

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

IN RE: CASE NO. 17-21340-RBR
CHAPTER 11

Rockline VAC Systems, Inc.,

Debtor.

**MOTION OF JOHN M. FERNANDEZ TO CONVERT CASE
APPOINT A CHAPTER 11 TRUSTEE, OR DISMISS CASE**

Creditor, **John M. Fernandez** (“**Fernandez**” or “**Creditor**”), through undersigned counsel and pursuant to 11 U.S.C. § 1112(b), files this *Motion to Convert Case, Appoint a Chapter 11 Trustee, or Dismiss Case* (the “**Motion**”) and in support thereof, states as follows:

1. This case was commenced by the filing of a voluntary petition for relief under chapter 11 of title 11, United States Code (the “**Bankruptcy Code**”) on September 6, 2017.

2. Fernandez and Thomas M. Dean (“**Dean**”) were the equity owners of the Debtor. However, a dispute arose and Fernandez commenced litigation against, among others, Dean and the Debtor in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida under case no. 062012CA007982AXXXCE, and captioned *John M. Fernandez v. Thomas M. Dean, Rockliner, Inc., and Rockline VAC Systems, Inc.* (the “**State Court Litigation**”).

3. The State Court Litigation was ostensibly settled pursuant to the terms of a Confidential Settlement Agreement (the “**Settlement Agreement**”). The Settlement Agreement provided, among other things, that the payment of the sums due to Fernandez under the Settlement Agreement were to be secured by a lien on all assets of the Debtor. Fernandez filed a UCC-1 financing statement with the Florida Secured Transaction Registry on January 28, 2014 under

number 201400646462. Despite this language and the existence of the UCC-1 financing statement, the Debtor never sought, and has not received, the consent of Fernandez to use cash collateral. In fact, the Debtor has not even scheduled Fernandez as a secured creditor. There are several other UCC-1 financing statements on file and the Debtor has never filed a motion to use cash collateral.

4. From January 27 of 2014, when the settlement was announced in open court just prior to the commencement of trial, the Debtor and Dean, along with the other defendants, exhibited a pattern of failing and refusing to comply with court orders. The Debtor and Dean made promises and representations to the state court, beginning in January of 2014, which were untrue when made. Likewise, when the Settlement Agreement was eventually executed (after months of delay by the Debtor and Dean), it contained representations by Dean and the Debtor which were untrue¹. On January 20, 2017 the state court ultimately found the Debtor and its principal, Dean, in contempt pursuant to the Order on Plaintiff's Motion For Contempt As To All Defendants (the "**Contempt Order**"). The state court previously entered the Agreed Order Granting Plaintiff's Verified Motion For Contempt, Specific Performance and Entry of Final Judgment, Attorneys' Fees and Other Relief (the "**Agreed Contempt Order**") with respect to prior transgressions by the Debtor and Dean. Copies of the Contempt Order and the Agreed Contempt Order are attached hereto as Exhibit A.

5. In particular, the judge in the Contempt Order found that Dean and the Debtor had willfully failed and violated court orders on multiple occasions. *See, Contempt Order, page 6, paragraph 3.* The Contempt Order further found that the Defendants had removed or discarded

¹ For example, the Settlement Agreement required the parties to utilize the services of a specific accountant. At the time the Settlement Agreement was executed, the Debtor and Dean had already hired another accountant which would only serve to obfuscate and delay Fernandez's attempts to minimize tax ramifications.

personal property. *See, Contempt Order, page 7, paragraph 4.* Accordingly, the state court ordered the appointment of Glenn J. Waldman, Esq. as receiver (the “**Receiver**”).

6. In addition to the appointment of the Receiver, for cause, the Contempt Order also prohibited the Debtor and Dean from pledging, encumbering, removing, transferring, hypothecating, or discarding any property of any kind, although Dean was authorized to pay no more than \$3,000 per month of personal expenses. *See, Contempt Order, page 5, paragraph 3.*

7. The Contempt Order further held that the monetary relief previously ordered to be paid would now be considered a fine imposed on the Debtor, Dean and the other defendants based on the evidence of losses that Fernandez had suffered as a result of the unilateral actions of the Debtor, Dean and the other defendants. *See, Contempt Order, page 4, paragraph 4.*

8. In accordance with his duties as receiver, the Receiver prepared the *Receiver’s Findings of Fact, Conclusions of Law and Recommendation(s)*, (the “**Receiver’s Report**”) a copy of which is attached hereto as Exhibit B. Paragraph 9 on page 17 of the Receiver’s Report details the Debtor’s failure in providing significant information to the Receiver and the Debtor’s failure to disclose assets and the location and status of assets. The Receiver’s Report found that the actions of the Debtor and Dean demonstrated “a pattern and practice of an intentional noncompliance with the Orders previously entered and an intention to avoid the obligations owing to Plaintiff. *See, Receiver’s Report, page 18, paragraph 13.*

9. Paragraph 16 of the Receiver’s Report details the Debtor’s improper and undisclosed transfer of a vactor truck and paragraph 17 of the Receiver’s Report describes additional violations of Court orders by the Debtor and Dean. Paragraph 19 of the Receiver’s Report lists numerous statements that the Debtor and Dean made to the state court which the Receiver found to be untruthful and inaccurate.

10. The Receiver's Report concluded as follows in paragraph 20 on page 20:

Defendants have intentionally, willfully and repeatedly failed to comply with Orders of the Court, inclusive of Orders of the undersigned Receiver. Defendants have repeatedly misrepresented themselves both to the Court and to the Receiver and have repeatedly disobeyed Orders of the Court and the Receiver. The record contains competent substantial evidence to support the trial court's determination, by clear and convincing evidence, that Defendants' misconduct was undertaken on purpose.

11. Fernandez filed a motion in the State Court Litigation to confirm and adopt the Receiver's findings and recommendations and enter judgment in favor of Fernandez. This bankruptcy proceeding was filed on the eve of the scheduled hearing on that motion.

12. Conversion of this case to a chapter 7 proceeding or the appointment of a chapter 11 trustee is appropriate and warranted. The Debtor and its principal have shown absolutely no regard or respect for the judicial system. Pre-petition, the Debtor (and its principal) demonstrated their complete disregard for the court system by their blatant failure to comply with court orders and make appropriate and adequate disclosure. The Debtor and its principal have already been found in contempt by the state court and this behavior continued with the Receiver. The bankruptcy filing was on the eve of the state court's ratification of the Receiver's findings and recommendations. The state court orders of contempt and the Receiver's speak for themselves.

13. The Debtor's contempt for the court system and the judicial system did not stop with the filing of this bankruptcy proceeding. Instead, the Debtor's failure to comply with the law has continued by virtue of the Debtor's failure to seek and obtain authorization for its continued use of cash collateral.

14. Accordingly, it is appropriate for this Court to convert the proceeding to a chapter 7 or appoint a chapter 11 trustee.

15. Finally, should the Court determine that it is not appropriate to either convert this case to a chapter 7 proceeding or appoint a chapter 11 trustee, Fernandez requests that the Court dismiss this case with prejudice. The case was filed on the eve of the state court's ratification of the Receiver's findings. The Debtor has only filed this proceeding to further delay Fernandez in his collection efforts. It should be dismissed.

WHEREFORE, Fernandez respectfully requests the entry of an order granting the relief requested herein, converting this case to a chapter 7 proceeding, or ordering the appointment of a chapter 11 trustee, or dismissing this case, and such other and further relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all parties via CM/ECF on October 4, 2017 and a true copy of the foregoing will be furnished to all creditors and interested parties with a copy of the Notice of Hearing.

