

DEBT CLAIM CASES: CHECKLIST

- Is it a Debt Claim Case?**
 - Yes, if it is a suit to recover a debt by:**
 - An assignee of a claim; or**
 - A debt collector or collections agency; or**
 - A financial institution; or**
 - A person or entity primarily engaged in the business of lending money at interest.**
 - No, if none of the above; then it is a Small Claims Case (see Rule 500.3).**

- Is the case within the Court's jurisdiction?**
 - Yes, if the claim is for no more than \$10,000, excluding statutory interest and court costs, but including attorney's fees (and contractual interest).**
 - No, if the claim is for more than \$10,000 (as calculated above).**

- Has the defendant filed an answer (or attempted to answer) by the answer date?**
 - If yes, set the case for trial;**
 - If no, consider whether a default judgment should be rendered.**

- In considering a default judgment, is there proof of proper service of the citation on the defendant?**
 - Was the defendant served with the citation and a copy of the petition:**
 - By delivery to the defendant in person?**
 - By registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested?**
 - If no, did the Court authorize alternative service of the citation with a copy of the petition by:**
 - Mailing them to the defendant by first class mail at a specified address and also leaving it at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or**
 - Mailing them to the defendant by first class mail at a specified address and also serving them by any other method that the Court finds is reasonably likely to provide the defendant with notice of the suit.**
 - Is the return of service signed or verified (if service was made by a person other than a sheriff, constable or clerk of the court) and does it show how service was effected on the defendant and has it been on file with the clerk of the court for at least three days excluding the day of filing and the day of judgment?**

- In considering a default judgment, does the petition contain:
 - For a claim based upon a credit card, revolving credit, or open account:
 - The account name or credit card name; and
 - The account number (which may be masked); and
 - The date of issue or origination of the account (if known); and
 - The date of charge-off or breach of the account (if known); and
 - The amount owed as of a date certain; and
 - Whether the plaintiff seeks ongoing interest.
 - For a claim based upon a promissory note:
 - The date and amount of the original loan; and
 - Whether the repayment of the debt was accelerated (if known); and
 - The date final payment was due; and
 - The amount due as of the final payment date; and
 - The amount owed as of a date certain; and
 - Whether plaintiff seeks ongoing interest.
 - If plaintiff seeks ongoing interest, does the petition state:
 - The effective interest rate claimed; and
 - Whether the interest rate is based upon contract or statute; and
 - The dollar amount of interest claimed as of a date certain.
 - If the debt has been assigned or transferred, does the petition state:
 - That the debt claim has been transferred or assigned; and
 - The date of the transfer or assignment; and
 - The name(s) of any prior holders of the debt; and
 - The name or a description of the original creditor.
 - If no, then the Court may deny relief or require plaintiff to amend the petition (and re-serve defendant if appropriate).

- In considering a default judgment, is there proof of plaintiff's damages?
 - Attached to the petition and served on the defendant; or
 - Submitted to the Court after the defendant failed to answer by the answer date.

Note: This evidence may be offered in either a sworn statement or live testimony and may include documentary evidence.

- In considering a default judgment, has the plaintiff established the amount of damages by evidence:
 - That the account or loan was issued to the defendant and the defendant is obligated to pay it; and
 - That the account was closed or the defendant breached the terms of the account or loan agreement; and
 - Of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and
 - That the plaintiff owns the account or loan and how the plaintiff acquired the account or loan (if applicable).

- In considering a default judgment, has the plaintiff submitted documentary evidence? If so, is it attached to a sworn statement made by the plaintiff or its representative (other than the attorney of record in the case), a prior holder of the debt or its representative, or the original creditor or its representative, attesting that:
 - The documents were kept in the regular course of business; and
 - It was the regular course of business for an employee or representative with knowledge of the act recorded to make the record; and
 - The documents were created at or near the time or reasonably soon thereafter; and
 - The documents attached are the original or exact duplicates of the original.

- Is a lack of trustworthiness indicated by the source of the information or the method of preparation of the sworn statement or the documents attached thereto?
- If so, the Court is not required to accept the sworn statement.
Note: The Court may not reject a sworn statement solely because it was not made by the original creditor or because the documents attached to it were created by a third party and subsequently incorporated into and relied upon the business of the plaintiff.

