

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

ERIN MARIE MILLER,
Plaintiff,

Case No.: 23-000027-MZ
Honorable Christopher Yates

v.

MICHIGAN DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Defendant

MOTION

**** ORAL ARGUMENT NOT
REQUESTED****

OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Attorney for Plaintiff
PO Box 107
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com

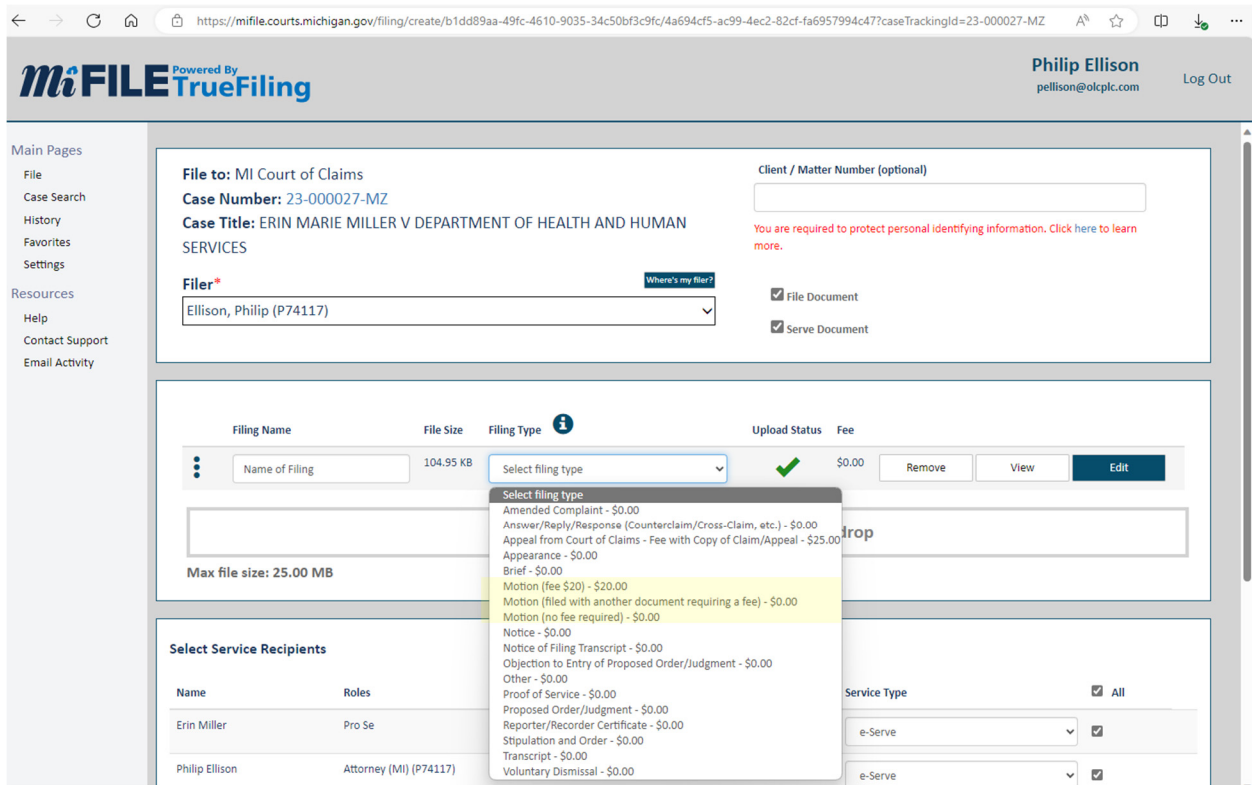
KYLA L. BARRANCO (P81082)
THOMAS QUASARANO (P27982)
Assistant Attorneys General
Attorneys for Defendant
Michigan Dep't of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
barrancok@michigan.gov

