

Paul E. Mayer (11715)
P.O. Box 27206
Salt Lake City, Utah 84127-0206
Telephone: (801) 952-3732
Email: paulm@burtonlumber.com
Attorney for Burton Lumber & Hardware Co.

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH**

IN THE MATTER OF THE LIEN RECOVERY	:	BURTON LUMBER &
FUND CLAIM OF BURTON LUMBER &	:	HARDWARE CO.'S RESPONSE
HARDWARE CO. ("CLAIMANT")	:	TO NOTICE OF INCOMPLETE
REGARDING THE CONSTRUCTION BY	:	OR INSUFFICIENT CLAIM
IKON CONSTRUCTION INC. ("IKON") ON	:	APPLICATION
THE RESIDENCE OF JOHN SCHUHMACHER	:	
("HOMEOWNER")	:	Claim No. LRF-2014-1219-01

COMES NOW, Burton Lumber & Hardware Co. ("Burton Lumber") and submits this Response to Notice of Incomplete or Insufficient Claim Application Conditional Denial of Claim dated February 11, 2015.

SUMMARY

The Utah State Division of Occupational and Professional Licensing's ("DOPL") Notice of Incomplete or Insufficient Claim Application Conditional Denial of Claim dated February 11, 2015 in this matter (LRF-2014-1219-01 states the following:

Supplemental Proceedings Documentation: *Utah Code Ann. § 38-11-204(4)(d)(iii)(A) requires:*

To recover from the fund, ...a qualified beneficiary shall establish that ...the qualified beneficiary...

- (I) ***obtained*** from a court of competent jurisdiction the ***issuance of an order*** requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property;
- (II) ***received return of service of the order*** from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b);
- (III) *made reasonable efforts to obtain asset information from the supplemental proceedings. (emphasis added)*

Response Procedure: Please submit the required documentation and a copy of this letter to my attention...

Accordingly, DOPL wants documentation demonstrating that Burton Lumber obtained properly issued notices of supplemental hearing; attempted to have the notices properly served by a person qualified to serve the order; and obtained the return of service of the notice from the serving party.

Burton Lumber has fully complied with the requirements in Utah Code Ann. §38-11-204(4)(d)(iii)(A) and Utah Admin. Code §R156-38a-101 *et seq.* in that it obtained from the Third District Court the required notices of supplemental hearing; had service of the notices attempted by a person qualified to effect service under Utah R. Civ. Pro. 4(b); and received a return of service from that qualified person.

Burton Lumber has previously provided DOPL with the requested documents in its Application for Payment dated December 16, 2014, and has also attached the requested documents to this Response demonstrating its compliance with Utah Code Ann. §38-11-

204(4)(d)(iii)(A) as cited in DOPL's Conditional Denial along with a description of the facts supporting its Application of Payment.

MATERIAL FACTS

1. On November 5, 2014, the Court entered a Default Judgment against defendants Ikon Construction, Inc, ("Ikon Construction") and Mark R. Fidler ("Fidler").

2. After Burton Lumber had obtained its judgment against Ikon Construction and Fidler, Burton Lumber was told by Ikon Construction's registered agent, The Contractor's School, that it would no longer be acting as the registered agent for Ikon Construction and would not accept any paperwork on behalf of Ikon Construction. As a result, copies of all documents in the case thereafter were sent to the last known address of Ikon Construction and Fidler at the address of 2991 West 7140 South, West Jordan, Utah 84084. No mailings that have been sent to this address have ever been returned to Claimant.

3. On November 12, 2014, Burton Lumber mailed copies of the Notice of Entry of Judgment to Ikon Construction, Fidler, and Daniel Day, attorney for the property owners, at their respective addresses.

4. On November 12, 2014, Notices of Supplemental Hearing as to Ikon Construction and Fidler were issued by Burton Lumber's legal counsel, Paul Mayer, Officer of the Court, pursuant to Rule 64(c) (2). (See Attached Exhibit "A")

5. On November 22, 2014, Burton Lumber employed process server Richard B. Allred – a person qualified under Utah R. Civ. Pro. 4(b) to perform service of process – to serve Ikon Construction and Fidler with the Notices of Supplemental Hearing.

6. Mr. Allred attempted service of the Notices of Supplemental Hearing on Ikon Construction by serving Mark Fidler (President and Director) and on Fidler, personally, at his last-known address of 2991 West 7140 South, West Jordan, Utah. At that time, the process server was told by Fidler's father that Fidler did not live at this address, refused to give him Fidler's current address, and told him that the documents should go to Fidler's attorney. Fidler's father took the process server's card and said he would find out who Fidler's attorney was and call him with the attorney information. Fidler's father never called Burton Lumber's process server with Fidler's attorney information. Accordingly, the Supplemental Orders were not served on Ikon Construction or Fidler. The Returns of Service are enclosed herein. (See Attached Exhibit "B")

7. On December 16, 2014, Burton Lumber filed its Application for Payment with the Residence Lien Recovery Fund, together with Paul Mayer's Affidavit, and mailed copies of the Application and Affidavit to all defendants and/or defendants' counsel at their last-known addresses.