- If the plaintiff has submitted sufficient written evidence of its damages as outlined above, then the Court may enter a default judgment without a hearing and should do so to avoid undue expense and delay.
- Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages.

- If the plaintiff proves its damages, the Court must render judgment for the plaintiff in the amount proven.
- If the plaintiff is unable to prove its damages, the Court must render judgment in favor of the defendant.

Justice Court Rules: Time Periods

Answer to petition in small claims or debt claim case: **14 days** after service of citation – Rule 502.5(d)

Motion to transfer venue: **21 days** after defendant's answer is filed – Rule 502.4(d)

Motion to recuse judge under Fair Trial Venue rule: no less than **7 days before trial** – Rule 502.4(e)

Motion for summary disposition: court must not consider until it has been on file at least **14 days** – Rule 503.2(c)

Trial date in small claims or debt claim case: no less than **45 days** after the setting date (unless the judge determines that an earlier setting is required in the interest of justice) – Rule 503.3(a)

Demand for jury: no later than **14 days** before the date the case is set for trial (\$22 fee now) – Rule 504.1(a)

Motion to reinstate case dismissed for want of prosecution: no later than **14 days** after dismissal order is signed – Rule 505.3(a)

Motion to set aside default judgment: no later than **14 days** after judgment is signed – Rule 505.3(b)

Motion for new trial: no later than **14 days** after judgment is signed – Rule 505.3(c)

Motion to reinstate, to set aside default judgment or for new trial: if judge does not rule on motion it is automatically denied on the **21st day** after the day the judgment was signed – Rule 505.3(e)

Appeal: **21 days** after judgment is signed or motion to reinstate, motion to set aside default or motion for new trial is denied – Rule 506.1(a)

Eviction case: citation and petition must be served on defendant at least **6 days** before trial – Rule 510.7(a)

Eviction case: must be set for trial **no less than 10 days nor more than 21 days** after petition is filed – Rule 510.4(a)(10)

Immediate possession bond: if defendant defaults or does not appear for trial plaintiff will be placed in possession on the **7th day** after defendant is served with the notice – Rule 510.5(c)

Immediate possession bond: if defendant files answer or appears at trial, no writ of possession may issue before the **6th day** after the date a judgment for possession is signed or the day following the deadline for appeal, whichever is later – Rule 510.5(d)

Trial in eviction case: may not be held less than **6 days** after service of the citation and petition on defendant – Rule 510.7(a)

Jury demand in eviction case: at least **3 days** before trial – Rule 510.7(b)

Trial in eviction case: may not be postponed more than **7 days total** unless both parties agree – Rule 510.7(c)

Writ of possession: may not issue before the **6th day** after the date a judgment for possession is signed or the day following the deadline for appeal, whichever is later – Rule 510.8(d)(1)