**02/02/2024 MOTION FOR ENTRY OF ORDER ACCEPTING
MOTION FOR RECONSIDERATION *NUNC PRO TUNC***

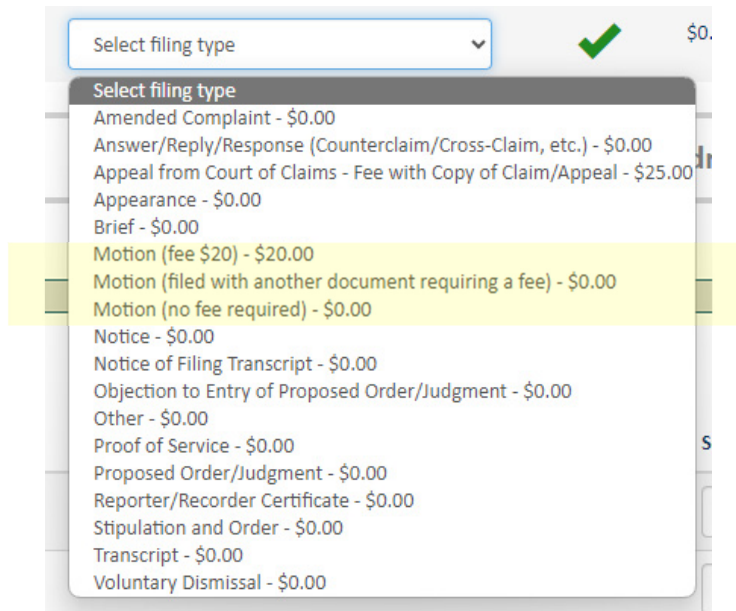
NOW COMES Plaintiff ERIN MARIE MILLER, by counsel, and moves for entry of an order *nunc pro tunc* to deem the Plaintiff's recently made motion for reconsideration be deemed timely filed.

On January 5, 2024, this Court (by Judge Gleischer) granted Defendant MDHHS' summary disposition after denying Plaintiff's request to civil fines and punitive damages. At the same time, January 5, 2023 opinion ordered that "plaintiff is awarded reasonable attorneys' fees and costs" and directed Plaintiff to "submit an itemized request for fees and costs." Since then, the current judicial officer (Yates, J) took over this case with his new assignment with the Court of Claims.

After granting an extension, Plaintiff’s counsel timely filed two documents on January 26, 2024—the motion for reconsideration and the “Statement Regarding Attorney Fees, Costs, and Disbursements.”¹ **Exhibit A.** However, the Clerk rejected both filings a day later indicating that a filing fee was tagged to each filing. As the Court might or might not be aware, the difference between tagging a fee to a filing or not is the slip of the computer mouse—



¹ In the submitted documentation, Footnote 1 stated “[t]he undersigned took the Court’s direction to mean to submit an itemized materials rather than a motion because it has already awarded reasonable attorney fees and costs but needed to determine the amount. If this thinking is in error and a motion is deemed needed, the Court is requested to direct Plaintiff to file the same.”



The undersigned specifically picked “Other” for the “Statement Regarding Attorney Fees, Costs, and Disbursements” but must have, erroneously, filed the motion for reconsideration under “motion” with “no fee required” by mistake. See **Exhibit A**. The undersigned has always selected “Motion (fee \$20)” for motions but suspects a mere mistake here.

When the Clerk “rejected” both filings on January 27, 2024, the undersigned immediately re-filed the motion for reconsideration with the fee payment selection triggered (**Exhibit A**) and wrote a letter to the Clerk about the “Statement Regarding Attorney Fees, Costs, and Disbursements,” (**Exhibit B**). Both were then later accepted. **Exhibit A**. However, neither have been docketed. **Exhibit C**.

The reason for the current motion is concerning possible future jurisdiction with the Court of Appeals should an appeal be taken. If this Court denies² reconsideration, the Clerk’s rejection of the filing means the filing for reconsideration could be treated as being

² If the Court grants reconsideration on any of the grounds argued, this motion becomes totally unnecessary as a new “final order” with a separate appeal by right would be issued.

“made” 22 days after the January 5, 2024 Opinion and Order (which is seeming the final order from which to appeal by right from). “An appeal of right in any civil case must be taken within 21 days... from the entry of... the judgment or order appealed from” unless a motion for reconsideration is filed. MCR 7.204(A)(1)(a). Entry means “the date a judgment or order is signed or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.” MCR 7.204(A). “A motion for rehearing or reconsideration... does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21 [] day period.”

A review of the Register of Actions lists the entry of the January 5, 2024 Opinion and Order as both January 5 and 16, 2024, **Exhibit C**, which makes the entry date of that filing unclear as well.

Motions for reconsideration can be filed at any time. *Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 52-53; 698 NW2d 900 (2005) (“a trial court has unrestricted discretion to review its previous decision”). However, the Court Rules speaks to being done within 21 days of entry of the order. MCR 2.119(F)(1) (“motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 21 days after entry of an order deciding the motion.”). While the Clerk rejected the filing (which was later corrected), the filing was “served” on opposing counsel and “filed” with the Clerk on the twenty-first day.

