUCE THE SPREAD OF COVID-19 AND PRESERVE
HEALTHCARE CAPACITY BY LIMITING GATHERINGS AND SPECTATOR
EVENTS AND URGING WORKING FROM HOME**

ATTEST:



SECRETARY OF STATE

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JIM M. COPPINGER
COUNTY MAYOR



EX. 9

REBEKAH T. BARNES, R.N.
ADMINISTRATOR

PAUL M. HENDRICKS, M.D.
HEALTH OFFICER

**HAMILTON COUNTY, TENNESSEE
HAMILTON COUNTY HEALTH DEPARTMENT**

HAMILTON COUNTY, TENNESSEE

OFFICE OF THE COUNTY MAYOR

JIM M. COPPINGER

DIRECTIVE NO. 5 OF THE HAMILTON COUNTY HEALTH OFFICER EFFECTIVE January 16, 2021

WHEREAS, Hamilton County is currently experiencing the effects of the worldwide COVID-19 pandemic, and

WHEREAS, Hamilton County is empowered to protect the health and lives of Hamilton County citizens, and

WHEREAS, Hamilton County began reopening businesses last summer requesting and expecting voluntary compliance with appropriate non-pharmaceutical interventions, such as wearing facial coverings, maintaining social distancing and personal hygiene as recommended by the CDC and required for safely opening those businesses, and

WHEREAS, such voluntary recommendations were not adequate to slow the spread of COVID-19, and

WHEREAS, protecting the economy of Hamilton County is also essential to the health of our citizens, and any provisions to protect both our county's health and economy are important to consider, and

WHEREAS, simple measures enacted to prevent the spread of COVID-19 will greatly help to prevent more stringent measures such as stay at home orders and closure of businesses, and

WHEREAS, CDC recommends all persons 2 years of age and older wear a cloth face covering in public settings and when around persons outside their household, especially when other social distancing measures are difficult to maintain, and

WHEREAS, COVID-19 can be spread by people who do not have symptoms and do not know that they are infected, and

WHEREAS, there is clear clinical and scientific evidence that masks or cloth facial coverings which cover the mouth and nose, along with social distancing and proper hygiene can decrease the spread of COVID-19, and

WHEREAS, there has now been an increase in the average number of new cases and continued efforts are needed to combat this trend,

WHEREAS, there are now vaccines available which are expected to mitigate and ultimately defeat this pandemic, but which will not be widely available until later this year,

NOW, THEREFORE, I, Paul M. Hendricks, MD, Hamilton County Health Officer, pursuant to the laws of the State of Tennessee, do hereby issue the following Health Directive No. 5:

1. Effective at 12:01 a.m. on January 16, 2021, all persons in Hamilton County shall wear a facial covering or mask which covers the mouth and nose at all times when indoors in all public and private buildings and when outdoors except under the following exceptions:
 2. Face coverings are not required for:
 - a. Children under 12 years of age, but all children over the age of 2 are encouraged to do so as the CDC recommends.
 - b. Anyone with documented medical contraindications to facial covers
 - c. Anyone who is acutely short of breath or incapacitated such that they would be unable to remove the covering on their own.
 - d. Persons who are deaf or hard of hearing - or those who care for or interact with a person who is hearing impaired if they rely on lip reading to communicate. In this situation, consider using a clear face covering. If a clear face covering is not available, consider whether you can use written communication, use closed captioning or decrease background noise to make communication possible while wearing a cloth face covering that blocks your lips.
 - e. Persons with intellectual and developmental disabilities, mental health conditions or other sensory sensitivities, who may have challenges wearing a cloth face covering. Those persons or their guardians are encouraged to consult with their healthcare provider for advice about wearing cloth face coverings.
 - f. Persons attending a religious service or religious ceremony unless required by that house of worship, but wearing a face covering in such locations is strongly encouraged.
 - g. Persons who are outdoors and can maintain a minimum of six (6) feet distance from others not a member of the person's household except for brief periods of time of less than 15 minutes. Facial coverings should, however, be kept accessible in the event of encountering a larger group.
 - h. Up to two (2) persons who are not household members in cars, trucks, or other private or commercial vehicles. However, all occupants in vehicles transporting more than two (2) persons who are not household members shall wear facial coverings.
 - i. Persons working under conditions where appropriate social distancing from others outside of the person's household can be maintained. A facial covering should be kept accessible in the event that others enter the area.