Dated: October 4, 2017

Respectfully submitted,
FURR COHEN, P.A.
Attorneys for Fernandez
2255 Glades Road, Suite 337W
Boca Raton, FL 33431
(561)395-0500/ (561)338-7532 fax
E-mail: agoldstein@furrcohen.com

By /s/Alvin S. Goldstein
ALVIN S. GOLDSTEIN, ESQ.
Florida Bar No. 993621

Electronic Mail Notice List

- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- People's United Equipment Finance Corp. (RTB) rbonsignore@puefc.com
- Chad T Van Horn Chad@cvhlawgroup.com,
jay@cvhlawgroup.com, chad@ecf.inforuptcy.com, susan@cvhlawgroup.com, Milagros@cvhlawgroup.com, terri@cvhlawgroup.com, martha@cvhlawgroup.com, g2320@notify.cincompass.com, steve@cvhlawgroup.com, notices@nextchapterbk.

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 062012CA007982AXXXCE

JOHN M. FERNANDEZ,

Plaintiff,

v.

THOMAS M. DEAN, an Individual,
a/k/a THOMAS MICHAEL DEAN, a/k/a
MICHAEL DEAN, ROCKLINER, INC., a
Florida corporation and ROCKLINE VAC
SYSTEMS, INC., a Florida corporation

Defendants.

ORDER ON PLAINTIFF'S MOTION FOR CONTEMPT AS TO ALL DEFENDANTS

THIS CAUSE having come before the Court on Plaintiff's Motion for the Court to Schedule a Show Cause Hearing as to Why Defendants Should Not Be Held in Contempt and Award Attorneys Fees and Costs (the "Motion"), and the Court having reviewed the Motion and argument of counsel and thereafter having scheduled hearing on the Motion, taken testimony, entertained an exhaustive review of the record, heard argument of counsel and review of the law, it finds as follows:

FINDINGS OF FACT

A. The parties stipulated that proceedings which have to date taken place in this case, whether before the undersigned or a predecessor judge are considered to have taken place before this Court.

B. An Agreed Order of Contempt has previously been entered on Plaintiff's prior motion seeking contempt.

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C. Defendants have also been previously been found by to have materially breached the parties' Settlement Agreement.

D. At a September 16, 2016 hearing on the Motion, the Defendants argued the Court's September 8, 2015 Order was unclear in its direction, although the Defendants did not seek clarification for one (1) year.

E. Thereafter, on September 22, 2016, this Court entered an Order scheduling hearing on the Motion ("The Scheduling Order").

F. To avoid any uncertainty of direction, both at the September 16, 2016 hearing and within the Scheduling Order itself, this Court advised the Defendants that the Defendants were to pay the sums set out in the September 8, 2015, Order and to otherwise fulfill the obligations in said Order. The Scheduling Order further Ordered that further hearing on the Motion would be unnecessary if the Defendants complied with this Court's September 8, 2015 Order or before October 30, 2016.

G. If the Defendants did not comply with the Scheduling Order, then the Defendants were ordered to appear at an evidentiary hearing on November 14, 2016 at 10:00 a.m., to show cause why Defendants should not be held in contempt for failing to comply with this Court's above- referenced Orders.

H. The Defendants did not comply with the September 8, 2015, Order nor did they comply with the related Scheduling Order. Hearing was therefore commenced on November 14, 2016 at 10:00 a.m. The Defendants and their counsel appeared and testified and admitted as a matter of undisputed fact that they did not comply with this Court's prior Orders.

I. Hearing on the matter was continued to December 5, 2016 at which time Defendants asserted that its newly retained co-counsel was unavailable and that the Defendants

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could not proceed at that time. No notice of unavailability was filed with the Court or served upon opposing counsel prior to the scheduled December 5, 2016 hearing. Nevertheless, the matter was therefore continued to December 6, 2016 at 10:30 a.m.

J. On December 6, 2016 despite the entry of the September 8, 2015 Order and the Scheduling Order, Defendants again argued that this Courts Orders were unclear. They also argued that although not disputing a mere scrivener's error is contained in the September 8, 2015 Order, and having full knowledge of the actual facts, they could not deliver the monies held by their counsel, Mr. Heffner because, the September 8, 2015 Order improperly advised the monies were actually being held by Plaintiff's counsel, not Mr. Heffner. Notwithstanding actual notice of the scrivener's error, the Defendants' never sought clarification or simple reformation of the Order. The Court also notes the prior position of the Defendants was that they did not have to deliver the money to Plaintiff's counsel while their Motion for Rehearing was pending (this Court has since denied the Motion for Rehearing) in effect granting to themselves an automatic stay without the imprimatur of the Court.

K. This Court has reviewed the Settlement Agreement between the parties, all of the evidence and testimony taken before the Court and applicable Motions. It is undisputed that the September 8, 2015 Order contains a mistake and should state that Defendants' counsel holds the sum of \$53,000 in his trust account. This Court has the power under Florida Rule of Civil Procedure 1.540, *Smith v. Smith*, 612 So.2d 713 (2nd DCA 1993) and *Franklin Financial, Inc. v. White*, 932 So. 2d 434 (4th DCA 2006) to correct the scrivener's error.

L. On December 5, 2016, this Court entered an Order prohibiting the Defendants from disposing of any and all of its property or assets.

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M. This Court has the authority to consider multiple avenues of relief available to it and is entitled to avail itself to any or all of those avenues in order to compel compliance with its Orders. *Huber v. Disaster Solutions LLC*, 180 So 3rd 1145 (4th DCA). *Parisi v. Broward County*, 769 So. 2d 359 (Fla. 2000).

ACCORDINGLY IT IS ORDERED AND ADJUDGED AS FOLLOWS:

1. The Findings of Fact set forth above are incorporated herein by reference.
2. The September 8, 2015 Order is hereby corrected to read that “Defendants” are holding monies in trust, not Plaintiff. Defendants, having materially breached the Settlement Agreement are not entitled to avail themselves to use the monies in accordance with the Settlement Agreement. As such, Defendants through their Counsel are hereby Ordered to **forthwith** (within one (1) business day) transfer the sum of \$53,000 to Plaintiff’s counsel’s trust account.
3. The Defendants have on multiple occasions willfully failed and violated Orders of this Court. Plaintiff’s Motion to hold Defendant’s in Contempt is **Granted**. This Court finds that the actions of Defendants are civil in nature. However, this Court further finds that additional findings or sanctions may be in order if this Court is apprised by the Receiver (as appointed below) that Defendants’ unilateral actions were willful and conscious disregard of this Court’s Orders.
4. The Court finds the monetary relief previously Ordered by this Court is a fine due to the Plaintiff and imposed upon Defendants based upon evidence of losses suffered as a result of Defendants’ unilateral actions. Furthermore, it is apparent the Defendants will not pay the fine or take such actions that are necessary to fully effectuate the prior Orders of this Court inclusive delivering items of equipment or property as well as removing Mr. Fernandez as a

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guarantor of the Defendants' debt. Accordingly, in order to ensure full and prompt payment of this fine and compliance with this Order, this Court hereby appoints Glenn J. Waldman, Esq. (Florida Bar No. 0374113) 500 E. Broward Blvd, Suite 1700, Fort Lauderdale, FL 33394 (the "Receiver") as a receiver of all property (inclusive of all of all property of any nature or kind) of the entities Rockliner, Inc., a Florida corporation and Rockline Vac Systems, Inc., a Florida corporation. Neither Mr. Dean individually nor the entities shall pledge, encumber, remove, transfer, hypothecate or discard any property of any kind (except Mr. Dean may pay up to a monthly total of \$3,000 of personal expense) until further order of this Court. As to Mr. Dean personally, he shall disclose to the Receiver all bank or checking accounts, provide a detailed financial statement in the form required by the Receiver, disclose (inclusive of make, vin, and location) all personal property (cars or boats) having a value in excess of \$5,000 and shall not remove or otherwise, sell, pledge or encumber the same. He shall hereafter pay the cost to maintain all real or personal property. Further he shall turnover all computers and cell phones used by him or in the business of the defendant entities since 2011; the Receiver is entitled to mirror or copy all information contained thereon.

