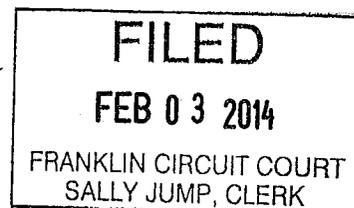


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 13-CI-1060



NORTON HEALTHCARE, INC.

PLAINTIFF

v.

UNIVERSITY OF LOUISVILLE

DEFENDANT

**NORTON'S RESPONSE TO
U of L'S MOTION FOR ORDER OF MEDIATION**

Norton Healthcare, Inc., f/k/a Children's Hospital ("Norton"), respectfully submits this Response to the University of Louisville's ("U of L") Motion for Order of Mediation. In further support, Norton states as follows:

Norton and U of L reached a binding settlement agreement on January 17, 2014, in a conference call between the parties' senior executives, which was memorialized and confirmed in writing on January 20, 2014. However, on the morning of January 21, 2014, right before the parties were scheduled to meet to finalize and execute the settlement documents, U of L breached the settlement agreement, demanding that Norton agree to an "addendum" containing numerous additional terms that were not part of the settlement agreement, precisely because the parties had concluded that they could not reach agreement on them. U of L then further repudiated the settlement agreement on January 24, claiming that the parties were "awfully close" to a settlement and that an agreement was "imminent," but denying that an agreement was reached. Although U of L may no longer be happy with the deal it agreed to, it should not be

permitted to escape it. Norton intends to raise U of L's breach of contract by amended complaint and seek all available relief.¹

Nevertheless, in recognition of the parties' long-standing collaborative relationship, and in an effort to avoid costly litigation over both U of L's breach of contract and baseless threats to evict Norton from Kosair Children's Hospital, which forced Norton to file this lawsuit in the first place, Norton is agreeable to participating in mediation provided that: (1) such agreement is without prejudice to Norton's claims arising out of or related to U of L's breach of the settlement agreement and may not be used in any way by U of L to defend against such claims, and (2) the litigation is stayed until the mediation process is over. Norton also proposes that the parties attempt to reach agreement on a mediator before one is appointed.

Finally, although Norton wants to resolve this lawsuit as soon as possible so it can focus all of its attention on its hospital and the children and families it serves, given the complexity of the issues and the negotiations to date, Norton has serious doubts that the parties will be able to complete a mediation before a qualified mediator within thirty (30) days, which U of L has asked the Court to order. In the experience of Norton's counsel, a qualified mediator may not have any availability in the next thirty days, and perhaps longer. We therefore request that the Court allow a period of at least ninety (90) days from the date a mediator is appointed or selected.

¹ U of L's accusation that Norton "refused to appear for scheduled meetings and called off the talks" (Mot. at 2) is simply untrue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was delivered via email and U.S. mail on this the 3 day of February, 2014 to:

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