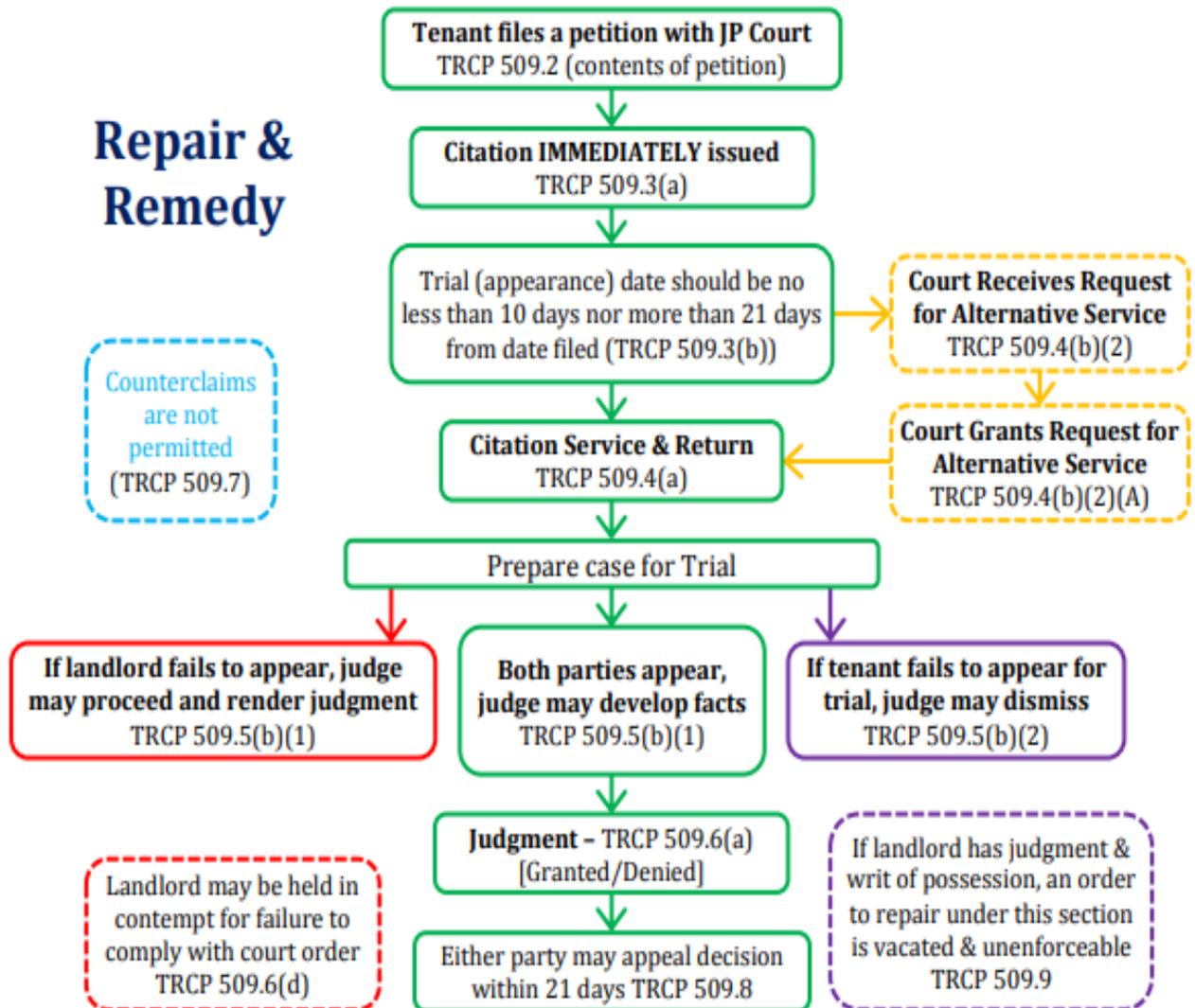
Writ of possession: may not issue more than **60 days** after a judgment for possession is signed; court may extend deadline to **90 days** for good cause – Rule 510.8(d)(1)

Writ of possession: may not be executed after the **90th day** after a judgment for possession is signed – Rule 510.8(d)(2)

Handout 3:

k. Flow Chart

Here is a flow chart in a repair and remedy case under Rule 509:



Whitewind, LLC
Plaintiff

v.

Brandy Daniels aka Brandy Renc Daniels
Defendant

* In The Justice Court
*
*
* Precinct 2 Place 1
*
*
* Tarrant County, Texas

ORDER GRANTING APPLICATION FOR TURNOVER FOR COLLECTION OF JUDGMENT AND APPOINTING OF A RECEIVER

On this day, the Court considered the Application of Whitewind, LLC, Plaintiff and judgment creditor, for the issuance of an order for the collection of judgment by court proceedings pursuant to Sec. 31.002, Tex.Civ.Prac. & Rem. Code (the "Statute"), and for appointment of a Receiver, against Brandy Daniels aka Brandy Rene Daniels, Defendant and Judgment Debtor. After consideration of the Application, the supporting evidence attached, taking judicial notice of the judgment and all postjudgment filings, the Court finds it has subject matter jurisdiction. Defendant was duly served with citation according to law but has failed to appear and wholly defaulted. This Court has personal jurisdiction to enter this judgment. This Court rules as follows:

1. IT IS ORDERED that the Application for Turnover and for Appointment of a Receiver be, and is hereby granted.
2. IT IS ORDERED that Robert Jenkins, 13904 Josey Ln #815928, Dallas, TX 75381, 214-220-2022, be, and is hereby, appointed Receiver until the judgment in Cause No. JP02-16-DC00002993 in the Justice Precinct 2 Place 1 of Tarrant County, Texas and until all attorney fees, expenses and costs of the court awarded in this Judgment, are paid. Receiver is in all ways qualified to act as Receiver herein and is not disqualified in any way, and that the Receiver is not required to post a bond in this post judgment matter.