The *Nunc Pro Tunc* Solution

The Latin phrase *nunc pro tunc* describes a doctrine that permits acts to be done after the time they should have been done with a retroactive effect — a Latin term meaning literally, “now for then.” *Barden v Keohane*, 921 F2d 476, 477 fn2 (CA 3, 1990).

“An act *nunc pro tunc* is an ‘entry made now of something actually previously done to have effect of former date, [previously] omitted through inadvertence or mistake.’” *Id.* (citing Black’s Law Dictionary). Michigan utilizes the doctrine as a corrective tool. *Band v Livonia Associates*, 176 Mich App 95, 107; 439 NW2d 285 (1989). “The power to enter a [order] *nunc pro tunc* is generally said to be in the court’s discretion.” *Vioglavich v Vioglavich*, 113 Mich App 376, 386; 317 NW2d 633 (1982).

The undersigned has exchanged emails with opposing counsel about entry of such an order for this Court to treat the motion for reconsideration to be filed on January 26, 2024 *nunc pro tunc*. There is no objection to providing such relief.

BRIEF IN SUPPORT

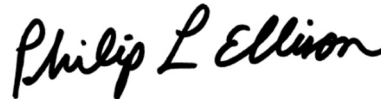
Plaintiff relies upon the precedents cited above.

RELIEF REQUESTED

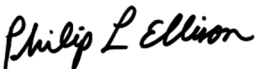
As such, this Court is requested to enter an order deeming the motion for reconsideration as timely filed *nunc pro tunc* on January 26, 2024.

Date: February 2, 2024

RESPECTFULLY SUBMITTED:



OUTSIDE LEGAL COUNSEL PLC
by PHILIP L. ELLISON (P74117)
Attorney for Plaintiff
PO Box 107
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com

PROOF OF SERVICE	
The undersigned certifies that a copy of the foregoing document(s) was provided to and/or served on parties or at least one of his/her attorney of record on the date stated above by the following method(s):	
<input type="checkbox"/> US Mail (Prepaid)	<input type="checkbox"/> Email (by MSC Admin Order)
<input type="checkbox"/> Fax	<input type="checkbox"/> Email (by Agreement)
<input type="checkbox"/> Hand Delivery	<input checked="" type="checkbox"/> Other: MiFile
 _____ PHILIP L. ELLISON Attorney at Law	



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Filer

Matter Number

Filing Type

Filing Name

Case Number

Court

Submission Date

Not Filed

Philip Ellison

Ellison, Philip (P74117)

Ellison, Philip (P74117)

Other

2024-01-30 Response to Defendant S...

23-000097-MM

MI Court of Claims

01/30/2024 at 12:11:54 P...

Filed

Philip Ellison

Ellison, Philip (P74117)

Other

2024-01-27 Ltr to COC Clerk

23-000027-MZ

MI Court of Claims

01/27/2024 at 4:58:05 PM

Filed

Philip Ellison

Ellison, Philip (P74117)

Other

2024-01-26 Itemization re Attorney F...

23-000027-MZ

MI Court of Claims

01/27/2024 at 4:58:05 PM

Filed

Philip Ellison

Ellison, Philip (P74117)

Motion (fee \$20)

2024-01-26 Motion for Reconsiderati...

23-000027-MZ

MI Court of Claims

01/27/2024 at 4:42:12 PM

Rejected

Philip Ellison

Ellison, Philip (P74117)

Other

Itemization for Attorney Fees

23-000027-MZ

MI Court of Claims

01/26/2024 at 7:43:56 PM

The filing was rejected. Any request is treated as a Motion pursuant to Court Rule. \$20 Motn fee is required unless a Fee Waiver is in effect.

Rejected

Philip Ellison

Ellison, Philip (P74117)

Motion (no fee required)

Motion for Reconsideration

23-000027-MZ

MI Court of Claims

01/26/2024 at 5:07:06 PM

The filing was rejected because required Motion fee of \$20 was not paid.

Filed

Philip Ellison

Ellison, Philip (P74117)

Brief

Reply

368598

MI Court of Appeals

01/18/2024 at 8:33:08 AM

Filed

Philip Ellison

Ellison, Philip (P74117)

Brief

Reply Brief

367903

MI Court of Appeals

01/17/2024 at 8:54:38 AM

Filed

Philip Ellison

Ellison, Philip (P74117)

Motion (fee \$20)

2024-01-15 Motion for Extension of ...