J. Office workers and any other employee working alone in an area (such as a private office) where the public or other workers are not present or do not usually enter. A facial covering should be kept accessible in the event others enter that area.

k. Persons who are exercising, such as jogging, bicycling, or swimming, etc, either alone or in small groups where physical distancing of 6 feet or greater can be maintained. A facial covering should be kept accessible in the event of encountering a larger group.

l. Private residences are exempt, but hallways, elevators and other common areas of apartment buildings, condominiums and other medium or high density residential structures are not exempt. All gatherings in private residences with non-household members are strongly encouraged to follow recommended social distancing and mask wearing guidelines.

m. Persons seated for the purpose of dining in any restaurant or business that provides food and/or drink for on premises consumption.

3. Facial coverings shall fit snugly and securely against the side of the face. Cloth facial coverings are preferred and should include multiple layers of fabric. Surgical and other medical masks (e.g. N95) are not required and should be preserved for healthcare personnel.

4. Businesses shall not allow anyone to enter or remain in their establishment unless they are wearing a facial covering and no business shall serve anyone without a facial cover unless seated and eating or drinking consumables served by the establishment or unless that person expressly notifies the business that they have an aforementioned exemption.

5. Any business failing to enforce this Directive or any person refusing to leave an establishment when requested due to no facial covering will be subject to civil citations for their violation of this Directive as well as criminal sanctions.

6. All businesses shall post signage in a place visible to those entering to remind customers of this requirement. Sample wording will be provided in digital format by the Hamilton County Health Department.

7. Wedding and funeral religious services held on private property are exempt from the requirement, but highly encouraged to abide by appropriate public health measures such as masks, social distancing and recommended personal hygiene. Routine business activities and non-religious portions of funerals and weddings, such as receptions and viewings shall not be exempt.

8. Voting sites for the purpose of voting or administering an election are exempt but encouraged to abide by appropriate public health measures such as masks, social distancing and recommended personal hygiene.

9. Properties belonging to and under the jurisdiction of the Hamilton County Department of Education and properties belonging to private schools will be exempt and allowed to follow their own policies, but are strongly encouraged to incorporate facial covers, social distancing and enhanced hygiene consistent with CDC and state guidelines.

10. Violations of this Directive by businesses and/or individuals shall be punishable by citation issued by the Hamilton County Health Department and/or criminally by local law enforcement as a Class C misdemeanor.

11. In all cases where individual exemptions from this ordinance are allowed, businesses and organizations may require other conditions such as those that would enhance social distancing and diminish risks to other patrons.

12. This Directive shall remain in effect until 11:59pm, March 31st, 2021.

DECLARED this 16th day of January, 2021.



Paul M. Hendricks, MD.

Health Officer

Hamilton County, Tennessee Department of Health



Becky Barnes

Regional Director

Hamilton County, Tennessee Department of Health

EX-10

Affidavit of David Jonathan Tulis

In evidence for the petition in equity and for writ of mandamus

Comes now, David Jonathan Tulis, of 10520 Brickhill Lane, Soddy-Daisy, Hamilton County, Tenn., being of sound mind and body, declaring the following facts true and correct to the best of my firsthand knowledge, reserving for a later date those injuries the expression for which escapes the affiant today or as may develop to describe, as follows:

Arrest threat

1. On July 31, 2020, deputies of Hamilton County sheriff's office threw affiant out of Hamilton County courthouse after imposing an illegal condition upon his entry, that of a "face mask," which he reasonably understands they had no authority to impose as he exercises his rights, obligations and duties pursuant to the Tennessee constitution Article 1, section 17, such as the right to enter a public building and courtroom as a member of the public and securing that the courts will be open.
2. Affiant told the officers that the county was under his duly served administrative notice as of April 15, 2020, as regards routine rejection of the state law, T.C.A. 40-7-103, arrest by officer without warrant, law enforcement officers and judges.
3. Affiant, additionally, explained that he was there on a reporting assignment, being a member of the press.
4. Affiant cited *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980) as one authority allowing his lawful presence unfettered in the building.
5. Hamilton County sheriff's department officers Craig Bodnar, Bush, Houston and unidentified officer No. 2798 and one other, unidentified, threatened affiant with arrest on the spot without first getting a warrant.

