

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CWB SERVICES, LLC, *et al.*,

Defendants.

Case No. 4:14-cv-00783-DW

**RECEIVER'S MOTION FOR TURNOVER OF PROPERTY
OF THE RECEIVERSHIP ESTATE TRANSFERRED TO
WYANDOTTE NATION/EDATA SOLUTIONS INC.**

Larry E. Cook ("Receiver"), by and through his undersigned counsel, for his Motion (the "Motion"), for Turnover of Property of the Receivership Estate Transferred to the Wyandotte Nation d/b/a eData Solutions Inc. ("Wyandotte Nation") respectfully states as follows:

Introduction and Summary

1. The Federal Trade Commission ("FTC") initiated this enforcement action on September 5, 2014 by filing its Complaint (Docket No. 3).

2. On September 9, 2014, the Court entered its *Ex Parte* Temporary Restraining Order With an Asset Freeze, Appointment of a Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (the "Order Appointing Receiver") (Docket No. 7).

3. On September 23, 2014, the Court entered its Order Entering Stipulated Preliminary Injunction with an Asset Freeze, Appointment of a Receiver, and other Equitable Relief (the "PI Order") (Docket No. 34).

4. The PI Order provides the Receiver is directed and authorized to take exclusive

custody, control, and possession of all assets of the Receivership Defendants, wherever situated. *See* PI Order, ¶ XII.B, Page 15. The PI Order also provides that the Receiver is directed and authorized to institute proceedings the Receiver deems necessary and advisable to recover assets of the Receivership Defendants. *Id.* at ¶ XII.L, Page 18. The PI Order further provides that any person or entity with knowledge of the PI Order shall transfer to the Receiver all assets of the Receivership Defendants. *Id.* at ¶ XIV.A.1, Page 23.

5. On August 26, 2015, the Court entered a Stipulated Order for Permanent Injunction and other relief against Defendant Timothy A. Coppinger and related entities (the “Coppinger Final Order”) (Doc. No. 188).

6. On October 14, 2015, the Court entered a Stipulated Order for Permanent Injunction and other relief against Defendants Frampton T. Rowland, III and related entities (the “Rowland Final Order”) (Doc. No. 205).

7. The Coppinger Final Order and the Rowland Final Order (collectively, the “Final Orders”) each provide that Sections XI through XV of the PI Order (provisions regarding the duties and authority of the Receiver) continue notwithstanding entry of the Final Orders.

8. In the instant Motion, the Receiver seeks a turnover order directing the Wyandotte Nation¹ to return \$11,825,819.31 (the “Wyandotte Nation Transfers”) transferred by Receivership Defendants FRH LLC, Incrementum Group LLC, Anasazi Group LLC, Namakan Capital LLC, Sandpoint Capital LLC, and Basseterre Capital LLC (collectively, the

¹ The Wyandotte Nation may assert sovereign immunity as a federally-recognized Indian tribe. However, this Motion is brought by the Receiver appointed by the Court in this action brought by the Federal Trade Commission under the Federal Trade Commission Act, a general Act of Congress and a federal statute of general applicability as to which tribal sovereignty does not apply. *See, e.g., FTC v. AMG Servs, Inc.*, 2014 WL 910302 (D. Nev. 2014). *See also, N.R.L.B. v. Fortune Bay Resort Casino*, 688 F. Supp.2d 858, 868-66 (D. Minn. 2010) (relying upon precedent from the 9th Cir. case of *N.R.L.B. v. Chapa de Indian Health Program, Inc.*, 316 F.3d 995 (9th Cir. 2003) to find that the NLRA was a statute of general applicability to which claims of tribal sovereignty did not apply; and that claims of tribal sovereignty are at their weakest where a tribal government goes beyond matters of internal self-governance and enters into off-reservation business transactions with non-Indians).

“Receivership Defendants”)² to Wyandotte Nation between July 2012 and August 2014.

9. The Court has broad equitable powers, not only to impose a receivership, but also to direct the return of proceeds of the underlying fraud under a constructive trust theory (from a non-party regardless of whether that non-party committed any wrong doing, simply by showing the non-party has been unjustly enriched) or a fraudulent transfer theory (from a non-party who received proceeds of the underlying fraud for less than reasonably equivalent value or who received the proceeds with intent of hindering creditors).