8. On January 28, 2015, Burton Lumber received a copy of the Certificate of Compliance from the Utah Residence Lien Restriction and Lien Recovery Fund as to homeowners Schumacher's claim.

9. On January 28, 2015, Burton Lumber forwarded a Release of Lien and Release of Lis Pendens to the Salt Lake County Recorder releasing its Lien and Lis Pendens previously recorded against the Schuhmacher property.

CONCLUSION

Based upon the foregoing, Burton Lumber has fully complied with the requirements of Utah Code Ann. §38-11-204(4)(d)(iii)(A). Burton Lumber's legal counsel properly issued Notices of Supplemental Hearing for Ikon Construction and Fidler. Burton Lumber employed a qualified process server to perform the service of the Notices of Supplemental Proceedings on Ikon and Fidler. Burton Lumber's process server returned to Burton Lumber returns of service stating that he had attempted service upon Ikon Construction and Fidler at their last known address but was unable to effect service because Fidler no longer lived there. Burton Lumber has taken reasonable steps to find and get asset information from Ikon and Fidler. However, Burton Lumber cannot serve someone who obviously does not want to be served.

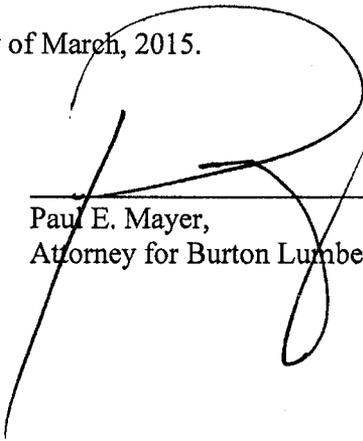
In addition, Burton Lumber's pending application is no different than past applications it has submitted to DOPL. Burton Lumber has, on numerous previous applications, demonstrated that it has attempted service of notices of supplemental hearing with the result that the defendants cannot be served because they have moved or simply would not answer the door. Attached are several examples of this as Exhibits "C", "D", and "E". Each of these examples was approved and paid by DOPL despite the defendants not being served with a notice of supplemental hearing. Accordingly, it appears that DOPL's Conditional Denial of Burton Lumber's Application is arbitrary and capricious.

Finally, the Lien Recovery Fund was created to protect homeowners, subcontractors and suppliers from the exact situation in which Burton Lumber currently finds itself. DOPL issued a Certificate of Compliance to the homeowners in this situation, but determined that Burton

Lumber's Application is incomplete despite conclusive evidence provided in its Application that all statutory requirements have been satisfied. Burton Lumber timely released its lien based upon the Certificate of Compliance and now appears to be unduly blocked by the agency tasked with helping homeowners, subcontractors and suppliers.

Accordingly, Burton Lumber requests that DOPL approve Burton Lumber's Application for Payment; or explain why Burton Lumber's actions are not sufficient for approval of its Application in light of the documents produced in its Application and this Response; and given that past identical Applications submitted by Burton Lumber were approved and paid.

DATED this 9th day of March, 2015.



Paul E. Mayer,
Attorney for Burton Lumber & Hardware Co.

Burton Lumber's Address:
1170 So. 4400 West
Salt Lake City, Utah 84104

Served	_____
Date/Time	_____ am, pm
Server	_____
Title	Process Server

Paul E. Mayer (11715)
P.O. Box 27206
Salt Lake City, UT 84127-0206
Telephone: (801) 952-3732
Fax: (801) 952-3734
Email: paulm@burtonlumber.com
Attorney for Plaintiff

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

BURTON LUMBER & HARDWARE CO.,
a Utah corporation,

Plaintiff,

vs.

IKON CONSTRUCTION, INC., a Utah
corporation, MARK REX FIDLER, an individual,
JOHN W. SCHUHMACHER, ITALINA M.
SCHUMACHER, TRUSTEES OF THE J&I
SCHUHMACHER 2010 FAMILY TRUST, and
DOES 1-20,

Defendants.

**NOTICE OF SUPPLEMENTAL
HEARING AS TO DEFENDANT
IKON CONSTRUCTION,
INC.**

Civil No. 140904183

Judge John Paul Kennedy

In the above-entitled action, IKON CONSTRUCTION, INC. is required to appear before this court to answer questions under oath concerning its assets and property and to restrain him from disposing of its non-exempt property pending the hearing.

