

Retainer Agreement

This is a contract between **Eugene Cunningham**

and _____(hereafter called the Creditor.)

The purpose of this blanket contract is for Creditor to engage Mr. Cunningham, as attorney, for the purpose of using his best efforts, as qualified by this document, to collect certain, defined debts owed to the Creditor by its Debtors. This is not an agency agreement and Mr. Cunningham is not a collection agency. This contract covers the general relationship between Mr. Cunningham and Creditor regarding Creditor's debt portfolio and actions referred to Mr. Cunningham.

Creditor's role

The Creditor will provide to Mr. Cunningham the following information to open a legal file:

1. Debtor's legal name: Exact description of Defendant(s) which includes a *proper legal name*. If a case is dismissed for failure to properly identify a Defendant, then the redrafting of the papers will be charged at the hourly rate explained below.
2. Creditor's legal name: If a case is dismissed for failure to properly identify the Plaintiff, then the redrafting of the papers will be charged at the hourly rate explained below. This can happen where attention is not paid to assignments and legal relationships. Mr. Cunningham can help identify proper parties, but must be given proper documentation.
 - a. If the Creditor is not entitled to collect upon the debt and the case is dismissed for that reason, Mr. Cunningham has earned 25% of the amount demanded.
3. Documentation of loan. Photocopy is acceptable to initiate the case.
4. Statement of amount due, plus copy of any demand letter(s), if issued.
5. Prior communication: records of communications with Debtor about debt in question, if any.

By providing this information to Mr. Cunningham. Creditor represents that the debt claimed is lawful, due and owing to Creditor. Further, providing documentation constitutes instructions to commence recovery procedures, short of filing suit.

Financial Terms

Unless otherwise agreed to herein,

1. All recovery actions, which fall under this agreement, shall be taken by Mr. Cunningham upon a contingency basis.
 - a. The professional fee shall be 33 1/3% of all funds collected, either by Mr. Cunningham or any other party, including the Creditor, after a file has been opened by Mr. Cunningham. A file is open when data has been received from the Creditor about the debt sufficient to commence contact with the Debtor.
 - b. Should a file be opened and it is determined that payment upon the amount in the file has been made, then Mr. Cunningham is entitled to one half of 1(a) above or 16 2/3%
 - c. Should merchandise be returned to the Creditor and accepted as a settlement, then the contingency amount due Mr. Cunningham is 10% of the total amount owed.
 - d. Should the file opened by Mr. Cunningham already contain a valid, enforceable judgement, then the contingency rate shall be 25% upon that judgement.
 - d. Should the Creditor settle a file, other than described above, which file has already been open by Mr. Cunningham, including settlement directly with the Debtor, the the following provisions apply:
 - i. If settlement occurs, payment made, and delivery of actual notice of
 - ii. After 30 days, the full provisions of Paragraph 1 (a) apply.
2. Defending against a counter claim is not part of the above contingency provisions.
 - a. The Creditor may request Mr. Cunningham to provide a defense against the counter claim. Mr. Cunningham, unless in his sole discretion he thinks the Creditor is better served by another lawyer, will charge for counter claim work at the rate of \$175 per hour and at the rate of \$75 for clerks, experts, paralegals or other assistants.
 - i. A separate accounting will be kept by Mr. Cunningham.
 - ii. These rates are subject to change and their change will in no way affect the overall validity of this agreement.

b. Where a counter claim is established and a set off is awarded, Mr. Cunningham will be entitled to 33 1/3% of the amount demanded in the Complaint.

3. Other legal matters are not upon a contingency basis. For non-inclusive examples, for illustration purposes, this provision may include: advice, drafting, or other legal services so that the Creditor may improve Creditor's contracts; representation resisting an injunction; third party claims against the Creditor, appeals.

Matters included in a contingency arrangement include: filing of a law suit, prosecution of the litigation, standard post-judgement collection efforts, such as Debtor examinations.

4. In all matters, Creditor agrees to pay all disbursements and costs incurred. These costs would include, but are not limited to:

- a. "Skip Tracing" and to find debtor.
- b. service upon debtor
- c. all legal filing fees

Movement of Funds

As an operating rule, all settlement and litigation recovery funds shall be deposited in Mr. Cunningham's trust account. It is imperative that this be done for proper tracking. Thus, if the Creditor pay the Debtor directly, said payment, as a rule, must be forwarded to Mr. Cunningham or his back office staff, as he directs.

1. Should Creditor fail to follow the above provision and directly take in the settlement amount, then all fees, costs, and disbursements regarding that recovered amount shall be immediately due and owing to Mr. Cunningham. The amount due may be paid by withdrawing directly from other funds held in trust.
2. Mr. Cunningham is hereby authorized to endorse, negotiate and/or deposit checks and negotiable instruments written to you directly into his trust account. You authorize Mr. Cunningham's office to withdraw his fees from these trust funds. At our discretion, we may use any funds collected to offset any fees, costs and suit fees due to us on any account assigned to us for collection or litigation.
3. Mr. Cunningham may look to the Creditor's funds in his trust account for any amount due and owing. It is anticipated that such withdrawal and payment to his business account shall be accounted for, as will all transactions, by way of an Internet-based account which will be accessible by the Creditor in real time, by way of a Personal Identification Number (PIN). If any interest is earned on the trust funds, it shall inure to the benefit of Mr. Cunningham or as statute requires.

4. Creditor authorizes Mr. Cunningham to use other law firms, clerks, independent contractors, paralegals and associates to act on this behalf in pursuing your claim.
5. Creditor authorizes Mr. Cunningham to list debts with credit agencies.

Litigation

Before any legal action is commenced by service of process, we will obtain Creditor's authorization, which shall be by written letter, fax, or specific e-mail. Oral approvals shall not be accepted. Further, at any time in the matter, you, hereby, authorize Mr. Cunningham's office to settle claims down to 75% of the demand amount. As to all other offers, Mr. Cunningham will contact Creditor to discuss settlement.

Procedures

The Creditor's portfolio and financial reports will be available to the Creditor through a private, secured web site.

Creditor will direct all contact by Debtors to Mr. Cunningham, once a file is opened. Mr. Cunningham, once a file is opened, is the sole contact point with Debtor.

Housekeeping

This contract is governed by the Laws of New York State. The venue of any legal dispute shall be Saratoga County, New York State. Further, the parties agree to binding arbitration administered under the rules of the American Arbitration Association.

If any section of this contract is void or voidable, that has no affect upon the validity of the remaining parts.

Date:

Date:

Eugene J. Cunningham, Esq.