10. Wyandotte Nation was unjustly enriched by, and/or has failed to return reasonable equivalent value for, the Wyandotte Nation Transfers it received from the Receivership Defendants. Furthermore, the Wyandotte Nation Transfers represent proceeds of an illegal consumer payday lending scheme, and, as such, represent funds held in a constructive trust for the benefit of the defrauded consumers. The Receiver has demanded the return of the Wyandotte Nation Transfers from Wyandotte Nation, but Wyandotte Nation has failed and refuses to return such funds. Accordingly, the Receiver seeks the Court’s Order directing Wyandotte Nation to return the \$11,825,819.31 it received from the Receivership Defendants.

Facts and Background

11. eData Solutions LLC was a Kansas limited liability company formed by Joel Tucker in July 2009 and at various times owned primarily by Joel Tucker, Amit Raizada d/b/a Spectrum Business Ventures and other minority owners. Previously, eData Solutions LLC was operated by Tucker under the names of Bahama Marketing Group, and BMG. eData Solutions LLC’s business was promoted as a “one-stop-shop” for online payday lenders (such as the Receivership Defendant payday lending entities), providing customer/borrower leads, qualifying

² Only the Receivership Defendants listed in this paragraph made transfers to Wyandotte Nation. Although other receivership defendant entities used the payday lending services operated by Wyandotte Nation, the others did not make transfers to Wyandotte Nation.

the leads, providing a loan management software system, and buying defaulted consumer loans to sell to third party collectors. For these services payday lender clients paid eData Solutions, LLC a monthly fee of 7 ½% of its outstanding consumer loan portfolio balance. Since eData Solutions, LLC maintained control of the lead generation and distribution, loan management system, and sale of defaulted loans for its clients, including the Receivership Defendants, these clients are wholly dependent on eData to operate a payday lending business.

12. In addition to the services identified above, the Receiver has also examined documents evidencing that eData Solutions LLC actively solicited capital, and raised millions of dollars in debt financing to provide funding for certain payday lending clients to increase loan volume (because the greater outstanding total consumer loan balance, the greater monthly fees generated for eData).

13. Each Receivership Defendant entity entered into a Services Agreement with eData Solutions LLC, and its predecessors, to provide borrower leads, loan management system software services, and sale of defaulted loans for a fee of 7 ½ % of the outstanding consumer loan portfolio balance.

14. In June 2012, Wyandotte Nation entered into a Purchase Agreement and Secured Promissory Note for \$277 million to purchase all of the membership interests of eData Solutions LLC. As part of this agreement, on or about July 1, 2012, Wyandotte Nation began operating eData as eData Solutions, Inc. (i.e., eData was operated as “LLC” by Tucker, Raizada, et al., and then as “Inc.” by Wyandotte Nation).

15. Wyandotte Nation was not required to make any down payment on the purchase agreement. All payments on the Secured Promissory Note were to be paid from the profits of the continued operation of the eData business. In addition, the Wyandotte Nation was to be paid a

“monthly distribution equal to the greater of (a) One Hundred Sixty Six Thousand Six Hundred Sixty-Seven and No/100 Dollars (\$166,667.00) or (b) 2% of Gross Revenue, which is defined to be all deposits resulting from [Wyandotte Nation’s] operation of its business in the ordinary course earned by [Wyandotte Nation] on a cash basis the previous calendar month.”

16. The Receiver’s examination of voluminous financial records of the Receivership Defendants, eData Solutions LLC, and eData Solutions Inc. may be summarized as follows:

- a. Between October 1, 2007 and July 1, 2012 (the date of the sale of eData to Wyandotte Nation), the Receivership Defendants paid eData Solutions, LLC \$18,819,277.23 in fees.
- b. Between July 1, 2012 (when Wyandotte Nation took over operation of eData as eData Solutions, Inc.) the Receivership Defendants paid eData Solutions, Inc. \$11,825,819.31 in fees and monthly distributions.