It being noted that this Court has already found that the Defendant's have removed or discarded personal property. **DEFENDANTS ARE REMINDED THAT IN OPERATING THEIR BUSINESS IN ACCORDANCE WITH THIS ORDER HEREAFTER, ALL EQUIPMENT (INCLUSIVE OF ANY COMPUTERS, CAMERAS, ROBOTS, HOSES – ANYTHING NECESSARY TO RUN OR OPERATE THE EQUIPMENT FOR THE EQUIPMENT'S INTENDED PURPOSE) SHALL BE RETURNED IN THE EXACT CONDITION AS THE SAME LEFT THE PREMISES, NORMAL WEAR AND TEAR EXCEPTED.**

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5. Within ten (10) days of the date of this Order, the Receiver shall file an Oath of Receiver with this Court.

6. The Court waives the requirement of the Receiver to post a bond.

7. The Receiver is hereby ordered to provide the following report to this Court:

(a). The Receiver is authorized to examine the transactions of all bank accounts or assets of the Defendants to determine if at any time since September 8, 2015, Defendants have or at any time had the ability to comply with this Court's Orders. The Receiver is further empowered to review all e-mail or documents to determine if the Defendants have at all times since the settlement of this case been forthcoming to this Court. The Receiver is also empowered to effectuate the Settlement Agreement to the extent not already effectuated.

(b). The Receiver is authorized to report to the Court if in the Receiver's opinion, Defendants have engaged in any act or actions which would indicate that Defendants lied or misrepresented themselves to this Court. The Receiver is entitled to review Defendants books, records, e-mails, correspondence, and other communications. It being noted a Receiver stands in the place of Mr. Dean and the companies with respect to any and all correspondence or communications which may be considered privileged. The Receiver is also authorized to convene hearing in order to take testimony on these matters.

8. Mr. Dean and the Defendant companies shall continue to operate their business; however, any and all checks, revenues, profits, properties or assets shall be under the control of the Receiver. The Receiver shall establish a budget for the operation of the business and, in accordance with this Order, the receiver shall be paid from the Defendants' assets and business until the fine is paid, the September 8, 2015 Order is complied with and all mandates of this Order are fulfilled.

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9. The Receiver shall, to the best of his ability, prepare and file with the Court, within forty-five (45) days of entry of this Order, a general inventory, under oath, of all property over which the Receiver has been given custody pursuant to this Order. He is not required to provide a detailed inventory except that he should to the extent possible, document via (i) bills of sale in the Defendant's business records, (ii) insurance documents, (iii) photographs of the equipment received and such other means as the Receiver deems sufficient to memorialize the property received pursuant to this Order.

10. The Receiver is directed to prepare and file with the Clerk of this Court on a quarterly basis by the 15th day following each calendar quarter (starting after the first full calendar quarter after the entry of this Order), so long as he/she shall remain as Receiver, a full and complete report, certified to the best of Receiver's knowledge and belief, setting forth all receipts and disbursements, reporting all changes in assets in his/her charge or claims against the assets that have occurred since filing of the previous report in compliance with Rule 1.620(b) of the Florida Rules of Civil Procedure. The Receiver is directed to serve a copy of each report on the attorneys of record for the parties.

11. The Receiver is hereby authorized and empowered to enter upon the business premises for the Defendants located at 2580 S.W. 32nd Street, Fort Lauderdale, FL 33312 (the "Business Premises") to fulfill the mandates of this Order.

12. The Receiver is authorized to execute and deliver, in the name of Receiver for any or all of the Defendants such documents or instruments as are necessary or appropriate, including, without limitation, agreements with third parties, to fulfill the terms of this Order.

13. The Receiver is entitled to possession of, and shall forthwith take possession of, all agreements, books, records, contracts, accounts, computer, bank accounts, cell phones, files,

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papers, records, keys and all other property, tangible and intangible personal or mixed which relate to the operation of the entity Defendants of the individual Defendant in order to fulfill the obligations of this Order. Persons in possession of same shall immediately surrender possession to the Receiver. The Receiver may dispose of any and all such property to fulfill the terms of the September 8, 2015 Order, the conditions of this Order or the Scheduling Order.

14. The Receiver is hereby authorized to use or employ, persons, managers, agents, attorneys, including, without limitation, independent legal counsel for the Receiver, the Receiver's employees, whose billable rate shall not exceed \$245.00 per hour, and to contract with them and utilize them for the purpose of fulfilling his duties as the Receiver and effectuating the terms and conditions of this Order.

15. The Receiver shall be reimbursed for all out-of-pocket expenses, and is entitled to payment of fees for services rendered as Receiver, in the amount of \$300.00 per hour will shall be treated as an operating expense for the Defendants and paid from the Defendants' Operating Account (as defined below), as hereinafter defined, on a monthly basis. The Receiver shall be reimbursed from the Operating Account on a monthly basis for any charges, expenses, or fees incurred by the Receiver in connection with his duties hereunder including, without limitation, legal and other professional fees, bond premium costs, insurance premium costs, management fees, security costs, leasing commissions, and costs reasonably advanced by the Receiver.

16. The Receiver hereby appointed shall have, and is hereby given, all necessary and incidental powers of a Receiver for the purpose of effectuating this Order. The Receiver, or any Party may apply at any time to this Court for further and other instructions from the Court, and for further power necessary to enable the Receiver to properly fulfill his duties.

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17. The Receiver shall use commercially reasonable efforts to effectuate this Order and carry out his duties.

18. The Receiver has derived judicial immunity and will not be liable for any damage, injury or cause of action arising out of the Receivership or execution of his duties as Receiver, to the extent such actions are pursuant to this Order or any subsequent order(s) of the Court. The Receiver shall not be liable for any debts, obligations, actions or failures to act that were incurred or that occurred prior to the date of this Order. The Receiver will be relieved from liability of any kind from any actions or omissions on account of funds not being provided for the fulfillment of the Receiver's duties hereunder.

19. All parties to this action, including their shareholders, representatives, members, managers, agents, employees, attorneys, accountants, partners, affiliates, independent contractors, officers, directors, successors, representatives and assigns, are ordered upon penalty of contempt of Court, to cooperate fully with the Receiver and his professionals and agents, and are enjoined from interfering in any way with the Receivership or the Receiver's duties.

20. This Order does not preclude Defendants or their representatives from entering upon the Business Premises so long as they do not interfere with the performance of receivership duties by the Receiver or his agents.