6. Affiant reasonably understands such conduct would have violated Tenn. Code Ann. § Title 40-7-103, arrest by officer without warrant, that requires a warrant in such circumstances from Lorrie Miller, chief magistrate, or one of her three associate magistrates.
7. Humiliated, and for his safety, affiant retreated without enjoying or fulfilling his fundamental liberty interest at the courthouse deprived by the officers despite the notice to them of the administratively challenged practice of on-the-spot arrest without warrant.
8. Outside the building, Deputy Bodnar said if affiant returned that day, officers would charge him with aggravated trespassing.
9. Deputies cited as their authority Mayor Jim Coppinger and county mask directive No. 1 under the state's ostensible state of emergency called by Gov. Lee.
10. Affiant's due diligence indicates the orders are facially and substantively invalid.
11. Denial of access to the court is an unwarranted infringement, being he has a constitutional right to the court and courts building. He has a right to freedom of association under the constitution and freedom **from** association with these officers in his lawful pursuits, as well.
12. The encounter was recorded live on Facebook,
<https://www.facebook.com/noogaradio/videos/2374419749519298>.
13. Affiant believes the officers threatened to commit a crime against him under color of lawful authority in violation of T.C.A. 40-7-103, and in bad faith, given the notice to the employer and to them orally by affiant of the nature of that law and the separate guarantee of open courts.

Religious injury

14. Respondents' actions and falsehoods about a state emergency have deprived affiant of Christian fellowship and gathering, or freedom of religious worship.
15. The threats and falsehoods of the governor closed North Shore Fellowship, where affiant is a member.
16. For many weeks starting in March, the church was shut in denial of affiant's rights of access or ingress and egress.
17. Affiant's right to gather in his religious obligation pursuant to biblical tenets is being infringed.
"For where two or three are gathered in my name, there am I among them," Matthew 18:20;

“Not neglecting to meet together, as is the habit of some, but encouraging one another, and all the more as you see the Day drawing near,” Hebrews 10:25; “Let the word of Christ dwell in you richly, teaching and admonishing one another in all wisdom, singing psalms and hymns and spiritual songs, with thankfulness in your hearts to God,” Colossians 3:16; “When the day of Pentecost arrived, they were all together in one place,” Acts 2:1; and “And they devoted themselves to the apostles’ teaching and the fellowship, to the breaking of bread and the prayers,” Acts 2:42, have been wrongfully infringed.

18. The respondent’s approved church offered “online services” “alternative” denies affiant’s right to fellowship (in-person meeting).
19. When respondent’s approved gathering resumed, service to God was bereft of song and sacraments, with affiant, one Sunday, denied the most basic natural need, access to the men’s restroom since his face was bare, as his beliefs require.
20. Affiant refuses to muzzle his face; it is a contravention of his religious, legal and private beliefs to do so.
21. As of mid-September, affiant is denied entry into the North Shore Fellowship building without a face mask. In unverified, even unverifiable, health crisis claims by Gov. Bill Lee and local health officials against his church elders and government, he is injured therein.

Arrest threat at worship

22. A second threat of arrest occurred when affiant stepped out of his car during a worship service at Metro Tabernacle in Chattanooga on or about April 12, 2020.
23. In exiting his car during a “parking lot” worship service that Sunday morning, affiant was approached by a Chattanooga police officer who’d been standing at the edge of the lot.
24. The officer demanded affiant to get back into his car, and said if he didn’t, affiant would be arrested as a violator of Mayor Andy Berke’s social distancing orders and of mayoral “permission” to the church for its governors to lead worship — but only in parked cars.
25. This command against affiant’s liberty interests was on private property, injuring affiant in the free exercise of his religious tenets or convictions, and other secured rights, protected by the bill of rights of the Tennessee constitution.