17. The \$11,825,819.31 in fees and distributions the Receivership Defendants paid to Wyandotte Nation are summarized in the following table:

Receivership Defendant	Paid to Wyandotte Nation after 7/1/12
FRH MARKETING LLC	\$ 444,250.51
INCREMENTUM INVESTMENT GROUP LLC	\$ 469,830.28
ANASAZI GROUP LLC	\$ 9,336,354.04
NAMAKAN CAPITAL LLC	\$ 479,077.55
SANDPOINT CAPITAL LLC	\$ 1,000,628.66
BASSETERE CAPITAL LLC	\$ 95,678.27
Total	\$ 11,825,819.31

18. The Complaint initiating this action alleged the Receivership Defendants: (i) made numerous payday loans to consumers who had not authorized the payday loan and/or had

not authorized the Defendants to make withdrawals from their bank accounts (the “Autofunded Payday Loans”); (ii) misrepresented or failed to disclose the cost of the payday loans prior to funding such loans (the “Cost/Fee Misrepresented Loans”); and (iii) conditioned the extension of credit on recurring preauthorized electronic fund transfers (the “ACH-Conditioned Loans”). In many cases, a consumer payday loan made by the Receivership defendants met all three of these violations.

19. The Receiver has confirmed the FTC’s allegations in the Complaint as follows:

- a. As to the Cost/Fee Misrepresented Loans and ACH-Conditioned Loans, the Defendants, obtained the consumer payday loan forms from eData, the same entity which sold the Defendants “leads” for new consumer payday loans. The payday loan forms reviewed by the Receiver misrepresented the cost of the loans and conditioned the extension of credit on recurring preauthorized electronic fund transfers. Based upon the documents reviewed and statements made by the individual defendants, the Receiver believes all of the consumer payday loans made by Defendants between 2007 and 2014 were either Cost/Fee Misrepresented Loans and/or ACH-Conditioned Loans.
- b. As to the Autofunded Payday Loans, the Receiver has reviewed numerous e-mails, voicemails, and other documents to confirm the FTC’s allegations that a significant number of the loans made by the Defendants were Autofunded Payday Loans which the consumer did not authorize and did not accept the terms of the loan. By reviewing the loan management software data for the Receivership Defendant Entities the Receiver has

confirmed these entities “autofunded” as much as 20% of their consumer payday loans. The Receiver’s review of the financials for the Receivership Defendant Entities, as set forth below, shows the autofunded loans generated as much 23% of their gross profit. Although autofunded loans were a small portion of the total loans, the autofunded loans generated proportionately greater gross profit than non-autofunded loans.

20. To provide a sense of the scope and activity by the Receivership Defendant Lending Entities, the following is a snapshot of their consumer lending activity between 2011 and 2014³:

Receivership Defendant	Number of Consumers	Number of Loans	Total Loan Amount	Total Payments Received from Consumers	Gross Profit
Huskhawk	41,170	44,977	\$11,322,355.00	\$18,851,733.00	\$7,529,378.00
Ansazi	60,028	73,631	\$18,472,500.00	\$26,068,728.00	\$7,596,228.00
Cutter	58,140	62,582	\$15,802,450.00	\$25,200,391.00	\$9,397,941.00
St. Armands	60,870	65,511	\$16,320,000.00	\$23,750,222.00	\$7,430,222.00
Vandelier	54,943	59,496	\$14,935,850.00	\$23,448,248.00	\$8,512,398.00
Mass Street	49,941	53,336	\$13,505,900.00	\$20,449,210.00	\$6,943,310.00
Sandpoint	81,771	95,151	\$23,978,731.00	\$40,204,119.00	\$16,225,388.00
NamaKan	33,052	37,133	\$9,471,121.00	\$13,468,205.00	\$3,997,084.00
Basseterre	628	660	\$287,600.00	\$425,843.00	\$138,243.00
Totals	440,543	492,477	\$124,096,507.00	\$191,866,699.00	\$67,770,192.00

21. Between 2011 and 2014, the Receivership Defendant entities realized a gross profit of nearly \$68 million from consumers (total loan payments collected less total loans