21. The Receiver shall be discharged upon the last to occur of Defendants' fulfillment of the September 8, 2015 Order, the Scheduling Order, Settlement Agreement, payment of any and all attorneys fees or costs awarded to Plaintiff. The Receiver shall have the right to resign upon thirty (30) days written notice to the Court and the parties, in the event that the Receiver does not receive the Receiver's fees and expenses or funds for the fulfillment of the Receiver's

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duties hereunder or is unable or unwilling to continue as the Receiver. The Receiver may be removed for cause upon notice to the Parties and hearing.

22. The Court shall retain jurisdiction for matters arising from or relating to the enforcement or performance of this Order.

23. The Court again finds the Plaintiff is entitled to attorneys fees and costs and the Court shall hold a hearing on the amount of the award of such attorney's fees and costs.

DONE and ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on this ____ day of January, 2017.

HONORABLE BARBARA MCCARTHY

Copies Furnished to:

Alan M. Burger, Esq., Counsel for Plaintiff, 505 S. Flagler Drive, Suite 300, West Palm Beach, FL 33401

Adam G. Heffner, Esq., Counsel for Defendants, 1900 N.W. Corporate Blvd., Suite 301, Boca Raton, FL 33431

Kenneth L. Lewis, Esq., Terrence Moons, Esq., Counsel for Defendants, Phillips & Phillips, P.A., 3500 State Road 7, Suite 312, Lauderdale Lakes, FL 33319

Glenn J. Waldman, Esq., 500 E. Broward Blvd, Suite 1700, Fort Lauderdale, FL 33394

True Copy
JAN 20 2017
Barbara McCarthy

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

JOHN M. FERNANDEZ,

Plaintiff,

v.

CASE NO.:062012CA007982AXXXCE

THOMAS M. DEAN, an Individual,
a/k/a THOMAS MICHAEL DEAN, a/k/a
MICHAEL DEAN, ROCKLINER, INC., a
Florida corporation and ROCKLINE VAC
SYSTEMS, INC., a Florida corporation

Defendants.

**AGREED ORDER GRANTING PLAINTIFF'S VERIFIED MOTION FOR CONTEMPT,
SPECIFIC PERFORMANCE AND ENTRY OF FINAL JUDGMENT, ATTORNEYS' FEES
AND OTHER RELIEF**

1. The parties have advised the Court that draft tax returns for Rockliner, Inc. and Rockline Vac, Systems, Inc. have been prepared by an account unilaterally chosen by the above Companies. (the "Companies").

2. The Companies' accountant, their attorney, Adam Heffner, along with Mr. Burger, Mr. Fernandez and Mr. Fernandez accountant shall confer via telephonic conference at 11:00a.m. EDT August 5, 2014, call in number 877.292.4169; conference code: 8604020 to go through the proposed tax returns.

3. Failure of any party to attend this call will be subject to contempt of court.

4. The Court reserves jurisdiction for matters arising from the Motion and this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida

this _____ day of August, 2014.

TRUE COPY
JUDGE JOHN J. MURPHY, III

AUG 01 2014
JOHN J. MURPHY, III
Circuit Court Judge

Copies to:

Alan M. Burger, Esq., McDonald Hopkins LLC, 505 S. Flagler Drive, Suite 300, West Palm Beach, FL 33401 (aburger@mcdonaldhopkins.com)

Adam G. Heffner, Esq., Adam G. Heffner, P.A., 1900 N.W. Corporate Blvd., Suite 301, Boca Raton, FL 33431 (adam@heffnerlaw.com)

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

JOHN M. FERNANDEZ,

Plaintiff,

v.

CASE NO.:062012CA007982AXXXCE

THOMAS M. DEAN, an Individual,
a/k/a THOMAS MICHAEL DEAN, a/k/a
MICHAEL DEAN, ROCKLINER, INC., a
Florida corporation and ROCKLINE VAC
SYSTEMS, INC., a Florida corporation

Defendants.

**AGREED ORDER GRANTING PLAINTIFF'S VERIFIED MOTION FOR CONTEMPT,
SPECIFIC PERFORMANCE AND ENTRY OF FINAL JUDGMENT, ATTORNEYS' FEES
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2. The Companies' accountant, their attorney, Adam Heffner, along with Mr. Burger, Mr. Fernandez and Mr. Fernandez accountant shall confer via telephonic conference at 11:00a.m. EDT August 5, 2014, call in number 877.292.4169; conference code: 8604020 to go through the proposed tax returns.

3. Failure of any party to attend this call will be subject to contempt of court.

4. The Court reserves jurisdiction for matters arising from the Motion and this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida

this _____ day of August, 2014.

TRUE COPY
JUDGE JOHN J. MURPHY, III

AUG 01 2014
JOHN J. MURPHY, III
Circuit Court Judge

Copies to:

Alan M. Burger, Esq., McDonald Hopkins LLC, 505 S. Flagler Drive, Suite 300, West Palm Beach, FL 33401 (aburger@mcdonaldhopkins.com)

Adam G. Heffner, Esq., Adam G. Heffner, P.A., 1900 N.W. Corporate Blvd., Suite 301, Boca Raton, FL 33431 (adam@heffnerlaw.com)

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

JOHN M. FERNANDEZ,

Plaintiff,

CASE NO.:062012CA007982AXXXCE

v.

THOMAS M. DEAN, an Individual,
a/k/a THOMAS MICHAEL DEAN, a/k/a
MICHAEL DEAN, ROCKLINER, INC., a
Florida corporation and ROCKLINE VAC
SYSTEMS, INC., a Florida corporation

Defendants.

_____ /

**MOTION TO CONFIRM AND ADOPT RECEIVER’S FINDINGS
AND RECOMMENDATIONS AND ENTER JUDGMENT**

Plaintiff JOHN M. FERNANDEZ, by and through undersigned counsel, and hereby files this Motion to Confirm and Adopt Receiver’s Findings and Recommendations and Enter Judgment and in support states as follows:

1. In accordance with this Court’s Order of January 20, 2017 (see Exhibit “A”).
2. On June 27, 2017 the Receiver entered its Findings Of Fact, Conclusions of Law and Recommendation(s). (See Exhibit “B”).
3. It is requested this Court adopt the Receiver’s Findings Of Fact, Conclusions of Law and Recommendation(s) and enter Judgment against the Defendants in accordance with the Receivers Findings Of Fact, Conclusions of Law and Recommendation(s).

Wherefore it is respectfully requested this Court grant the relief requested herein and such other and further relief as this Court deems just and proper.

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and Recommendations and Enter Judgment
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Dated this 28th day of June, 2017.

MCDONALD HOPKINS LLC
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By: /s/ Alan M. Burger
Alan M. Burger, Esq.
Florida Bar No. 833290

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court by using the CM/ECF system and e-served it by CM/ECF to: Tania Williams, Esq. and Kenneth L. Lewis, Esq., The Williams Firm, P.A., 515 North Flagler Drive, Suite P-300, West Palm Beach, FL 33401 (tania.williams@williamsfirmmpa.com) (kenlewisj@gmail.com) and by E-mail to Glenn Waldman, Esq., (Receiver) Waldman Trigoboff Hildebrandt Marx & Calnan, P.A., 100 N.E. Third Avenue, Suite 780, Plaza 100, Fort Lauderdale, FL 33301 (gwaldman@waldmanlawfirm.com)) on this 28th day of June, 2017.

MCDONALD HOPKINS LLC

By: /s/ Alan M. Burger
Alan M. Burger, Esq.
Florida Bar No. 833290

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 062012CA007982AXXXCE

JOHN M. FERNANDEZ,

Plaintiff,

v.