23-000027-MZ

MI Court of Claims

01/15/2024 at 11:25:08 P...

Filed

Philip Ellison

Ellison, Philip (P74117)

Proof of Service

2024-01-10 Proof of Mailing

367805

MI Court of Appeals

01/10/2024 at 3:23:22 PM

Filed

Philip Ellison

Ellison, Philip (P74117)

Other

2024-01-09 Response to Extension R...

367805

MI Court of Appeals

01/09/2024 at 2:39:09 PM

Filed

Philip Ellison

Ellison, Philip (P74117)

Docketing Statement

2024-01-09 docketing-statement

368834

MI Court of Appeals

01/09/2024 at 9:06:39 AM

Filed

Philip Ellison

Ellison, Philip (P74117)

Brief

Higgins Lake - Appellant Brief

367805

MI Court of Appeals

01/08/2024 at 2:49:24 PM

Filed

Philip Ellison

Ellison, Philip (P74117)

Appendix

Higgins Lake - Appendix

367805

MI Court of Appeals

01/08/2024 at 2:49:24 PM

Filed

Philip Ellison

Ellison, Philip (P74117)

Proof of Service

Non MIFile User Proof of Mailing

367805

MI Court of Appeals

01/08/2024 at 2:49:24 PM

Showing 1 to 15 of 17 entries

Shipping Tool
Screenshot tool
Select here to

EXHIBIT
A
OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com

Document received by the MI Court of Claims.

Correspondence from Philip L. Ellison
Business Counselor & Attorney at Law
pellison@olcplc.com

January 27, 2024
SENT VIA MIFILE

Clerk of the Court
Michigan Court of Claims
Lansing, Michigan

Re: Itemization Filing
Miller v MDHHS
Case No.: 23-000027-MZ

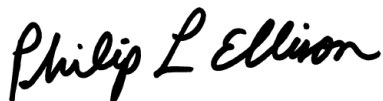
Dear Clerk:

On January 26, 2024, I submitted a document entitled “01/26/2024 Statement Regarding Attorney Fees, Costs, and Disbursements” at the request of the Court pursuant to the January 5, 2024 Opinion and Order of the Court. You sua sponte rejected it. I am assuming that the reason is because you thought that this filing should be a motion. However, it is a submission requested by the Court and thus not a motion. I believe the rejection to be in error.

That said, your office does not have any authority to reject filings in these circumstances. MCR 8.119(C) expressly provide that “[t]he clerk of the court may only reject documents submitted for filing that do not comply with MCR 1.109(D)(1) and (2), are not signed in accordance with MCR 1.109(E), or are not accompanied by a required filing fee or a request for fee waiver under MCR 2.002(B), unless already waived or suspended by court order.” Because this is not a motion, no fee is required.

Pursuant to MCR 8.119(C), please promptly file the January 26, 2024 filing as timely filed and forward the same the assigned judicial officer. I am re-attaching a copy.

Best regards,



Philip L. Ellison, MBA, JD, Esq.
Attorney at Law

CC: Client Litigation File
Opposing Counsel (via MiFILE)
Client (via US mail)

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 23-00027-MZ C/COC/MI	EXHIBIT C <small>OUTSIDE LEGAL COUNSEL PLC www.olcplc.com</small>
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CASE

Judicial Officer	Date Filed	Adjudication	Status
YATES, CHRISTOPHER	2/24/23		OPEN

PARTICIPANTS

PLAINTIFF 1	MILLER, ERIN MARIE	FILED: 2/24/23
	ATTY: PHILIP LEE ELLISON # 74117 PRIMARY RETAINED	
DEFENDANT 1	DEPARTMENT OF HEALTH AND HUMAN SERVICES	FILED: 2/24/23
	ATTY: KYLA BARRANCO # 81082 PRIMARY RETAINED	

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 ERIN MARIE MILLER	\$235.00	\$235.00	\$0.00
DEF 1 DEPARTMENT OF HEALTH AND HUMAN SERVICES	\$20.00	\$0.00	\$20.00