Powers of the Receiver

3. IT IS ORDERED : The Receiver has the authority to take possession, *in custodia legis*, immediately, the property of the Judgment Debtor which is subject to collection under the Statute, and not exempt therefrom, including but is not limited to, all right, title, interest and documents of ownership to the following property:

All cash money on hand; all money in any checking and savings account held in Judgment Debtor's name individually or held jointly with another person; all debts payable and notes payable to Defendant; all rents payable to Defendant; all legal rights, licenses contract rights and powers; all causes of action and legal claims, including without limit any counterclaims and the personal injury action; all judgments payable to Defendant and the funds received from the payment of any judgment in favor of Defendant; all account receivables payable to Defendant; all stock and stock certificates; all membership interests, all business interests, all partnership interests; all titles and deeds to non-exempt, real and personal property; all leases (including without limitation any personal property leases or hunting leases) all bonds with any bonding agency or insurance company; all money in the registry of any court or on deposit with any government entity; all inheritances and all trust payments; all beneficial interests, all mineral rights; all deposits held by a third party and all prepaid money; all income and funds from all of the above property; all checks on hand payable to the order of Defendant, all future interests in any of the foregoing types of property, and all records concerning the foregoing property, hereafter referred to as the "Property".

4. IT IS ORDERED that the Receiver is hereby granted all the power and authority to take possession of all non-exempt Property that is in, or later comes into, the actual or constructive possession or control of Judgment Debtor, and to use whatever means in the reasonable judgment of the Receiver is necessary to enforce the Court's

judgment and orders in this case.

Access to Property. The Receiver is authorized by this Order to take all action reasonable and necessary, to gain access to real Property, leased premises, storage facilities, mail, and safety deposit boxes, in which Property of any Judgment Debtor may be situated, whether owned by a Judgment Debtor or not.

No interference. Any person with notice of this Order is ordered not to interfere with any Property belonging to the Judgment Debtor or Property that is in the control of the Receiver or that is subject to this Order. Any person with notice of this Order is ordered not to interfere with the Receiver in the carrying out of the Receiver's duties.

Storage. The Receiver is authorized by this Order to take control of Property in place that belongs to the Judgment Debtor or to place the Property into storage;

Insurance. The Receiver is authorized, but not required, to insure Property taken into his possession.

Moving. The Receiver is authorized by this Order to Hire assistants to move Property belonging to the Judgment Debtor or aid the Receiver in taking possession, custody and control of the Property.

Receiver has the sole power over Property. Every Judgment Debtor is prohibited from re-letting, selling, assigning or changing the ownership identification of the domain name or modifying or amending any lease agreement or any other agreement effecting the domain name without the prior written consent of the Receiver.

Collecting payments due Judgment Debtors. The Receiver has the power by this Order to re-direct and to collect all payments due to any Judgment Debtor.

Credit bureau. The Receiver has the authority to obtain and use Judgment Debtor's credit reports.

Receiver has no duty to protect any Judgment Debtor or asset. Nothing in this Order requires Receiver to protect Judgment Debtor or Property from loss or anything else.

IT IS ORDERED that this Order applies to Defendant under Defendant's name and any variations of Defendant's name.

Duties of Third Party Recipients of this Order

5. IT IS ORDERED that all utility providers, including without limit, all telephone, water, electric, gas, cable, internet, or satellite television services (such as Time Warner, Satellite TV, Direct TV, EV1), shall provide to the Receiver all information that is requested by the Receiver and known to the utility provider.

6. IT IS ORDERED that all financial institutions shall provide to the Receiver all information that is requested by the Receiver and known to the financial institution, including without limit, the existence and location of a Judgment Debtor's whereabouts, bank accounts, loan, and credit card information.