Honest government services injury

26. Affiant has a right to honest government services by health commissioner Lisa Piercey and the local health administrator, Rebekah Barnes, who refuse to obey Tenn. Code Ann. § Title 68, the health law.
27. The April 2 Gov. Lee-ordered interference with commerce statewide and the declaration by mayors of lockdowns and the purported “need” to wear face masks at all times denied his right of free association to people.
28. These so-called executive orders, state and local, denied affiant private contact with people in local economy whose businesses, buildings and ministries being deemed “nonessential” and forced to close.
29. Refusal of these and other officials to obey the law and give honest government services, under color of lawful authority, wrongfully infringed and prohibited affiant’s right of free association or being free of interference with innumerable fellow residents of Hamilton County.
30. These cancellations include visits with homeschool dads and friends during Friday morning coffees at the Panera bread store in Hixson or meetings with business prospects in his unfettered right to a livelihood at a lawful and harmless calling.
31. Innumerable prospects refused to meet with him, talk with affiant or do business with affiant beginning in March because of the orders, or fear of the repercussions from disobeying respondent’s orders.

Economic damage

32. Life under unlawful emergency orders are contributing to affiant’s overall economic decline because of the interference of local economy, to which affiant is subject and in which he is injured.
33. Affiant is suffering injury buying goods and services in commerce and selling goods and services. These activities have been curtailed — with opportunities for growth and expansion lost — whether from barking store clerks, officers threatening affiant in public buildings or by

billboards telling affiant, or by unwarranted ridicule, that if he doesn't wear a mask he doesn't care for other people.

34. After Gov. Lee's placing the people of Tennessee under house arrest, affiant finds people unwilling to meet with him at every part of life in local economy and free markets, to the growth and prosperity of which affiant is committed.

35. People have shut their businesses and won't sell to him, refusing also to buy from him in the ordinary course of business.

36. At every turn since March, the state's emergency edicts and their illicit use have created the very disastrous conditions the Tennessee general assembly enactments seek to prevent in the emergency provisions of the law, of which the affiant has right to be secure thereby. The wrongful health crisis claims injuriously "impede economic growth and development" of the affiant in violation of Tenn. Code Ann. § 58-2-102 and of the Tennessee constitution.

Further, at this time, affiant sayeth naught.

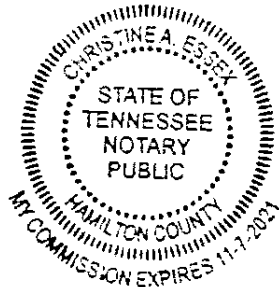
David Jonathan Tulis

David Jonathan Tulis

STATE OF TENNESSEE, COUNTY OF Hamilton — I, the undersigned notary public, do hereby affirm that David Jonathan Tulis was present before me on the 20th day of October 2020, and signed this affidavit as his free and voluntary act and deed.

Christina Essex

(notary public)



IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
 AT CHATTANOOGA
 DIVISION IV

FILED IN OFFICE
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 LARRY L. HENRY, CLERK
 BY HLB DC

FLEXIBILITY CAPITAL, INC.)	
)	
Plaintiff,)	
)	
VS.)	NO. 22C429
)	<u>IV</u>
SABATINO CUPELLI and)	
DAVID JONATHAN TULIS,)	
D/B/A HOT NEWS TALK RADIO)	
)	
Defendants.)	

MOTION TO CONTINUE TRIAL

Comes the plaintiff, Flexibility Capital, Inc., by and through counsel, John R. Cheadle, Jr. and Mary Barnard Cheadle, and moves the Court for any order continuing the trial currently scheduled in this matter for September 8, 2022. Plaintiff has filed a motion for summary judgment that was originally scheduled to be heard on June 20, 2022. Defendants' served plaintiff with requests for production of documents on June 16, 2022. As a result, plaintiff's motion for summary judgment was continued to July 18, 2022. On July 14, 2022, defendants filed a motion to dismiss, a motion to compel and a motion for Rule 8 sanctions with a hearing date of July 25, 2022. All pending motions, including plaintiff's motion for summary judgment, were continued by the Court to July 25, 2022, to be heard at the same time. Plaintiff's counsel was not available on July 25, 2022. The parties agreed to continue all motions to August 15, 2022. At the conclusion of the hearing on August 15, 2022, plaintiff's counsel's motion for summary judgment was continued to September 26, 2022, due to a late filing response by defendants. Further, the Court suggested to

defendants that they might want to serve plaintiff with interrogatories, pursuant to Rule 33, Tennessee Rules of Civil Procedure.