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity	User	Entry Date
2/24/23	SUMMONS AND COMPLAINT	ma	2/27/23
	PTF 1	ma	2/27/23
	DEF 1		
2/24/23	JUDICIAL OFFICER ASSIGNED TO GLEICHER, ELIZABETH L. 30369	ma	1/16/24
2/24/23	RECEIVABLE ELECTRONIC FILING SYSTEM FEE	ma	2/27/23
2/24/23	RECEIVABLE FILING FEE	ma	2/27/23
2/27/23	PAYMENT	ma	2/27/23
	RECEIPT NUMBER: COC-LAN.0006912		
	METHOD: ELECTRONIC FUND TRANSFER \$175.00		
	bundle - TEMP-Y9PKZXR6-31857050		
2/28/23	PROOF OF MAILING NOTICE OF INTENT	ma	2/28/23
	PTF 1		
3/21/23	APPEARANCE - KYLA L. BARRANCO WITH PROOF OF SERVICE	ma	3/21/23
	DEF 1		
3/21/23	APPEARANCE OF COUNSEL - THOMAS QUASARANO WITH PROOF OF SERVICE	ma	3/21/23
	DEF 1		
3/25/23	ACKNOWLEDGMENT OF SERVICE	amd	3/27/23
4/4/23	REVIEW SCAO - MAXIMUM CASE AGE	ma	4/4/23
	BEFORE: GLEICHER, ELIZABETH		
4/4/23	ANSWER, CIVIL TO PLAINTIFF'S COMPLAINT AND AFFIRMATIVE DEFENSES WITH PROOF OF SERVICE	ma	4/4/23
	DEF 1		
4/17/23	REPLY BRIEF TO DEFENDANT'S AFFIRMTIVE DEFENSES WITH PROOF OF SERVICE	ma	4/17/23
	PTF 1		

Document received by the MI Court of Claims.

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 23-000027-MZ C/COC/MI	Public 2/2/2024 8:59:58 AM Page: 2 of 4
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Activity Date	Activity		User	Entry Date
4/17/23	AMENDED COMPLAINT WITH PROOF OF SERVICE PTF 1		ma	4/17/23
4/17/23	PROOF OF MAILING REPLY AND FIRST AMENDED COMPLAINT PTF 1		ma	4/17/23
5/8/23	ANSWER, CIVIL TO PLAINTIFF FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES WITH PROOF OF SERVICE DEF 1		kj	5/8/23
5/15/23	REPLY BRIEF TO DEFENDANT'S AFFIRMATIVE DEFENSES REGARDING PLAINTIFF'S FIRST AMENDED COMPLAINT WITH PROOF SERVICE PTF 1		kj	5/16/23
5/18/23	PROOF OF MAILING WITH PROOF SERVICE PTF 1		kj	5/19/23
5/22/23	NOTICE OF APPEARANCE WITH PROOF OF SERVICE PTF 1		ma	5/22/23
5/31/23	STIPULATED PROPOSED SCHEDULING ORDER PTF 1 DEF 1		kj	6/1/23
6/7/23	STIPULATED SCHEDULING ORDER GLEICHER, ELIZABETH 30369		kj	6/8/23
6/8/23	MOTION FOR LEAVE TO AMEND COMPLAINT PTF 1	\$20.00	kj kj	6/8/23 6/8/23
6/8/23	RECEIVABLE MOTION FEE	\$20.00	kj	6/8/23
6/8/23	PAYMENT RECEIPT NUMBER: COC-LAN.0007065 METHOD: ELECTRONIC FUND TRANSFER \$20.00 Bundle - 23-000027-MZ-33539015	\$20.00	kj	6/8/23
6/22/23	PROPOSED STIPULATED ORDER REGARDING PROPOSED PLEADING PTF 1 DEF 1		ma	6/26/23
6/22/23	EXHIBIT (SECOND AMENDED COMPLAINT) WITH PROOF OF SERVICE PTF 1		ma	6/26/23
6/27/23	STIPULATED ORDER REGARDING PROPOSED PLEADING GLEICHER, ELIZABETH 30369		kj	6/27/23
7/25/23	ORDER GRANTING PLAINTIFF'S MOTION FOR FILE AND AMENDED COMPLAINT GLEICHER, ELIZABETH 30369		kj kj	7/25/23 7/25/23
7/26/23	VERIFIED SECOND AMENDED COMPLAINT WITH PROOF OF SERVICE PTF 1		ma	7/26/23
7/26/23	PRELIMINARY WITNESSES LIST WITH PROOF OF SERVICE PTF 1		ma	7/26/23
7/26/23	MOTION TO REQUIRE A VAUGHN INDEX WITH PROOF OF SERVICE PTF 1	\$20.00	ma ma	7/26/23 7/26/23
7/26/23	RECEIVABLE MOTION FEE	\$20.00	ma	7/26/23
7/26/23	PAYMENT	\$20.00	ma	7/26/23