Judgment was entered by the Third District Court on November 5, 2014 against defendants IKON CONSTRUCTION, INC. and MARK REX FIDLER, jointly and severally, in the amount of \$11,335.96, of which \$11,335.96 is still unpaid, together with post-judgment

EXHIBIT A

interest at the rate of 2% per month from August 25, 2014 forward, together with court costs and attorney's fees incurred through collection.

ACCORDINGLY, pursuant to the foregoing notice and good cause appearing, you appear in person before this Court at the time and place shown to answer questions under oath concerning Ikon Construction Inc.'s property.

DATE: Wednesday, December 17, 2014 TIME: 2:00 p.m.

PLACE: Third District Court
450 South State Street, Courtroom W-32
Salt Lake City, Utah

FURTHER, you are not to sell, loan, give away, or otherwise dispose of Ikon Construction Inc.'s non-exempt property pending this hearing.

FURTHER, you are to bring with you to the Supplemental Order hearing all bank account information for Ikon Construction Inc. including name of bank and account numbers and current balances with last three-month bank statements, income tax returns (federal and state) for prior year, list of all vehicles licensed in Ikon Construction Inc.'s name including all cars, trucks, motorcycles, recreational vehicles, boats, ATV's, motorhomes/travel trailers including vehicle identification numbers and license plate numbers and all lien holder information on said vehicles, a complete list of all personal property owned by Ikon Construction including a full description of each item, brand name, and model number.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED this 20th day of November, 2014.

/s/ Paul E. Mayer
Paul E. Mayer,
Officer of the Court

**SERVE DEFENDANT IKON CONSTRUCTION INC.'S
PRESIDENT/DIRECTOR:**

**MARK REX FIDLER
2991 WEST 7140 SOUTH
WEST JORDAN, UTAH 84084**

Paul E. Mayer (11715)
P.O. Box 27206
Salt Lake City, UT 84127-0206
Telephone: (801) 952-3732
Fax: (801) 952-3734
Email: paulm@burtonlumber.com
Attorney for Plaintiff

Served	_____
Date/Time	_____ am, pm
Server	_____
Title	Process Server

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

BURTON LUMBER & HARDWARE CO.,
a Utah corporation,

Plaintiff,

vs.

IKON CONSTRUCTION, INC., a Utah
corporation, MARK REX FIDLER, an individual,
JOHN W. SCHUHMACHER, ITALINA M.
SCHUMACHER, TRUSTEES OF THE J&I
SCHUHMACHER 2010 FAMILY TRUST, and
DOES 1-20,

Defendants.

NOTICE OF SUPPLEMENTAL
HEARING AS TO DEFENDANT
IKON CONSTRUCTION,
INC.

Civil No. 140904183

Judge John Paul Kennedy

In the above-entitled action, **MARK REX FIDLER** is required to appear before this court to answer questions under oath concerning his assets and property and to restrain him from disposing of his non-exempt property pending the hearing.

Judgment was entered by the Third District Court on November 5, 2014 against defendants IKON CONSTRUCTION, INC. and MARK REX FIDLER, jointly and severally, in the amount of \$11,335.96, of which \$11,335.96 is still unpaid, together with post-judgment

interest at the rate of 2% per month from August 25, 2014 forward, together with court costs and attorney's fees incurred through collection.

ACCORDINGLY, pursuant to the foregoing notice and good cause appearing, you appear in person before this Court at the time and place shown to answer questions under oath concerning your property.

DATE: Wednesday, December 17, 2014 TIME: 2:00 p.m.

PLACE: Third District Court
450 South State Street, Courtroom W-32
Salt Lake City, Utah

FURTHER, you are not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing.

FURTHER, you are to bring with you to the Supplemental Order hearing all bank account information in your name including name of bank and account numbers and current balances with last three-month bank statements, income tax returns (federal and state) for prior year, most recent paycheck stub from your employer(s), list of all vehicles licensed in your name including all cars, trucks, motorcycles, recreational vehicles, boats, ATV's, motorhomes/travel trailers including vehicle identification numbers and license plate numbers and all lien holder information on said vehicles, a complete list of all personal property owned by you including a full description of each item, brand name, and model number.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED this 12th day of November, 2014.

/s/ Paul E. Mayer
Paul E. Mayer,
Officer of the Court

SERVE DEFENDANT :

**MARK REX FIDLER
2991 WEST 7140 SOUTH
WEST JORDAN, UTAH 84084**

STATE OF UTAH)

:SS

County of Salt Lake)

BURTON LUMBER & HARDWARE CO.

Plaintiff

Vs

IKON CONSTRUCTION, INC.