WHEREFORE, plaintiff respectfully requests that the trial scheduled for hearing on September 8, 2022, be continued until after plaintiff's pending motion for summary judgment can be heard.

DATED: August 24, 2022.

Respectfully submitted,



JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, TN 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com
mcheadle@cheadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, and by e-mail at dauidtuliseditor@gmail.com, this 24th day of August, 2022.



JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

(21001231)

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA

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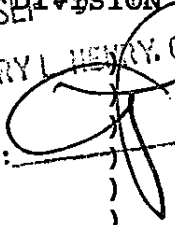
FLEXIBILITY CAPITAL, INC

Plaintiff,

VS.


SABATINO CUPELLI and
DAVID JONATHAN TULIS,
D/B/A HOT NEWS TALK RADIO

Defendants.

BY:  DC

NO. 22C429

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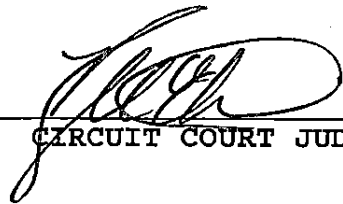
ORDER DENYING MOTION FOR SANCTIONS

This cause came on to be heard on August 15, 2022, upon defendants' motion for Rule 8 sanctions, plaintiff's response, the statements of plaintiff's counsel and defendants, and the record as a whole; from all of which it appears to the Court that defendants' motion for Rule 8 sanctions shall be denied. Proceeding forward, the document underlying this lawsuit shall be referred to as the "Future Receivables Sale and Purchase Agreement."

It is, accordingly, ORDERED, ADJUDGED AND DECREED that defendants' motion for Rule 8 sanctions is denied.

It is further ORDERED that proceeding forward, the documents underlying this lawsuit shall be referred to as the "Future Receivables Sale and Purchase Agreement."

ENTERED this 15th day of September, 2022.


CIRCUIT COURT JUDGE

SUBMITTED FOR ENTRY:

Myrmel Cheadle

JOHN R. CHEADLE, JR. (6053)
MARY BARNARD CHEADLE (27084)
Attorneys for Plaintiff
2404 Crestmoor Road
Nashville, TN 37215
(615) 254-1009 Office
(615) 254-9298 Facsimile
jcheadle@cheadlelaw.com
mcheadle@cheadlelaw.com

CERTIFICATE

I hereby certify that copies of the foregoing have been mailed, postage paid, to defendants, Sabatino Cupelli and David Jonathan Tulis, d/b/a Hot News Talk Radio, at 5512 Ringgold Road, Suite 216, Chattanooga, TN 37412, to defendant Sabatino Cupelli at 8665 Summit Peak Way, Apt. 209, Ooltewah, TN 37363 and to defendant David Jonathan Tulis at 10520 Brickhill Lane, Soddy Daisy, TN 37379, and by e-mail at davidtuliseditor@gmail.com, this 24th day of August, 2022.

Myrmel Cheadle

JOHN R. CHEADLE, JR.
MARY BARNARD CHEADLE

(p.shell; 21001231)

CLERK CERTIFICATE

The undersigned hereby certifies that a copy of this Order has been mailed to all parties or to counsel of all parties in this cause.

This 9 day of Sept. 2022

LARRY L. HENRY, CLERK

By *[Signature]* D.C.

Mary B. Cheadle
Sabatino Cupelli
David J. Tulis

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENN. DIV. 4

Flexibility Capital Inc.)
)
vs.)
)
Sabatino Cupelli)
8665 Summit Creek Way)
Chattanooga, TN37363)
David Jonathan Tulis)
10520 Brickhill Lane)
Soddy-Daisy TN 37379)

Case No.
22C429

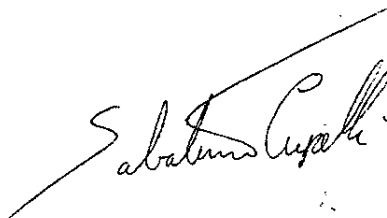
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Motion for summary judgment

Accused move the court to dismiss this cause with prejudice on grounds of two legal impossibilities that inhere in the controlling contract, one an original impossibility, and one supervening.