³ The following table summarize data extracted from the Receivership Defendant entities’ loan management software and do not reflect purported operational expenses of those entities—only the number of consumers, number of loans (some consumers had more than one loan) total loans made to consumers and total payments by consumers. The dollar figures between the Receivership Defendant entities’ financial statements and the loan management software may not match precisely due to timing of recognition of loans made and payments received. This table excludes data for Receivership Defendants FRH Marketing, LLC and .Incrementum Investment Group, LLC because it was not recoverable by the Receiver. Some of the Receivership Defendants operated prior to 2011. Accordingly, these tables represent only a sample snapshot of 2011 to 2014 operations and is not a complete accounting of all operations. In addition, Receivership Defendants FRH, Incrementum, and Anasazi paid the eData fees for Receivership Defendants Huskhawk, Cutter, St. Armands, and Vandelier. Thus, the table of Receivership Defendants which paid the fees does not necessarily match the table of Receivership Defendants which generated revenue.

made). The Receivership Defendant entities, in turn, paid \$11,825,819.31 in fees and distributions to Wyandotte Nation.

22. Absent Wyandotte Nation's operation of eData Solutions, Inc., the Receivership Defendant entities could not have maintained their illicit payday lending operations.

Authorities and Argument

23. Federal courts inherently have broad equitable power enabling them to issue a variety of ancillary relief necessary to grant full relief which goes beyond the parties before the court. *See Ritchie v. Capital Mgmt., L.L.C. v. Jeffries*, 653 F.3d 755, 762 (8th Cir. 2011) (citing *SEC v. Wencke*, 622 F.2d 1363, 1369–71 (9th Cir. 1980); *see also SEC v. Blatt*, 583 F.2d 1325 (5th Cir. 1978); *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103-04 (2d Cir. 1972). Federal courts seeking to enforce the public interest especially have broad equitable powers to shape equitable remedies to grant full relief depending on the particular case. *See Matter of E.C. Bishop & Son, Inc.*, 32 B.R. 534, 537 (Bankr. W.D. Mo. 1983) (citing *SEC v. Wencke*, 622 F.2d 1363, 1371 (9th Cir. 1980)). Federal common law of receivership recognizes the broad equitable powers of an equity receivership to take possession and ultimately sell property obtained by fraud even though it may impact the rights of innocent parties. *SEC v. Am. Capital. Invs., Inc.*, 98 F.3d 1133, 1145 (9th Cir. 1996), *abrogated on different grounds*, 523 U.S. 83 (1998).

24. Included within the federal court's authority to grant ancillary relief is the power to impose a receivership. *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1021 (N.D. Ind. 2000) (citing *FTC v. American Nat'l Cellular, Inc.*, 810 F.2d 1511, 1512–13, 1514 (9th Cir.1987); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432–33 (11th Cir. 1984); *FTC v. Windermere Big Win Int'l* [1999–2 Trade Cases ¶ 72,647], No. 98C8066, 1999 WL 608715, at * 1 (N.D. Ill. Aug.5, 1999); *Slimamerica*, 77 F. Supp. 2d 1263, 1277 (S.D. Fla. 1999); *FTC v. Wilcox*, 926 F. Supp. 1091, 1106 (S.D. Fla. 1995); *FTC v. Int'l Computer Concepts* [1994–2

Trade Cases ¶ 70, 798], No. 94CV1678, 1994 WL 730144, at * 17 (N.D. Ohio Oct. 24, 1994); *c.f. Commodity Futures Trading Comm'n v. Chilcott Portfolio Mgmt.*, 713 F.2d 1477, 1480, 1482 (10th Cir. 1983) (receiver may be directed to take custody and control of all assets and records, to prevent further dissipation of assets, and to prosecute and defend court actions).

25. In addition to the power to impose a receivership, a federal court may obtain equitable relief against a non-party regardless of whether that non-party committed any wrongdoing. A court may direct that all of the proceeds of the fraud be paid to the receiver to preserve the status quo for the benefit of the defrauded consumers. *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1022 (N.D. Ind. 2000) (holding that it would be inequitable to allow any party to obtain or retain proceeds from a fraudulent scheme, and that, equities requires a court to form a constructive trust for the benefit of the defrauded parties and disgorge the unjustly enriched parties of the proceeds of the fraudulent scheme).