THOMAS M. DEAN, an Individual,
a/k/a THOMAS MICHAEL DEAN, a/k/a
MICHAEL DEAN, ROCKLINER, INC., a
Florida corporation and ROCKLINE VAC
SYSTEMS, INC., a Florida corporation

Defendants.

ORDER ON PLAINTIFF'S MOTION FOR CONTEMPT AS TO ALL DEFENDANTS

THIS CAUSE having come before the Court on Plaintiff's Motion for the Court to Schedule a Show Cause Hearing as to Why Defendants Should Not Be Held in Contempt and Award Attorneys Fees and Costs (the "Motion"), and the Court having reviewed the Motion and argument of counsel and thereafter having scheduled hearing on the Motion, taken testimony, entertained an exhaustive review of the record, heard argument of counsel and review of the law, it finds as follows:

FINDINGS OF FACT

A. The parties stipulated that proceedings which have to date taken place in this case, whether before the undersigned or a predecessor judge are considered to have taken place before this Court.

B. An Agreed Order of Contempt has previously been entered on Plaintiff's prior motion seeking contempt.

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C. Defendants have also been previously been found by to have materially breached the parties' Settlement Agreement.

D. At a September 16, 2016 hearing on the Motion, the Defendants argued the Court's September 8, 2015 Order was unclear in its direction, although the Defendants did not seek clarification for one (1) year.

E. Thereafter, on September 22, 2016, this Court entered an Order scheduling hearing on the Motion ("The Scheduling Order").

F. To avoid any uncertainty of direction, both at the September 16, 2016 hearing and within the Scheduling Order itself, this Court advised the Defendants that the Defendants were to pay the sums set out in the September 8, 2015, Order and to otherwise fulfill the obligations in said Order. The Scheduling Order further Ordered that further hearing on the Motion would be unnecessary if the Defendants complied with this Court's September 8, 2015 Order or before October 30, 2016.

G. If the Defendants did not comply with the Scheduling Order, then the Defendants were ordered to appear at an evidentiary hearing on November 14, 2016 at 10:00 a.m., to show cause why Defendants should not be held in contempt for failing to comply with this Court's above- referenced Orders.

II. The Defendants did not comply with the September 8, 2015, Order nor did they comply with the related Scheduling Order. Hearing was therefore commenced on November 14, 2016 at 10:00 a.m. The Defendants and their counsel appeared and testified and admitted as a matter of undisputed fact that they did not comply with this Court's prior Orders.

I. Hearing on the matter was continued to December 5, 2016 at which time Defendants asserted that its newly retained co-counsel was unavailable and that the Defendants

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could not proceed at that time. No notice of unavailability was filed with the Court or served upon opposing counsel prior to the scheduled December 5, 2016 hearing. Nevertheless, the matter was therefore continued to December 6, 2016 at 10:30 a.m.

J. On December 6, 2016 despite the entry of the September 8, 2015 Order and the Scheduling Order, Defendants again argued that this Courts Orders were unclear. They also argued that although not disputing a mere scrivener's error is contained in the September 8, 2015 Order, and having full knowledge of the actual facts, they could not deliver the monies held by their counsel, Mr. Heffner because, the September 8, 2015 Order improperly advised the monies were actually being held by Plaintiff's counsel, not Mr. Heffner. Notwithstanding actual notice of the scrivener's error, the Defendants' never sought clarification or simple reformation of the Order. The Court also notes the prior position of the Defendants was that they did not have to deliver the money to Plaintiff's counsel while their Motion for Rehearing was pending (this Court has since denied the Motion for Rehearing) in effect granting to themselves an automatic stay without the imprimatur of the Court.

K. This Court has reviewed the Settlement Agreement between the parties, all of the evidence and testimony taken before the Court and applicable Motions. It is undisputed that the September 8, 2015 Order contains a mistake and should state that Defendants' counsel holds the sum of \$53,000 in his trust account. This Court has the power under Florida Rule of Civil Procedure 1.540, *Smith v. Smith*, 612 So.2d 713 (2nd DCA 1993) and *Franklin Financial, Inc. v. White*, 932 So. 2d 434 (4th DCA 2006) to correct the scrivener's error.

L. On December 5, 2016, this Court entered an Order prohibiting the Defendants from disposing of any and all of its property or assets.

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M. This Court has the authority to consider multiple avenues of relief available to it and is entitled to avail itself to any or all of those avenues in order to compel compliance with its Orders. *Huber v. Disaster Solutions LLC*, 180 So 3rd 1145 (4th DCA). *Parisi v. Broward County*, 769 So. 2d 359 (Fla. 2000).

ACCORDINGLY IT IS ORDERED AND ADJUDGED AS FOLLOW:

1. The Findings of Fact set forth above are incorporated herein by reference.
2. The September 8, 2015 Order is hereby corrected to read that "Defendants" are holding monies in trust, not Plaintiff. Defendants, having materially breached the Settlement Agreement are not entitled to avail themselves to use the monies in accordance with the Settlement Agreement. As such, Defendants through their Counsel are hereby Ordered to **forthwith** (within one (1) business day) transfer the sum of \$53,000 to Plaintiff's counsel's trust account.
3. The Defendants have on multiple occasions willfully failed and violated Orders of this Court. Plaintiff's Motion to hold Defendant's in Contempt is **Granted**. This Court finds that the actions of Defendants are civil in nature. However, this Court further finds that additional findings or sanctions may be in order if this Court is apprised by the Receiver (as appointed below) that Defendants' unilateral actions were willful and conscious disregard of this Court's Orders.
4. The Court finds the monetary relief previously Ordered by this Court is a fine due to the Plaintiff and imposed upon Defendants based upon evidence of losses suffered as a result of Defendants' unilateral actions. Furthermore, it is apparent the Defendants will not pay the fine or take such actions that are necessary to fully effectuate the prior Orders of this Court inclusive delivering items of equipment or property as well as removing Mr. Fernandez as a

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guarantor of the Defendants' debt. Accordingly, in order to ensure full and prompt payment of this fine and compliance with this Order, this Court hereby appoints Glenn J. Waldman, Esq. (Florida Bar No. 03741113) 500 E. Broward Blvd, Suite 1700, Fort Lauderdale, FL 33394 (the "Receiver") as a receiver of all property (inclusive of all of all property of any nature or kind) of the entities Rockliner, Inc., a Florida corporation and Rockline Vac Systems, Inc., a Florida corporation. Neither Mr. Dean individually nor the entities shall pledge, encumber, remove, transfer, hypothecate or discard any property of any kind (except Mr. Dean may pay up to a monthly total of \$3,000 of personal expense) until further order of this Court. As to Mr. Dean personally, he shall disclose to the Receiver all bank or checking accounts, provide a detailed financial statement in the form required by the Receiver, disclose (inclusive of make, vin, and location) all personal property (cars or boats) having a value in excess of \$5,000 and shall not remove or otherwise, sell, pledge or encumber the same. He shall hereafter pay the cost to maintain all real or personal property. Further he shall turnover all computers and cell phones used by him or in the business of the defendant entities since 2011; the Receiver is entitled to mirror or copy all information contained thereon.