A brief in support of this basis in law for summary judgment is attached to this motion.

Respectfully submitted,



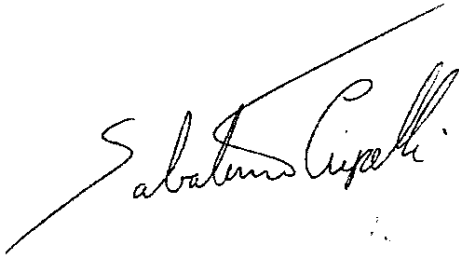
By _____
Sabatino Cupelli

By David J. Tulis
David Jonathan Tulis

CERTIFICATE OF SERVICE

Sabatino Cupelli and David Jonathan Tulis certify that a true and exact copy of this motion is being sent by first-class mail this 13th day of September, 2022, to:

Mary Barnard Cheadle
2404 Crestmoor Road
Nashville, TN 37215

A handwritten signature in cursive script that reads "Sabatino Cupelli". The signature is written in black ink and is positioned above a horizontal line.

Sabatino Cupelli

A handwritten signature in cursive script that reads "David Jonathan Tulis". The signature is written in black ink and is positioned above a horizontal line.

David Jonathan Tulis

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENN. DIV. 4

Flexibility Capital Inc.)
)
vs.)
)
Sabatino Cupelli)
8665 Summit Creek Way)
Chattanooga, TN37363)
David Jonathan Tulis)
10520 Brickhill Lane)
Soddy-Daisy TN 37379)

Case No. 22CA29
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Brief supporting motion for summary judgment

This lawsuit should be dismissed summarily because the guarantee of the radio station's two owners is for receivables from advertising sales in cause of business failure, in addition that they shall "shall well and truly pay or perform *** the obligations and pay all damages and other amounts stipulated," (contract, p. 11, ¶ 2), which receivables cannot be remitted given near-failure imposed by third parties, making complying with the contract terms a supervening impossibility, with the "other" payments from either man likewise an original impossibility in the contract.

This dispute is over future receivables at a radio station that makes its bread selling advertising for broadcast under a federal license. The lawsuit is filed under a "personal guaranty of performance" part of the contract in which the purported plaintiff demands payment of the whole amount personally from the owners, even though receipts from ads have dried up in a government-caused economic calamity.

The accused reserve by reference the motion to dismiss the case on grounds of third-party intervention. They reserve their motion to compel discovery, which to date remains unsatisfied, with not a single document forthcoming about financing in the contract.

Two sorts of impossibility of performance are ground or dismissal as a matter of law. One is original impossibility, and the other is supervening impossibility.

Intervening ‘extreme hardship’

The doctrine of frustration has been limited to cases of extreme hardship so that businessmen, who must make their arrangements in advance, can rely with certainty on their contracts. The courts have required a promisor seeking to excuse himself from performance of his obligations to prove that the risk of the frustrating event was not reasonably foreseeable and that the value of counterperformance is totally or nearly totally destroyed, for frustration is no defense if it was foreseeable or controllable by the promisor, or if counterperformance remains valuable.

Tennessee courts freed a Chattanooga utility in 1943 from a mandatory renewal provision in the 50-year deal, saying it was unenforceable because population growth on Lookout Mountain had polluted the spring from which the water came. *Hinchman v. City Water Co.*, 179 Tenn. 545, 167 S.W.2d 986 (1943). As a later case explains, “The Water Company alleged that it had contracted for water that was pure and useable for human consumption. The Court in reaching its decision relieving the Water Company of liability, cited the case of *Taylor v. Caldwell*, 3 B.&S. 826, 122 *905 Eng.Rep. 309 (1863), the leading case establishing what is known as the new or modern rule in regard to the defense of impossibility of performance of a contract” *N. Am. Cap. Corp. v. McCants*, 510 S.W.2d 901, 904–05 (Tenn. 1974).