Defendant

I received the within and hereto annexed Notice of Supplemental Hearing for IKON Construction Co. c/o Mark Rex Fidler (President/Director) on the 22nd day of November, 2014. I attempted service on the above at the address of 2991 W. 7140 S., West Jordan, Utah one time but found that Mr. Mark Rex Fidler who is listed as the President/Director of IKON does not live at this address. His parents live at this address and they state that he does not live there and refuse to give his current address. His father stated that he would find out who Mark's attorney is so that the document could be delivered there but the father has not given that information to me. I can only determine that they are avoiding service. I am, therefore, returning these documents unserved as directed.

If I can be of further assistance please let me know.



Process Server

Case # 140904183

Matter #:

<u>1</u> Trips @ <u>14</u> Miles	\$ <u>21.00</u> Mileage
	\$ _____ Other
	\$ <u>21.00</u> TOTAL

EXHIBIT B

STATE OF UTAH)

:SS

County of Salt Lake)

BURTON LUMBER & HARDWARE CO.

Plaintiff

Vs

MARK REX FIDLER

Defendant

I received the within and hereto annexed Notice of Supplemental Hearing for Mark Rex Fidler on the 22nd day of November, 2014. I attempted service on the above at the address of 2991 W. 7140 S., West Jordan, Utah one time but found that Mr. Fidler does not live at this address. I talked with Mr. Fidler's father who said that the document should go to Mr. Fidler's attorney but the father did not know who that was. He took my card and said that he would find out and call me with the information. I have not heard back and I believe that Mr. Fidler and his parents are avoiding service. I am, therefore, returning these documents unserved as directed.

If I can be of further assistance please let me know.



Process Server

Case # 140904183

Matter #:

<u>1</u> Trips @ <u>14</u> Miles	\$ <u>21.00</u> Mileage
	\$ _____ Other
	\$ <u>21.00</u> TOTAL

Memorandum

To: JoAnn
From: Bob
Date: 12/4/2009
Re: Redrock Contracting – Account No. 270569.001

JoAnn:

Please deposit the attached check and code it to the above-referenced account as follows:

- (1) Use \$20,276.01 to pay off principal;
- (2) Apply \$2,273.23 to pay down accrued interest;
- (3) Then use the remaining \$1,941.50 as reimbursement of costs and legal fees.

THIS IS WATERMARKED PAPER. HOLD TO LIGHT TO VERIFY. DO NOT ACCEPT WITHOUT NOTING WATERMARK. DOCUMENT HAS COLORED BACKGROUND ON WHITE PAPER.

STATE OF UTAH

RICHARD K. ELLIS, UTAH STATE TREASURER
DIVISION OF FINANCE, 2110 STATE OFFICE BUILDING, SALT LAKE CITY, UTAH 84114
STATE VENDORS



Warrant Number
F 8693915

PAYABLE ON
UTAH STATE TREASURER
SALT LAKE CITY, UTAH 84114
31-288
1240

PAY Twenty Four Thousand Four Hundred Ninety And 74/100
Dollars

VOID ONE YEAR FROM DATE
12-01-2009

PAY THE AMOUNT
\$24490.74**

TO THE ORDER OF:

BURTON LUMBER & HARDWARE CO.
C/O ROBERT A BURTON JR
PO BOX 27206
SALT LAKE CITY, UT 84127-0206

Richard Beckstead
DIVISION OF FINANCE

⑈0008693915⑈ ⑆124002890⑆ ⑆53100367736⑈

DETACH BEFORE CASHING
STATE OF UTAH, Division of Finance
2110 State Office Building, Salt Lake City UT 84114

000LRF

Dept	Voucher #	Invoice # / Description	Amount
670	03000000530	2009-0721-01 / LRF PAYMENT	24,490.74

EXHIBIT C

Received 10-22-09

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN
RECOVERY FUND CLAIM OF BURTON
LUMBER & HARDWARE CO.
("CLAIMANT") REGARDING THE
CONSTRUCTION BY REDROCK
CONTRACTING INC ("NONPAYING
PARTY") ON THE RESIDENCE OF
PENNY SHIELDS ("HOMEOWNER")
LOCATED AT 2807 CONNER ST, SALT
LAKE CITY, UTAH

ORDER

Claim No. LRF-2009-0721-01

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:

1. The incident residence is an "owner-occupied residence" as defined in UTAH CODE ANN. § 38-11-102(18);
2. The owner of the incident residence entered into a written contract with an original contractor licensed or exempt from licensure pursuant to Utah Code Title 58, Chapter 55, a real estate developer, or a factory built housing retailer as provided in UTAH CODE ANN. § 38-11-204(4)(a);
3. The homeowner paid the original contractor, real estate developer, or factory built housing retailer in full according to the terms of the contract and any modifications thereto as required by UTAH CODE ANN. § 38-11-204(4)(b);

AFFIDAVIT

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, ROBERT A. BURTON, being duly sworn on oath depose and say:

1. I am Legal Counsel for Claimant, Burton Lumber & Hardware Co.

2. This Affidavit and the attached documents pertain to the Burton Lumber & Hardware Co. ("Burton Lumber")/Redrock Contracting, Inc. ("Redrock Contracting") claim which has been filed with the Lien Recovery Fund (Fund) with regard to the Third District Court lawsuit, Salt Lake County, and should be referred to in connection with said claim.