26. Furthermore, a court may order non-parties to turn over receivership assets to the Receiver. *FTC v. Neiswonger*, 2009 WL 2998356, *3 (E.D. Mo. Sept. 15, 2009) (citing *FTC v. Productive Mktg., Inc.*, 136 F. Supp. 2d 1096 (C.D. Cal. 2001)); *FTC v. Transcon. Warranty, Inc.*, 2009 WL 5166213, *2 (N.D. Ill. Dec. 22, 2009) (“[d]istrict courts routinely enforce [orders requiring non-parties to turn over receivership assets to the Receiver] in conjunction with lawsuits filed by government agencies on behalf of injured consumers”). A court can obtain equitable relief to recover ill-gotten gains for the benefit of the victims of the wrongdoing, whether those ill-gotten gains are “‘held by the original wrongdoer or by one who has received the proceeds after the wrong[,]’” simply by showing that the non-party has possession of the ill-gotten funds and has no legitimate claim to them. *FTC v. Ivy Capital, Inc.*, 2013 WL 1224613,

*18 (D. Nev. Mar. 26, 2013) (quoting *SEC v. Colello*, 139 F.3d 674, 676 (9th Cir. 1998)); *see also SEC v. Cherif*, 933, F.2d 403, 414, n. 11 (7th Cir. 1991).

27. Moreover, a court of equity has jurisdiction to reach property either in the hands of the original wrongdoer, or in the hands of any subsequent holder and to convey that property to the one who is truly and equitably entitled to same. *SEC v. Cavanagh*, 155 F.3d 129, 136 (2nd Cir. 1998). Disgorgement is an equitable remedy that prevents unjust enrichment. *SEC v. Contorinis*, 743 F.3d 296, 306 (2nd Cir. 2014). Disgorgement is not a cause of action, but rather is a remedy for retrieving funds held by a party who has been unjustly enriched. *Swift v. Pandley*, 2013 WL 6022093, *3 (D. N.J. Nov. 13, 2013). Disgorgement is designed to equitably deprive those who have obtained ill-gotten gains of enrichment and may be imposed upon innocent third parties who have received such ill-gotten funds and have no legitimate claim to them. *Contorinis*, 743 F.3d 296, 307 (2nd Cir. 2014).

28. The Receiver is entitled to recover the \$11,825,819.31 transferred from the Receivership Defendants to Wyandotte Nation under two theories. The first is constructive trust. *Liken v. Shaffer*, 141 F.2d 877, 880-81 (8th Cir. 1944) (holding that a constructive trust is imposed where, rightfully or wrongfully, a party obtains or retains property that unjustly enriches him, even if the party obtaining or retaining the property does nothing wrongful); *see also Parke v. First Reliance Standard Life Ins. Co.*, 368 F.3d 999, 1008 (8th Cir. 2004) (holding that “[a] constructive trust is imposed when a defendant has possession of particular funds or property that in good conscience belong to the plaintiff”); *In re McGehee*, 342 B.R. 587, 591 (Bankr. W.D. Mo. 2006) (holding that unjust enrichment alone is a valid basis for the imposition of a constructive trust in Missouri) (citing *Brown v. Brown*, 152 S.W.3d 911, 916-17 (Mo. Ct. App. 2005)); *Rollins v. Metro. Life Ins. Co.*, 863 F.2d 1346, 1354 (7th Cir. 1988) (“a constructive trust

may be invoked even where the unjustly enriched party is completely blameless), *overruled on other grounds*, 979 F.2d 575 (7th Cir. 1992). The court has broad equitable powers to impose a constructive trust on funds traceable to the original transfer. *US v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996). Regardless of whether eData Solutions, Inc. was operated as a d/b/a or a separate entity from the Wyandotte Nation, the Receiver has traced the funds paid by the Receivership Defendants to the Wyandotte Nation.

29. In this case, the Court should exercise its equitable powers to establish a constructive trust over the nearly \$68 million in gross profits realized by the Receivership Defendants between 2011 and 2014 of which over \$11.8 million was ultimately paid to Wyandotte Nation. No wrongdoing is alleged or required to impose a constructive trust and order the return of these funds to the receivership estate. As alleged by the FTC and confirmed by the Receiver, the defendants in this case engaged in deceptive consumer payday lending activity. The \$11,825,819.31 ultimately received by Wyandotte Nation are proceeds of the fraudulent consumer lending activity. Wyandotte Nation have no legitimate claim to these proceeds. The Court should order Wyandotte Nation to return these funds to the receivership estate.