“The essence of the modern defense of impossibility is that the promised performance was at the making of the contract, or thereafter became, impracticable owing to some extreme or unreasonable difficulty, expense, injury, or loss involved, rather than that it is scientifically or actually impossible.” Williston on Contracts (Revised Ed.), Vol. 6, p. 5410.

Hinchman v. City Water Co., 179 Tenn. 545, 167 S.W.2d 986, 991 (1943)

The *McCants* court holds that supervening acts are grounds for a finding of unenforceability, citing *Heart v. East Tennessee Brewing Co.*, 112 Tenn. 69, 113 S.W. 364 (1908) that holds unenforceable a saloon rental agreement supervened by governmental acts — imposition of state and national alcohol prohibition.

It is not necessary in this case to determine whether or not the contract contained in the lease restricts the use of the property for the sale of intoxicating liquors. It was the purpose of both lessor and lessee, as clearly expressed in the instrument, that it should be used as a saloon, and, **this being made unlawful by law, the contract is no longer enforceable.** 112 Tenn. at 74, 113 S.W. at 365. [emphasis added]

Interventions and interruptions that are reasonably foreseeable are not grounds for finding a contract unenforceable. Those beyond the contemplation of the parties are excused from performance.

The doctrine of frustration of commercial purpose, as expressed in *McCants*, is if the happening of an event, not foreseen by the parties to the contract and neither caused by nor under the control of either party, **has destroyed or nearly destroyed either the value of performance or the object or purpose of the contract**, then the parties are excused from further performance. The *McCants* court stated the “**supervening event**” must be “**wholly outside the contemplation of the parties**” but, if such frustrating event was reasonably foreseeable, the doctrine is not a defense. *872 The doctrine is predicated on the premise of giving relief where the parties **could not provide themselves**, by the provisions of the contract, against the happening of the supervening event. 17A C.J.S., *Contracts*, § 463(2).

Haun v. King, 690 S.W.2d 869, 872 (Tenn. Ct. App. 1984) (emphasis added)

“Failure to perform a contract is excused if performance becomes impossible due to a cause not attributable to the non-performing party and the **impossibility is not among the probable contingencies which a person of ordinary prudence** should have foreseen and provided for” *St. George Holdings LLC v. Hutcherson*, 632 S.W.3d 515 (Tenn. Ct. App. 2020), appeal denied (May 12, 2021) (emphasis added).

A party is not relieved under an impossible condition for performance if that party is the origin of the condition. “Party is not relieved of liability for his nonperformance of a contract based upon the defense of impossibility of performance where the impossibility is *caused by the party’s own conduct* or where the impossibility is caused by developments which the party *could have prevented or avoided* or remedied by appropriate corrective measures” *Jenkins Subway, Inc. v. Jones*, 990 S.W.2d 713 (Tenn. Ct. App. 1998) (emphasis added).

Future receivables sale & purchase agreement

Disputed in this case is an agreement that appears to be a uniquely American innovation serving free enterprise capitalism apart from the lending, banking and financialization sectors of the economy that deal in loans and are heavily regulated.

The counterparty in this case — Flexibility, or some other entity ¹ — agrees on a sale of future receivables from Hot News Talk Radio LLC, which company is dissolved. Because this is not a loan, and because there is no collateral, the arrangement in the contract is that the buyer of receipts takes a great risk with the prospect of great reward — richer than if it were a mere business lender extending a loan protected by collateral.

¹ Accused awaits evidence from discovery so that it might submit interrogatories as to the identity of the actual party in interest.

This review of the contract, the law in this case, will shed light on the “personal guaranty of performance” section, p. 11, that triggers the lawsuit. “This sale of the purchased futures receipts is made without express or implied warranty to Flexibility of collectibility of the purchased future receipts.” The radio station agrees to give Flexibility “full and complete ownership” of future receipts until the deal is satisfied.

Flexibility's ability to collect “is contingent upon merchant’s continued operation of its business and successful generation of the future receipts until the purchased amount is delivered to flexibility in full.” The parties understand that “in the event of decreased efficiency or total failure of merchant's business, Flexibility’s receipt of the full or any portion of the purchased amount may be delayed indefinitely” (§ 5).