3. Between December 7, 2007 and May 6, 2008, Burton Lumber supplied building materials to real property owned by Penny Shields ("Shields") located at 2807 So. Connor Street, Salt Lake City, Salt Lake County, Utah, more particularly known as Lot 2, Matonis Landing Subdivision (Parcel No. 16-27-130-074). Burton Lumber's customer, Redrock Contracting, was the general contractor on this job. The last materials were delivered by Burton Lumber to the Shields property on May 6, 2008. (See Customer Aging attached as Exhibit 1).

4. Redrock Contracting was a general contractor licensed as such by the State of Utah during the time Burton Lumber supplied materials to the real property set forth above. (See Exhibit 2 attached hereto).

5. Payment was not made to Burton Lumber by Redrock Contracting on the Salt Lake County property. Therefore, within 90 days of last materials provided to the real property, Burton Lumber recorded Mechanic's Liens against the above-described properties with the Salt Lake County Recorder.

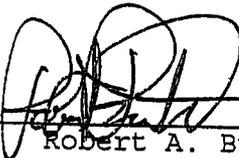
6. Payment was still not made to Burton Lumber by Redrock Contracting. Therefore, on August 11, 2008, Burton Lumber filed a Complaint in the Third District Court, Salt Lake County, against Redrock Contracting and Joshua J. Perry ("Perry") personal guarantor of the Redrock Contracting account with plaintiff. (See Complaint attached hereto as Exhibit 3)
7. Plaintiff filed its lawsuit in this matter on August 11, 2008. This date was within the earlier of 180 days from the date Burton Lumber filed a Notice of Claim as to the real property under Section 38-1-7 Utah Code Annotated or 270 days from the completion of the original contract as to the real property pursuant to Subsection 38-1-7(1) Utah Code Annotated.
8. On February 13, 2009, Burton Lumber recovered a Judgment against Redrock Contracting and Perry. (See Exhibit 4)
9. On May 8, 2009, Supplemental Orders were issued against Redrock Contracting and Perry by the Third District Court, Salt Lake County. (See Exhibit 5)
10. The Process Server for Burton Lumber's counsel has been unable to serve the Supplemental Orders on Redrock Contracting or Perry. (See Proofs of Attempted Service attached hereto as Exhibit 6).
11. Additionally, on March 27, 2009, the Third District Court issued a Writ of Garnishment on Redrock Contracting's suspected account with Zions Bank. The account, if it still exists at all, is devoid of funds. No funds have been received by Burton Lumber.
12. As shown by Exhibit 1, as of June 25, 2009, \$3,928.12 is owed in interest on the Shields claim. This interest is, in all likelihood, in excess of the interest amount the Lien Recovery Fund is authorized to pay.
13. Burton Lumber's principal claim with the Fund is \$20,276.01 as to the Shields property described above. Pre-judgment and post-judgment interest is owed to Burton Lumber. Burton Lumber requests that these amounts be calculated by the Lien Recovery Fund pursuant to DOPHL-AP-097 Revised 7/1/03. To assist Fund personnel in making that calculation, Exhibit 1 shows the dates of the outstanding invoices on the property.

14. Pre-judgment fees and costs, as specified in the Judgment total \$1,023 as to the Shields property. (See Judgment, Exhibit 4).

15. Post-judgment fees were incurred by me and my paralegal in the amount of \$818. An Affidavit of Post-Judgment Fees and Costs is attached hereto as Exhibit 7.

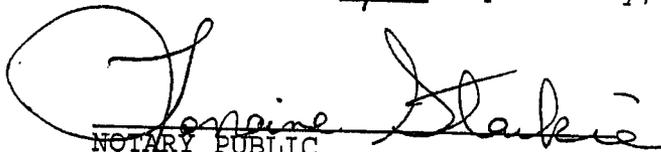
16. Post-judgment costs have been incurred by plaintiff in the amount of \$100.50. (See Exhibit 7).

DATED this 15 day of July, 2009.



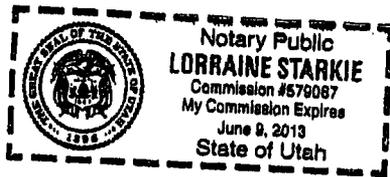
Robert A. Burton

SUBSCRIBED AND SWORN to before me this 15 day of July, 2009.