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 23-000027-MZ C/COC/MI	Public 2/2/2024 8:59:58 AM Page: 3 of 4
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Activity Date	Activity	User	Entry Date
	RECEIPT NUMBER: COC-LAN.0007124 METHOD: ELECTRONIC FUND TRANSFER \$20.00 Bundle - 23-000027-MZ-34877980		
7/28/23	WITNESS LIST WITH PROOF OF SERVICE DEF 1	ma	7/28/23
8/9/23	RESPONSE IN OPPOSITION TO PLAINTIFF'S 07/26/2023 MOTION TO REQUIRE VAUGHN INDEX WITH PROOF OF SERVICE DEF 1	kj	8/10/23
8/16/23	ANSWER, CIVIL TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES WITH PROOF OF SERVICE DEF 1	kj	8/17/23
8/25/23	ORDER PROVISIONALLY DENYING PLAINTIFF'S 07/26/2023 MOTION FOR VAUGHN INDEX GLEICHER, ELIZABETH 30369	kj	8/25/23
9/29/23	MOTION FOR SUMMARY DISPOSITION [ORAL ARGUMENT REQUESTED] WITH PROOF OF SERVICE DEF 1	kj	10/2/23
9/29/23	RECEIVABLE MOTION FEE	\$20.00	kj 10/2/23
10/17/23	PROPOSED STIPULATED ORDER EXTENDING DEADLINE TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION PTF 1 DEF 1	kj	10/18/23
10/19/23	ORDER EXTENDING DEADLINE TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION GLEICHER, ELIZABETH 30369	kj	10/19/23
11/1/23	SECOND PROPOSED STIPULATED ORDER EXTENDING DEADLINE TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION PTF 1 DEF 1	kj	11/2/23
11/3/23	ORDER - SECOND ORDER EXTENDING DEADLINE TO FILE RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION GLEICHER, ELIZABETH 30369	kj	11/3/23
11/13/23	RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR CASE DISMISSAL [ORAL ARGUMENT REQUESTED] PTF 1	kj	11/14/23
11/13/23	CORRECTED RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR CASE DISMISSAL PTF 1	kj	11/14/23
11/20/23	REPLY BRIEF IN SUPPORT OF ITS 09/29/2023 MOTION FOR SUMMARY DISPOSITION DEF 1	kj	11/21/23
1/5/24	OPINION AND ORDER GRANTING DEFENDANT'S REQUEST FOR SUMMARY DISPOSITION AND PLAINTIFF'S REQUEST FOR ATTORNEYS' FES GLEICHER, ELIZABETH 30369 DEF 1	kj kj	1/5/24 1/16/24
1/15/24	MOTION FOR EXTENSION OF TIME TO FILE FOR ATTORNEY FEES, COSTS, AND DISBURSEMENTS PTF 1	\$20.00 kj kj	1/17/24 1/17/24
1/15/24	RECEIVABLE MOTION FEE	\$20.00	kj 1/17/24

<p align="center">STATE OF MICHIGAN COURT OF CLAIMS</p>	<p align="center">REGISTER OF ACTIONS</p>	<p align="center">CASE ID 23-000027-MZ C/COC/MI</p>	<p align="right">Public 2/2/2024 8:59:58 AM Page: 4 of 4</p>
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Activity Date	Activity	User	Entry Date
1/16/24	JUDICIAL OFFICER REASSIGNED FROM GLEICHER, ELIZABETH L. 30369	system	1/16/24
1/16/24	REVIEW SCAO - MAXIMUM CASE AGE SET 2/21/25 8:00 A	system	1/16/24
1/16/24	REVIEW SCAO - MAXIMUM CASE AGE 2/21/25 8:00 AM RESCHEDULED TO: 2/21/25 8:00 AM AUTOMATIC PROFESSIONAL REASSIGNMENT	system	1/16/24
1/16/24	JUDICIAL OFFICER ASSIGNED TO YATES, CHRISTOPHER P 41017	system	1/16/24
1/17/24	PAYMENT \$20.00 RECEIPT NUMBER: COC-LAN.0007455 METHOD: ELECTRONIC FUND TRANSFER \$20.00 Bundle: 23-000027-MZ-39602037	kj	1/17/24
1/18/24	ORDER OF REASSIGNMENT SWARTZLE, BROCK 58993	kj	1/18/24
1/18/24	ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE FOR ATTORNEY FEES, COSTS, AND DISBURSEMENTS	kj	1/18/24