Hot News Talk Radio LLC receives a direct deposit in its checking account and begins payments at \$164.22 per weekday. If the merchant “will experience sporadic increase or decrease in its daily receipts,” merchant has the right to reconcile and renegotiate payment, with Flexibility willing to be flexible on daily amounts collected (§ 10).

“This agreement consummates the sale of the purchase future receipts at a discount, not borrowing funds by merchant from Flexibility. Flexibility does not charge merchant and will not collect from merchant any interest on the monies spent on the purchase of the purchased future receipts. The period of time that it will take Flexibility to collect the purchase amount is **not fixed**, is **unknown** to both parties as of the effective date of this agreement and will depend on [] how well or not well merchant’s business will be performing.” The contract proposes “as an extreme example” that if the “business ceases to exist *** for reason outside merchant’s control,” Flexibility may “**never recover any moneys** [sic] spent on such purchase” (§ 14(a)(ii) (emphasis added).

Contract grants absolution

The contract, with repeating incantations implying absolution, says “if the full purchased amount is not remitted because merchant’s business went bankrupt or otherwise ceased operations in the ordinary course of business (but not due to merchant's willful or negligent mishandling of its business), and merchant shall not have breached this agreement, merchant would not owe anything to Flexibility and would not be in breach of or in default under this agreement” (emphasis added). (§ 14(a)(iv))

Flexibility’s risk acknowledgments. Flexibility agrees to purchase the purchased future receipts knowing the risks that merchant’s business may slow down or fail, and Flexibility assumes these risks based exclusively upon the information provided to it by merchant, and related to the business operations of merchant’s business prior to the date hereof *** . Furthermore, Flexibility hereby acknowledges and agrees that merchant shall be excused from performing its obligations under this agreement in the event merchant’s business ceases its operations *** . (emphasis original)

Four “valid excuses” are given for business failure: “adverse business conditions that occurred for reasons outside merchant’s control”; loss of premises; bankruptcy; and “natural disasters or similar occurrences beyond merchant’s control.”

With a valid excuse of intervening impossibilities imposed, accused are not in breach of contract.

The contract’s section 14 begins, “**Not a loan**” (emphasis original). “Merchant and Flexibility agree that the purchase price is paid to merchant in consideration for the ownership of the purchased future receipts and that payment *** is not intended to be, nor shall it be construed as[,] a loan from Flexibility to merchant that **requires absolute and unconditional repayment** on a maturity date. To the contrary, Flexibility’s ability to receive the purchased amount pursuant to this agreement, and the date when the

purchased amount is paid in full **(if ever)** are **subject to and conditioned upon performance** of merchant's business" (§ 14(c)) (emphasis added).

The purchase is securitized under a "pledge of security," in which the radio station gives a "continuing, perfected and first priority lien upon and security interest in ***all of merchant's right, title and interest in *** all accounts, without limitation, all deposit accounts, accounts-receivable, and other receivables" as well as equipment and "all *** proceeds, as that term is defined by Article 9 of the UCC."

Guaranty provisions

Under "events of default and remedies," § 21-25, a merchant breach triggers the guaranty provisions of the contract. Nonpayment, an empty bank account from which Flexibility cannot draw out a \$164.22 weekday payment, constitutes a breach.

Flexibility "may declare merchant in default *** by sending a default notice," but it can also determine a breach without notice simply by virtue of not getting a payment (§ 22). Contract § 23, suggesting the parties to the contract live in Shlaraffenland or "the land of cockaigne,"² declares the following:

Upon receipt of such default notice, merchant **shall immediately pay Flexibility the unpaid portion of the purchased amount.** [emphasis added]

These terms are an *original impossibility*. The accused are in business to make a living. The living — struck by actions of third parties, as per Affidavit and amended answer to motion for summary judgment, filed Aug. 12, 2022, — has been destroyed by

² As in Pieter Breughel's "The Land of Cockaigne," 1567, a land of plenty in medieval myth where the lazy lie under a tilted table as wine and grub fall into their awaiting mouths, where the pig is equipped with a knife to slice it, where the duck lays its neck across a platter, and where pies slide off the the knight's roof into his gaping mouth — where the real world retreats before magic, free money and endless bounty.