This Order specifically serves as the court order required by 47 U.S.C. § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

7. IT IS ORDERED that upon service of a certified copy of the Order of Receivership in the manner specified by Section 59.008, Finance Code, Property held by a financial institution in the name of or on behalf of the Judgment Debtor as customer of the financial institution, shall be turnover forthwith to the Receiver.

8. **Law Officers to assist.** IT IS ORDERED that every security officer, constable, deputy constable, sheriff, deputy sheriff, or any other peace officer with notice of this Order is authorized to accompany the Receiver to any location designated by the Receiver where Receiver believes Property or documents of a Judgment Debtor may be located, without the necessity of a writ of execution's having been issued, and is ordered to prevent any person from interfering with the Receiver (or any person under the direction of the Receiver) from carrying out any duty under this Order or interfering with any Property in control of the Receiver, or any Property subject to this order. The Receiver is authorized by this Order to direct any sheriff or constable to seize and sell Property under writ of execution or assist to the Receiver under a writ of turnover.

The Receiver shall have and exercise the fullest and broadest powers, including, but not limited to:

Production and turnover. Ordering the production of any and all documents upon the matters the Receiver

deems necessary to effectuate this Order; and

Examinations and Testimony. Scheduling status conferences, hearings and meetings and directing parties and witnesses to give testimony at such hearings and meetings.

Further Orders

9. Turnover of all Property, present and future. Duty to supplement. Every Judgment Debtor or party with knowledge of this Order is hereby ordered to turn over all of the listed items, and all similar items. All portions of this Order continue until the Judgment is paid. The duties to disclose, supplement, turnover, etc., continue. If the items are not presently in existence, or the control of a Judgment Debtor or the party with knowledge of this Order, then Judgment Debtor or the party with knowledge of this Order shall turnover the Property to the Receiver, immediately upon its existence and that person obtaining control of the Property. If a Judgment Debtor or the party with knowledge of this Order does not obtain control of an asset, but receives knowledge of its existence, that Judgment Debtor or the party with knowledge of this Order is ORDERED to notify the Receiver, immediately.

Disputes. If there be any dispute, including (but not limited to) whether an Property is non-exempt, or whether Judgment Debtor has an interest in the Property, then the Receiver shall have custody and control of the Property until the Court can determine the rights of those claiming interests in the Property.

Judgment Debtors' duties to disclose and supplement. Judgment Debtor and any person with knowledge of this Order is ORDERED to fully disclose to the Receiver the location of all Property and to neither directly nor indirectly interfere or impede the Receiver in the performance of Receiver's duties under this Order. Exempt and nonexempt property shall be disclosed, so that the exempt status of the property can be determined. Judgment Debtor is ORDERED to supplement all disclosures, in writing, within five days of knowledge of information required to be disclosed by this Order.

Disposition of Property

10. IT IS ORDERED that Judgment Debtor deliver the Property to the Receiver's address above, within 21 days from service of this Order on Judgment Debtor, or within 21 days of Judgment Debtor's actual receipt or actual notice of this Order, whichever is earlier. IT IS ORDERED that upon oral or written request of the Receiver, Judgment Debtor shall properly endorsed in blank all documents needed to transfer possession or title to the Receiver.

11. IT IS ORDERED that the Property be stored by the Receiver in possession until liquidated.

12. IT IS ORDERED that the Property be sold at public or private sale at Receiver's discretion by the Receiver. IT IS ORDERED the sale shall be conducted by the Receiver or an agent for the Receiver. The funds received from such sale of the Property and all the cash on hand be shall delivered, after deduction of any and all sales expenses (including Receiver's 25% commission fee of the funds collected), to the Plaintiff, in reduction of the indebtedness owed to Plaintiff on the Judgment and any other indebtedness ordered in this cause to be paid by Judgment Debtor. The Receiver shall report the results of the sale and distribution to the Court at the conclusion of the case, or sooner upon written request of any party or the Court.

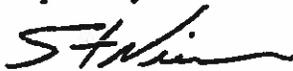
13. IT IS ORDERED that Plaintiff have judgment of and from Judgment Debtor in the sum of \$750.00 as reasonable and necessary costs, including attorney's fees and expenses for bringing this Application.

14. IT IS ORDERED that this is not an exclusive remedy, and this Court reserves the right to make further orders and issue all writs necessary to enforce the Judgment, and to enforce or clarify orders in this cause.