NOTARY PUBLIC
Residing at Salt Lake City, UT

My Commission Expires:



Served _____
 Date/Time _____ a.m., p.m.
 Server _____
 Title _____ Process Server

Robert A. Burton (0516)
 Paul E. Mayer (11715)
 P.O. Box 27206
 Salt Lake City, UT 84127-0206
 Telephone: (801) 952-3732
 Attorneys for Plaintiff

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
 SALT LAKE COUNTY, STATE OF UTAH**

BURTON LUMBER & HARDWARE CO.,
 a Utah corporation,

Plaintiff,

vs.

REDROCK CONTRACTING, INC., a Utah
 corporation, JOSHUA J. PERRY, PENNY
 SHIELDS, and DOES 1-20,

Defendants.

**MOTION AND ORDER
 IN SUPPLEMENTAL
 PROCEEDINGS**

Civil No. 080916501

Judge Dever

MOTION

In the above-entitled action, plaintiff moves the court for an order requiring JOSHUA J. PERRY, Registered Agent, Director, and President of **REDROCK CONTRACTING, INC.** to appear before this court to answer questions under oath concerning the assets and property of Redrock Contracting, Inc. and to restrain Redrock Contracting, Inc. from disposing of its non-exempt property pending the hearing. Judgment was entered by the Third District Court on February 13, 2009 against defendants Redrock Contracting, Inc. and Joshua J. Perry, jointly and severally, in the

EXHIBIT 5

amount of \$22,945.42, of which \$22,945.42 is still unpaid, together with post-judgment interest at the rate of 2% per month from January 25, 2009 forward, together with court costs and attorney's fees incurred through collection.

DATED this 29 day of April, 2009.



Robert A. Burton,
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT REDROCK CONTRACTING, INC. by
and through its Registered Agent, Director, and President, Joshua J. Perry:

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown to answer questions under oath concerning the property of Redrock Contracting, Inc.

DATE: Thursday, ~~June 25~~, 2009 TIME: 2:00 p.m.

PLACE: Third District Court
450 South State Street, Courtroom W-32
Salt Lake City, Utah 84111

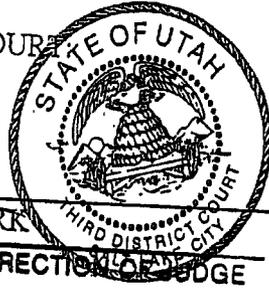
YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of Redrock Contracting, Inc.'s non-exempt property pending this hearing.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED this 8 day of May, 2009.

BY THE COURT

Dana
FB



By _____ CLERK
STAMP USED AT DIRECTION OF JUDGE

SERVE DEFENDANT'S REG. AGENT
DIRECTOR and PRESIDENT:

JOSHUA J. PERRY
1775 East Hubbard Ave. (home)
Salt Lake City, UT

or
3480 South 1439 East (work)
Salt Lake City, UT

Robert A. Burton (0516)
Paul E. Mayer (11715)
P.O. Box 27206
Salt Lake City, UT 84127-0206
Telephone: (801) 952-3732
Attorneys for Plaintiff

Served	
Date/Time	am/pm
Server	
Title	Process Server

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

BURTON LUMBER & HARDWARE CO.,
a Utah corporation,

Plaintiff,

vs.

REDROCK CONTRACTING, INC., a Utah
corporation, JOSHUA J. PERRY, PENNY
SHIELDS, and DOES 1-20,

Defendants.

MOTION AND ORDER
IN SUPPLEMENTAL
PROCEEDINGS

Civil No. 080916501

Judge Dever

MOTION

In the above-entitled action, plaintiff moves the court for an order requiring JOSHUA J. PERRY to appear before this court to answer questions under oath concerning his assets and property and to restrain him from disposing of his non-exempt property pending the hearing. Judgment was entered by the Third District Court on February 13, 2009 against defendants REDROCK CONTRACTING, INC. and JOSHUA J. PERRY, jointly and severally, in the amount of \$22,945.42, of which \$22,945.42 is still unpaid, together with post-judgment interest at the rate of 2% per month from

January 25, 2009 forward, together with court costs and attorney's fees incurred through collection.

DATED this 29 day of April, 2009.


Robert A. Burton, Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT JOSHUA J. PERRY:

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown to answer questions under oath concerning your property.

DATE: Thursday, ~~June 15~~, 2009

TIME: 2:00 p.m.

PLACE: Third District Court
450 South State Street
Salt Lake City, Utah

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED this 8 day of May, 2009.