It being noted that this Court has already found that the Defendant's have removed or discarded personal property. **DEFENDANTS ARE REMINDED THAT IN OPERATING THEIR BUSINESS IN ACCORDANCE WITH THIS ORDER HEREAFTER, ALL EQUIPMENT (INCLUSIVE OF ANY COMPUTERS, CAMERAS, ROBOTS, HOSES – ANYTHING NECESSARY TO RUN OR OPERATE THE EQUIPMENT FOR THE EQUIPMENT'S INTENDED PURPOSE) SHALL BE RETURNED IN THE EXACT CONDITION AS THE SAME LEFT THE PREMISES, NORMAL WEAR AND TEAR EXCEPTED.**

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5. Within ten (10) days of the date of this Order, the Receiver shall file an Oath of Receiver with this Court.

6. The Court waives the requirement of the Receiver to post a bond.

7. The Receiver is hereby ordered to provide the following report to this Court:

(a). The Receiver is authorized to examine the transactions of all bank accounts or assets of the Defendants to determine if at any time since September 8, 2015, Defendants have or at any time had the ability to comply with this Court's Orders. The Receiver is further empowered to review all e-mail or documents to determine if the Defendants have at all times since the settlement of this case been forthcoming to this Court. The Receiver is also empowered to effectuate the Settlement Agreement to the extent not already effectuated.

(b). The Receiver is authorized to report to the Court if in the Receiver's opinion, Defendants have engaged in any act or actions which would indicate that Defendants lied or misrepresented themselves to this Court. The Receiver is entitled to review Defendants books, records, e-mails, correspondence, and other communications. It being noted a Receiver stands in the place of Mr. Dean and the companies with respect to any and all correspondence or communications which may be considered privileged. The Receiver is also authorized to convene hearing in order to take testimony on these matters.

8. Mr. Dean and the Defendant companies shall continue to operate their business; however, any and all checks, revenues, profits, properties or assets shall be under the control of the Receiver. The Receiver shall establish a budget for the operation of the business and, in accordance with this Order, the receiver shall be paid from the Defendants' assets and business until the fine is paid, the September 8, 2015 Order is complied with and all mandates of this Order are fulfilled.

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9. The Receiver shall, to the best of his ability, prepare and file with the Court, within forty-five (45) days of entry of this Order, a general inventory, under oath, of all property over which the Receiver has been given custody pursuant to this Order. He is not required to provide a detailed inventory except that he should to the extent possible, document via (i) bills of sale in the Defendant's business records, (ii) insurance documents, (iii) photographs of the equipment received and such other means as the Receiver deems sufficient to memorialize the property received pursuant to this Order.

10. The Receiver is directed to prepare and file with the Clerk of this Court on a quarterly basis by the 15th day following each calendar quarter (starting after the first full calendar quarter after the entry of this Order), so long as he/she shall remain as Receiver, a full and complete report, certified to the best of Receiver's knowledge and belief, setting forth all receipts and disbursements, reporting all changes in assets in his/her charge or claims against the assets that have occurred since filing of the previous report in compliance with Rule 1.620(b) of the Florida Rules of Civil Procedure. The Receiver is directed to serve a copy of each report on the attorneys of record for the parties.

11. The Receiver is hereby authorized and empowered to enter upon the business premises for the Defendants located at 2580 S.W. 32nd Street, Fort Lauderdale, FL 33312 (the "Business Premises") to fulfill the mandates of this Order.

12. The Receiver is authorized to execute and deliver, in the name of Receiver for any or all of the Defendants such documents or instruments as are necessary or appropriate, including, without limitation, agreements with third parties, to fulfill the terms of this Order.

13. The Receiver is entitled to possession of, and shall forthwith take possession of, all agreements, books, records, contracts, accounts, computer, bank accounts, cell phones, files,

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papers, records, keys and all other property, tangible and intangible personal or mixed which relate to the operation of the entity Defendants of the individual Defendant in order to fulfill the obligations of this Order. Persons in possession of same shall immediately surrender possession to the Receiver. The Receiver may dispose of any and all such property to fulfill the terms of the September 8, 2015 Order, the conditions of this Order or the Scheduling Order.

14. The Receiver is hereby authorized to use or employ, persons, managers, agents, attorneys, including, without limitation, independent legal counsel for the Receiver, the Receiver's employees, whose billable rate shall not exceed \$245.00 per hour, and to contract with them and utilize them for the purpose of fulfilling his duties as the Receiver and effectuating the terms and conditions of this Order.

15. The Receiver shall be reimbursed for all out-of-pocket expenses, and is entitled to payment of fees for services rendered as Receiver, in the amount of \$300.00 per hour will shall be treated as an operating expense for the Defendants and paid from the Defendants' Operating Account (as defined below), as hereinafter defined, on a monthly basis. The Receiver shall be reimbursed from the Operating Account on a monthly basis for any charges, expenses, or fees incurred by the Receiver in connection with his duties hereunder including, without limitation, legal and other professional fees, bond premium costs, insurance premium costs, management fees, security costs, leasing commissions, and costs reasonably advanced by the Receiver.

16. The Receiver hereby appointed shall have, and is hereby given, all necessary and incidental powers of a Receiver for the purpose of effectuating this Order. The Receiver, or any Party may apply at any time to this Court for further and other instructions from the Court, and for further power necessary to enable the Receiver to properly fulfill his duties.

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17. The Receiver shall use commercially reasonable efforts to effectuate this Order and carry out his duties.

18. The Receiver has derived judicial immunity and will not be liable for any damage, injury or cause of action arising out of the Receivership or execution of his duties as Receiver, to the extent such actions are pursuant to this Order or any subsequent order(s) of the Court. The Receiver shall not be liable for any debts, obligations, actions or failures to act that were incurred or that occurred prior to the date of this Order. The Receiver will be relieved from liability of any kind from any actions or omissions on account of funds not being provided for the fulfillment of the Receiver's duties hereunder.

19. All parties to this action, including their shareholders, representatives, members, managers, agents, employees, attorneys, accountants, partners, affiliates, independent contractors, officers, directors, successors, representatives and assigns, are ordered upon penalty of contempt of Court, to cooperate fully with the Receiver and his professionals and agents, and are enjoined from interfering in any way with the Receivership or the Receiver's duties.

20. This Order does not preclude Defendants or their representatives from entering upon the Business Premises so long as they do not interfere with the performance of receivership duties by the Receiver or his agents.

21. The Receiver shall be discharged upon the last to occur of Defendants' fulfillment of the September 8, 2015 Order, the Scheduling Order, Settlement Agreement, payment of any and all attorneys fees or costs awarded to Plaintiff. The Receiver shall have the right to resign upon thirty (30) days written notice to the Court and the parties, in the event that the Receiver does not receive the Receiver's fees and expenses or funds for the fulfillment of the Receiver's

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duties hereunder or is unable or unwilling to continue as the Receiver. The Receiver may be removed for cause upon notice to the Parties and hearing.

22. The Court shall retain jurisdiction for matters arising from or relating to the enforcement or performance of this Order.

23. The Court again finds the Plaintiff is entitled to attorneys fees and costs and the Court shall hold a hearing on the amount of the award of such attorney's fees and costs.

DONE and ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on this ____ day of January, 2017.