Signed: _____, 20____.

Judge Presiding

Prepared by:



Stephen Niermann, Attorney for Plaintiff

CACH, LLC
Plaintiff(s)

VS.

INOCENTE PEREZ; DIANNA PEREZ
Defendant(s)

§ IN THE JUSTICE COURT
§
§ PRECINCT ONE
§
§ ANGELINA COUNTY, TEXAS

**ORDER APPOINTING POST-JUDGMENT RECEIVER
(LIMITED RECEIVERSHIP)**

On this 4th day of May, 2018, came on to be considered CACH, LLC, (hereinafter referred to as "Judgment Plaintiff(s)") Motion to Appoint a Post-Judgment Receiver, ROBERT E JENKINS (hereinafter referred to as "Receiver") Pursuant to CPRC 31.002 (Limited Receivership). After reviewing the evidence and the Court's file, the Court finds that the Judgment in this case is valid, final and fully payable, but remains unsatisfied, and that Judgment Plaintiff(s) is entitled to aid from this Court in order to reach non-exempt property of INOCENTE PEREZ and DIANNA PEREZ, (herein after referred to as "Judgment Defendant(s)") to obtain satisfaction on of the Judgment. The Court further finds that a receiver should be appointed. Notwithstanding any language to the contrary, this ORDER does not compel turnover of the homestead, checks for current wages, or other exempt property of Judgment Defendant(s).

IT IS THEREFORE, ORDERED, that ROBERT E JENKINS, JENKINS LAW FIRM, PC, 13904 JOSEY LN # 815928, DALLAS, TX 75381, 214-220-2022, FrontDesk@JenkinsLaw.com be and is hereby appointed Receiver pursuant to the Texas Turnover Statute for 120 days from the day Order is signed.

Receiver's Powers: The Receiver SHALL have the power and authority to take possession of (a) all financial accounts (Bank accounts), certificates of deposit, and money-market accounts held by any third party; and (b) all financial records related to such property that is in the actual or constructive possession or control of Judgment Defendant(s); and that all such property shall be held in custodia legis of said Receiver as of the date of this Order.

Additional Powers: The Receiver SHALL have the following additional rights, authority, and powers with respect to the Judgment Defendant(s); (a) obtain Judgment Defendant(s)'s credit information and credit reports; (b) obtain from any third party and financial records belonging to or pertaining the Judgment Defendant(s) and (c) to negotiate and obtain installment payment agreements with Judgment Defendant(s), if the Receiver reasonably believes that a payment agreement is the best option to satisfy the judgment; and the Receiver does not compromise any amounts awarded in the judgment without Plaintiff's authorization.

Receiver's Fee, Oath, and Bond: The Receiver's fee is taxed as costs against the Judgment Defendant(s). A Receiver's fee of 25% is usual and customary; however a finding by the Court for the Receiver's fee will be made at a later date. Because this is a post-judgment receivership pursuant to CPRC 31.002, no receiver bond is required. The Receiver is further ordered to take the oath of his office.

Receiver's Expenses: After approval by the Court at a later date, costs reasonably incurred in carrying out the terms of this Order shall be taxed against the Judgment Defendant(s) as costs of court, and shall be collected by the Receiver from the Judgment Defendant(s) which shall be in addition to those sums and amounts provided for in the Judgment.

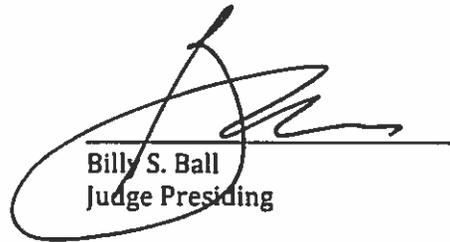
Cause No. 16127

Receiver to Hold Property: Receiver **SHALL NOT** disburse to judgment Plaintiff(s), funds recovered by Receiver without judgment Defendant(s) written consent, or court order.

Receiver's Responsibilities: Receiver **SHALL** inventory all property, funds, and records recovered and submit to the Court.

This Order expires and terminates 120 days from the day this Order is signed.

ORDERED THIS 4th day of May, 2018


Billy S. Ball
Judge Presiding