30. The second theory entitling the Receiver to recover the \$11,825,819.31 from Wyandotte Nation is the applicable fraudulent transfer statutes. *See, e.g., Fleming Cos., Inc. v. Rich*, 978 F. Supp. 1281, 1296 (E.D. Mo. 1997). Under fraudulent transfer statutes, a transfer is set aside when it is made with actual intent to hinder, delay, or defraud any creditor, or is made for less than reasonably equivalent value in exchange for the transfer. *Id.* at 1294, 1299.

31. Here, neither Wyandotte Nation nor eData Solutions, Inc. (to the extent the two are distinguishable) gave reasonably equivalent value to the Receivership Defendants in exchange for the \$11.8 million transferred by the Receivership Defendants.

32. To the extent Wyandotte Nation operated eData Solutions, Inc. as a separate entity, the court should pierce the corporate veil of eData Solutions, Inc. because the Wyandotte Nation dominated and controlled eData Solutions, Inc. for its own benefit and eData Solutions, Inc. was grossly undercapitalized.

33. Summary proceedings are appropriate for turnover actions where the respondents are “provided all procedural rights and safeguards to which they are entitled pursuant to the Federal Rules of Civil Procedure.” *U.S. Commodities Futures Trading Comm’n v. Cook*, 2011 WL 2160283, *4 (D. Minn. Apr. 22, 2011); *see also SEC v. Am. Capital. Invs., Inc.*, 98 F.3d 1133, 1146 (9th Cir. 1996) (holding that “[f]or the claims of nonparties to property claimed by receivers, summary proceedings satisfy due process so long as there is adequate notice and opportunity to be heard”), *abrogated on different grounds*, 523 U.S. 83 (1998); *SEC v. Universal Fin.*, 760 F.2d 1034, 1037 (9th Cir. 1985) (rejecting the requirement of plenary proceedings where the lower court afforded the interested parties all of the procedural protections that would have been available in a plenary proceeding, i.e. discovery, filing briefs and exhibits, and the application of the Federal Rules of Evidence and Civil Procedure).

Conclusion

34. The \$11,825,819.31 paid by Receivership Defendants to Wyandotte Nation represents proceeds of the consumer lending fraud alleged by the FTC in the Complaint. As such, the \$11,825,819.31 transfer to Wyandotte Nation was an unjust enrichment of Wyandotte Nation at the expense of the defrauded consumer borrowers. The Court should impose a constructive trust on the funds received by Wyandotte Nation and it should be ordered to return the funds to the Receiver as property of the Receivership Estate. Alternatively, the Court should find that Wyandotte Nation should return the transferred funds because they provided the Receivership Defendants less than reasonably equivalent value for the \$11,825,819.31 extracted

from the Receivership Defendants. To the extent the Wyandotte Nation asserts eData Solutions, Inc. was a separate corporate entity, the court should pierce the corporate veil to compel the Wyandotte Nation to return the \$11,825,819.31 to the Receiver.

WHEREFORE, the Receiver respectfully requests the Court enter an Order:

- (i) Directing Wyandotte Nation to immediately turnover the sum of \$11,825,819.31 to the Receiver;
- (ii) An Order of Judgment against Wyandotte Nation in the amount of \$11,825,819.31 in favor of the Receiver; and
- (iii) For such other and further relief as the Court deems just and appropriate.

Dated: February 25, 2016

Respectfully submitted,

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Attorney for Larry E. Cook, Receiver//

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February 2016, I electronically filed the foregoing document, with the Clerk of the Court for the Western District of Missouri by using the CM/ECF system which will send a notice of electronic filing to all parties participating in the Court's CM/ECF system.

I further certify that on this 25th day of February 2016, I transmitted a copy of the above and foregoing via electronic mail to the following counsel not presently participating in the Court's CM/ECF system in this case:

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/s/ Brian M. Holland
An Attorney for Larry E. Cook, Receiver