HONORABLE BARBARA MCCARTHY

Copies Furnished to:

Alan M. Burger, Esq., Counsel for Plaintiff, 505 S. Flagler Drive, Suite 300, West Palm Beach, FL 33401

Adam G. Heffner, Esq., Counsel for Defendants, 1900 N.W. Corporate Blvd., Suite 301, Boca Raton, FL 33431

Kenneth L. Lewis, Esq., Terrence Moons, Esq., Counsel for Defendants, Phillips & Phillips, P.A., 3500 State Road 7, Suite 312, Lauderdale Lakes, FL 33319

Glenn J. Waldman, Esq., 500 E. Broward Blvd, Suite 1700, Fort Lauderdale, FL 33394

Barbara McCarthy
JAN 20 2017
True Copy

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 062012CA007982AXXXCE

JOHN M. FERNANDEZ,

Plaintiff,

v.

THOMAS M. DEAN, an Individual,
a/k/a THOMAS MICHAEL DEAN, a/k/a
MICHAEL DEAN, ROCKLINER, INC., a
Florida corporation and ROCKLINE VAC
SYSTEMS, INC., a Florida corporation

Defendants.

_____/

**RECEIVER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDATION(S)**

This Cause came before Receiver primarily upon Plaintiff's Motion to Compel Compliance with the Receiver's Order (the "Motion") and upon the Court's Order on Plaintiff's Motion for Contempt as to All Defendants entered on January 20, 2017 (the "Contempt Order"). The Receiver was appointed under the Contempt Order and having (i) taken approximately eight hours of live testimony, (ii) reviewed a wide variety of documentary and electronic evidence, (iii) reviewed materials and copies of emails to and from Defendants provided to the Receiver from former counsel for the Defendants, Adam Heffner, Esq., (iv) reviewed deposition testimony and exhibits thereto, (v) reviewed related testimony and evidence in proceedings before the Court during the course of this case (before the Contempt Order), and (vi) heard argument of counsel for the parties, hereby Grants the Motion and, in so doing, further makes the following Findings of Facts, Conclusions of Law and Recommendations to the Court in connection with the Motion and the Contempt Order:

FINDINGS OF FACT

1. The Honorable Barbara McCarthy entered the Contempt Order on January 20, 2017. (Hearing Exhibit 32)

2. In pertinent part, the Contempt Order reads:

The Court finds the monetary relief previously Ordered by this Court is a fine due to the Plaintiff and imposed upon Defendants based upon evidence of losses suffered as a result of Defendants' unilateral actions. . . Neither Mr. Dean individually nor the entities shall pledge, encumber, remove or discard any property of any kind (except Mr. Dean may pay up to a monthly total of \$3,000 of personal expense) until further order of this Court. As to Mr. Dean personally, he shall disclose to the Receiver all bank or checking accounts, provide a detailed financial statement in the form required by the Receiver, disclose (inclusive of make, vin, and location) all personal property (cars or boats) having a value in excess of \$5,000 and shall not remove or otherwise, sell, pledge or encumber the same. . . Further he shall turnover all computers and cell phones used by him or in the business of the defendant entities since 2011; the Receiver is entitled to mirror or copy all information contained thereon. (Hearing Exhibit 32 at ¶ 4)

And, the Contempt Order also reads:

The Receiver is hereby ordered to provide the following report to this Court:

(a). The Receiver is authorized to look at the transactions of all bank accounts or assets of the Defendants to determine if at any time since September 8, 2015, Defendants have or at any time had the ability to comply with this Court's Orders. The Receiver is further empowered to review all e-mail or documents to determine if the Defendants have at all times since the settlement of this case been forthcoming to this Court. The receiver is also empowered to effectuate the settlement agreement to the extent not already effectuated.

(b). The Receiver is authorized to report to the Court if in the Receiver's opinion, Defendants have engaged in any act or actions which would indicate that Defendants lied or misrepresented themselves to this Court. The Receiver is entitled to review Defendants books, records, e-mails, correspondence communications. It being noted a Receiver stands in the place of Mr. Dean and the companies with respect to any and all correspondence or communications which may be considered privileged. The Receiver is also authorized to convene hearings in order to take testimony on this matter. (Hearing Exhibit 32 at ¶ 7)

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3. On February 17, 2017 the Receiver entered an earlier Order which, in part,

Ordered the Defendants to:

Within 20 days hereof, the Defendants shall deliver exact mirror images of any and all hard-drives or email accounts used since 2011. It being agreed by the Plaintiff that for the period of 2011 until November 1, 2013 Defendants need only provide information related to trucks and equipment used in the Rockline/Rockliner business. With respect to the period of November 2, 2013 and thereafter, Defendants shall deliver complete images of all hard-drives, devices, email accounts they have used or which were used in connection with their business or on their behalves. If a hard-drive, device or email account has been changed, lost, damaged, erased, the Defendants shall provide a **detailed explanation** as to what happen and when; and

The Defendants shall provide the Receiver with all other documents and information as required in the third paragraph of Judge McCarthy's January 20, 2017 Order no later than February 28, 2017. (the "2/17/17 Order"; Hearing Exhibit 30)

4. On March 21, 2017, Defendants served the Receiver and Plaintiff's counsel with a document entitled Information Requested by Receiver. (Hearing Exhibit 2). This document was intended to be Defendants' compliance with the 2/17/17 Order.

5. On April 20, 2017, Defendants delivered three external hard drives (the "Hard Drives") to the Receiver. These Hard Drives were intended to be compliance with the Contempt Order and the 2/17/17 Order. The Defendants thereafter asserted compliance under both Contempt Order and the 2/17/17 Order. Defendants represented the information on the Hard-Drives were mirror images of all hard-drives used in their business.

6. On March 22, 2017, the Receiver emailed counsel for Plaintiff as follows:

Alan:

You can test the information provided to me by Ken. Please call my office to make these arrangements.

7. Defendants' counsel was copied on this email.

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8. Having heard no objection or anything otherwise to the contrary, the Hard Drives referenced in paragraph 5 above were delivered to Plaintiff's counsel early on April 24, 2017.

9. The Plaintiff attempted to review the contents of the Hard Drives, but review was thwarted because the information on the Hard Drives appeared to be incomplete and, the Hard-Drives in part were password protected. In addition, few if any emails were delivered. Accordingly, the Motion was served on April 25, 2017.

10. Thereafter, on May 31, 2017 approximately four hours of testimony was taken and documentary evidence was introduced. Another four hours of testimony was taken with the introduction of documentary evidence on June 15, 2017.

11. In addition to the above testimony and documentary evidence, the Receiver has been provided with, and carefully reviewed, the following: (i) full and partial transcripts of deposition testimony with exhibits; (ii) transcripts of hearings in this case; (iii) copies of some evidence previously admitted in hearings before the Court, (iv) copies of all correspondence between Defendants and their former counsel, Adam Heffner – it being noted that much of the communication occurred via e-mail, and (v) copies of selected balance sheets and profit and loss statements of the Defendants.

12. The evidence revealed that Mr. Dean, Mr. Dean's daughter-in-law "Brandy", Judy Kroeger (an employee), and the companies used various email accounts in connection with the Defendants' business. Brandy and Ms. Kroeger were responsible for financial transactions related to the Defendants' business. Evidence also proved that there was no way to determine the accuracy of the balance sheets or financial statements presented to the Receiver by the Defendants without reviewing all of the underlying source data and information. The testimony showed that Defendants received the balance sheets and financial statements from Brandy but

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that Brandy did not have the ability to verify the accuracy of the financial statements or balance sheets which were ultimately presented to the Receiver.

13. During the hearings before the Receiver, the Defendants testified or admitted that they: (a) did not provide copies of all of computer hard-drives used in their business having failed to copy the hard-drive(s) used by Brandy and that used by Ms. Kroeger - - both of whom were intimately involved in the businesses, (b) failed to mirror or copy cell phones or all mobile devices used in their business; (c) failed to provide passwords to the Receiver to allow access to information contained on the Hard Drives or to online banking accounts, (d) although Defendants used emails in their business, the Defendants failed to provide access to or copies of emails or email accounts used in their business or of accounts used by the Defendants, Mr. Dean, Ms. Kroeger or Brandy, (e) failed to provide or allow real time access to bank accounts or quick-books, (f) failed to provide complete information regarding Mr. Dean's bank accounts, (g) failed to provide sufficient detail and valuation as to all equipment now used in their business, (h) failed to disclose the location of Mr. Dean's yacht. (In fact the Defendants misrepresented the location of the yacht.), (i) failed to disclose the ownership (via a 99 year lease) of two boat slips which Mr. Dean was leasing, (j) failed to identify and describe equipment used in connection with the yacht, (k) failed to advise that they were attempting to sell the yacht and had the yacht listed for sale with a broker for \$229,0000, (l) admitted that there was no way to determine if the balance sheets and profit and loss statements were accurate because they were provided by Brandy in North Carolina without any review or verification as to the underlying information, and (m) claimed to the Court they were insolvent and continued to assert insolvency, yet the Defendants continued to seek (and in fact obtained) more credit and loans, did not miss payments, listed the yacht for sale at \$229,000, and had bank account statements which showed

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substantial balances over extended periods of time. Any one of these items may be individually explainable, but taken together, they demonstrate a pattern and practice of an intentional noncompliance with the Orders previously entered and an intention to avoid the obligations owing to Plaintiff.

14. The Defendants admit they have not paid or provided anything of value to Mr. Fernandez anything beyond the \$53,000 heretofore ordered by Judge McCarthy. There is no stay in effect and no bond has been posted to stay enforcement of the Contempt Order.

15. Although there is equity in the real property located at 2580 SW 32nd Street, Ft. Lauderdale, Florida a/k/a "the North 140 feet of Lot 3, Block 3 of TROPIC FARMS, according to the Plat thereof as recorded in Plat Book 24, Page(s) 30, of the Public Records of BROWARD County, Florida" (the "Property") from which the Defendants are operating their business, the Defendants did not remove Plaintiff as a guarantor of the debt encumbering the Property and did not consult with Plaintiff prior to restructuring the debt encumbering the Property. Plaintiff potentially remains a guarantor of the debt despite the Defendants' agreeing to remove Plaintiff and that the Defendants were in fact ordered to remove him from the obligation or sell the Property.

16. Evidence was introduced here and in prior Court proceedings that the so-called vactor truck was "sold" to an entity affiliated with Mr. Dean's brother to which he disclaimed knowledge or even a current relationship with his brother, yet was valued by Defendants in 2011 at \$242,447.28. (2015 Court's Exhibit 1, tab 59).¹ No notice of sale was provided to Plaintiff at any time.

¹ 2015 Exhibit refers to the Exhibit entered into evidence during the proceedings before the Honorable Cynthia Imperato on May 26, 2015 and May 28, 2015.

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17. It is the conclusion of the Receiver that Defendants willfully and intentionally violated the Order of the Receiver, by (i) not fully and completely disclosing all assets having a value of more than \$5,000, (ii) not copying or mirroring all hard-drives used in their business, (iii) not copying all emails used in their business both those used by the entities, Mr. Dean, his daughter Brandy and Ms. Kroeger, (iv) not providing passwords to allow information to be accessed by the Receiver, (v) not providing financial information for Mr. Dean, (vi) not providing accurate and complete information to the Receiver, (vii) failing to reveal the accurate location of the yacht, and (viii) trying to sell the yacht without notice, (viii) advising the Court that all documents relating to Broward Truck and Trailer had been produced (Exhibit 16) when in fact additional documents existed and were not produced. (Exhibit 14).

18. It is further inescapable that Defendants willfully and intentionally violated the September 8, 2015 Order and Judge McCarthy's directives by not delivering monies and property to Plaintiff while having the ability to do so while at the same time incurring actions contrary to the Court's Order or designed to be contrary to the rights of the Plaintiff.

19. Defendants appear to have made statements to the Court and to Plaintiff which were not entirely accurate and/or truthful. Included in these actions and statements are (i) having the ability to comply (or take substantial efforts to comply) with the Court's September 8, 2015 Order, but taking no actions and claiming to be bankrupt when not being insolvent or bankrupt and in fact incurring more debt; (ii) causing a lien to be placed on the "vactor" truck which ultimately ended up with an entity affiliated with Mr. Dean's brother; and (iii) undertaking actions inconsistent with their oral representations or testimony to Judge Murphy, Judge Imperato and/or Judge McCarthy relating to implementation of the parties settlement agreement.

CONCLUSIONS OF LAW

20. Defendants have intentionally, willfully and repeatedly failed to comply with Orders of the Court, inclusive of Orders of the undersigned Receiver. Defendants have repeatedly misrepresented themselves both to the Court and to the Receiver and have repeatedly disobeyed Orders of the Court and the Receiver. The record contains competent substantial evidence to support the trial court's determination, by clear and convincing evidence, that Defendants' misconduct was undertaken on purpose. *See, e.g., Faddis v. City of Homestead*, 121 So.3d 1134 (3rd DCA 2013); F.R.C.P. 1.380(b)(2), *O'Vahey v. Miller*, 644 So.2d 550 (Fla. 3d DCA 1994), rev. denied, 654 So.2d 919 (Fla.1995); *Desimone v. Old Dominion Insurance Co.*, 740 So.2d 1233, 1234 (Fla. 4th DCA 1999). *Desimone v. Old Dominion Insurance Co.*, 740 So.2d 1233, 1234 (Fla. 4th DCA 1999)

21. Plaintiff should be entitled to a Final Judgment for: (1) all unpaid sums under the September 8, 2015 Order in the amount of \$126,263.79 less the \$53,000 paid plus interest at the statutory rate from September 8, 2015; (2) the value of the "vactor" truck in the amount \$242,447.28 (pursuant to the evidence already before the Court) with interest accruing at the statutory rate from January 1, 2016 (per Mr. Kern's testimony as to approximately when the vactor truck was sold to Mr. Dean's brother); and (3) in addition to fees and costs to which Plaintiff is already entitled, Plaintiff's fees and costs from the Date of the Contempt Order until all sums due to the Plaintiff have been paid in full.

22. The Plaintiff should be further entitled to sell the real property located at "the North 140 feet of Lot 3, Block 3 of TROPIC FARMS, according to the Plat thereof as recorded in Plat Book 24, Page(s) 30, of the Public Records of BROWARD County, Florida." The proceeds of sale shall first be used to satisfy the first mortgage, next to pay Plaintiff and finally,

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if all sums due Plaintiff are paid, the balance shall be paid to the Defendants Finally, Plaintiff is entitled to inventory Defendants' real and personal property to obtain the items taken from the equipment (see Judge Imperato's September 8, 2015 Order).

RECOMMENDATIONS

The Receiver recommends the Court adopt these findings and conclusions as an Order of the Court, execution forthwith entering Final Judgment for Plaintiff as indicated above. The Court should retain jurisdiction to quantify Plaintiff's attorneys' fees and costs and the Receiver's fees and costs, and to further oversee execution upon the Final Judgment.

Dated this 27th day of June, 2017.



GLENN J. WALDMAN, RECEIVER

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