BY THE COURT

Dana

CLERK



By _____
STAMP USED AT DIRECTION OF JUDGE

SERVE DEFENDANT

JOSHUA J. PERRY

**1775 East Hubbard Ave. (home)
Salt Lake City, UT**

or

**3480 South 1439 East (work)
Salt Lake City, UT**

STATE OF UTAH)

:SS

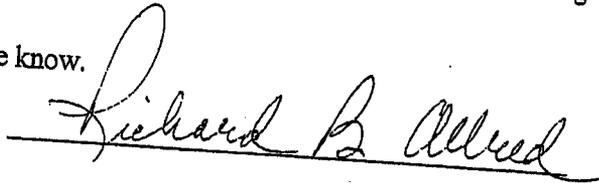
County of Salt Lake)

BURTON LUMBER & HARDWARE CO.
Plaintiff

REDROCK CONTRACTING, INC AND JOSHUA J. PERRY
Defendant

I received the within and hereto annexed Motion and Order in Supplemental Proeedings for Redrock Contracting, Inc. and Joshua J. Perry on the 15th day of May, 2009. I attempted service on the above at three different addresses, 3480 S. 1438 E., Salt Lake City, Utah; 1775 E. Hubbard Ave, Salt Lake City, Utah; and 2807 Connor Street, Salt Lake City, Utah but found that Mr. Perry no longer lives at any of these addresses and there is no sign of Redrock Contracting, Inc. at any of the addresses. I have not been able to discover any information regarding the current whereabouts of Redrock Contracting and/or Joshua J. Perry. Therefore, I am returning these documents unserved.

If I can be of further assistance please let me know.



Process Server

Case #: 080916501

Matter #:

3 Trips @ 21 Total Miles

\$ 31.50 Mileage

\$ _____ Other

\$ 31.50 TOTAL

EXHIBIT 6

STATE OF UTAH

RICHARD K. ELLIS, UTAH STATE TREASURER
DIVISION OF FINANCE, 2110 STATE OFFICE BUILDING, SALT LAKE CITY, UTAH 84114
STATE VENDORS



Warrant Number
F 8477460

PAYABLE ON
UTAH STATE TREASURER
SALT LAKE CITY, UTAH 84114

31-289
1240

PAY Four Thousand Six Hundred Eighty Five And 77/100 Dollars

VOID ONE YEAR FROM DATE
05-21-2009

PAY THIS AMOUNT
\$4685.77**

TO THE ORDER OF:

BURTON LUMBER & HARDWARE
C/O ROBERT A BURTON JR
PO BOX 27206
SALT LAKE CITY, UT 84127-0206

Richard K. Ellis
DIVISION OF FINANCE

⑈0008477460⑈ ⑆124002890⑆ 153100367736⑈

DETACH BEFORE CASHING
STATE OF UTAH, Division of Finance
2110 State Office Building, Salt Lake City UT 84114

000LRF

Dept	Voucher #	Invoice # / Description	Amount
670	93000001273	2009-024-01 / LRF PAYMENT 0224	4,685.77

rec'd 5/19/09

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY FUND CLAIM OF BURTON LUMBER & HARDWARE ("CLAIMANT") REGARDING THE CONSTRUCTION BY WHOLESALE SIDING & WINDOW CO LLC ("NONPAYING PARTY") ON THE RESIDENCE OF EARL HAGGERTY ("HOMEOWNER") LOCATED AT 2197 E THISTLEWOOD WY, SANDY, UTAH	ORDER Claim No. LRF-2009-0224-01
--	---

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:

1. The incident residence is an "owner-occupied residence" as defined in UTAH CODE ANN. § 38-11-102(18);
2. The owner of the incident residence entered into a written contract with an original contractor licensed or exempt from licensure pursuant to Utah Code Title 58, Chapter 55, a real estate developer, or a factory built housing retailer as provided in UTAH CODE ANN. § 38-11-204(4)(a);
3. The homeowner paid the original contractor, real estate developer, or factory built housing retailer in full according to the terms of the contract and any modifications thereto as required by UTAH CODE ANN. § 38-11-204(4)(b);

STATE OF UTAH

RICHARD K. ELLIS, UTAH STATE TREASURER
DIVISION OF FINANCE, 2110 STATE OFFICE BUILDING, SALT LAKE CITY, UTAH 84114
STATE VENDORS



Warrant Number
F 8377779

PAYABLE ON
UTAH STATE TREASURER
SALT LAKE CITY, UTAH 84114
31-289
1240

PAY Seven Thousand Three Hundred Fifty Two And 74/100 Dollars

VOID ONE YEAR FROM DATE
03-04-2009

PAY THIS AMOUNT
\$7352.74**

TO THE ORDER OF:

BURTON LUMBER & HARDWARE
C/O ROBERT A BURTON JR
PO BOX 27206
SALT LAKE CITY, UT 84127-0206

Richard K. Ellis
DIVISION OF FINANCE

⑈0008377779⑈ ⑆124002890⑆153100367736⑈

DETACH BEFORE CASHING
STATE OF UTAH, Division of Finance
2110 State Office Building, Salt Lake City UT 84114

000LRF

Dept	Voucher #	Invoice # / Description	Amount
670	93000000873	2008-1222-03 / LRF PAYMENT	7,352.74

Received 2-17-09

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY FUND CLAIM OF BURTON LUMBER & HARDWARE ("CLAIMANT") REGARDING THE CONSTRUCTION BY A WHOLESALE SIDING & WINDOW COMPANY LLC ("NONPAYING PARTY") ON THE RESIDENCE OF SCOTT J BRINGHURST ("HOMEOWNER") LOCATED AT 2588 E 3020 S, SALT LAKE CITY, UTAH	ORDER Claim No. LRF-2008-1222-03
---	---

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:

1. The incident residence is an "owner-occupied residence" as defined in UTAH CODE ANN. § 38-11-102(18);
2. The owner of the incident residence entered into a written contract with an original contractor licensed or exempt from licensure pursuant to Utah Code Title 58, Chapter 55, a real estate developer, or a factory built housing retailer as provided in UTAH CODE ANN. § 38-11-204(4)(a);
3. The homeowner paid the original contractor, real estate developer, or factory built housing retailer in full according to the terms of the contract and any modifications thereto as required by UTAH CODE ANN. § 38-11-204(4)(b);

AFFIDAVIT

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

I, ROBERT A. BURTON, being duly sworn on oath depose and say:

1. I am Legal Counsel for Claimant, Burton Lumber & Hardware Co.

2. This Affidavit and the attached documents pertain to the Burton Lumber & Hardware Co. ("Burton Lumber")/A Wholesale Siding & Window Company("Wholesale Siding") claim which has been filed with the Lien Recovery Fund (Fund) with regard to the Third District Court lawsuit, Salt Lake County, and should be referred to in connection with said claim.

3. Between June 15, 2007 and October 18, 2007, Burton Lumber supplied building materials to real property owned by Scott J. Bringhurst and Julie A. Bringhurst (Bringhurst) located at 2588 East 3020 South, Salt Lake City, Utah, known as Lot 54, North Millcreek Heights Sub. (Parcel No. 16-27-279-007). Burton Lumber's customer, Wholesale Siding, was the general contractor on this job. The last materials were delivered by Burton Lumber to the property on October 18, 2007. (See Customer Aging attached as Exhibit 1).

4. Between September 10, 2007 and September 26, 2007, Burton Lumber supplied building materials to real property owned by Earl O. Haggerty (Haggerty) located at 2197 East Thistle Wood Way, Sandy, Utah, known as Lot 343, Raintree Village #3 (Parcel No. 28-10-177-004). Burton Lumber's customer, Wholesale Siding, was the general contractor on this job. The last materials were delivered by Burton Lumber to the property on September 26, 2007. (See Customer Aging attached as Exhibit 2).

5. Wholesale Siding was a general contractor licensed as such by the State of Utah during the time Burton Lumber supplied

materials to the real properties set forth above. (See Exhibit 3 attached hereto).

6. Payment was not made to Burton Lumber by Wholesale Siding on the Salt Lake County properties. Therefore, within 90 days of last materials provided to the respective properties, Burton Lumber recorded Mechanic's Liens against the above-described properties with the Salt Lake County Recorder.

7. Payment was still not made to Burton Lumber by Wholesale Siding. Therefore, on January 22, 2008, Burton Lumber filed a Complaint in the Third District Court, Salt Lake County, against Wholesale Siding and Shem Hendricks (Hendricks), personal guarantor of the Wholesale Siding account with plaintiff. (See Complaint attached hereto as Exhibit 4)

8. Plaintiff filed its lawsuit in this matter on March 10, 2008. This date was within the earlier of 180 days from the date Burton Lumber filed Notices of Claim as to the respective real properties under Section 38-1-7 Utah Code Annotated or 270 days from the completion of the original contract as to the respective real properties pursuant to Subsection 38-1-7(1) Utah Code Annotated.

9. On February 11, 2008, the Utah Residence Lien Restriction and Lien Recovery Fund issued a Certificate of Compliance as to the Haggerty property. A copy of the Certificate of Compliance is attached hereto as Exhibit 5.

10. On May 14, 2008, the Utah Residence Lien Restriction and Lien Recovery Fund issued a Certificate of Compliance as to the Bringhurst property. A copy of the Certificate of Compliance is attached hereto as Exhibit 6.

11. On August 20, 2008, Burton Lumber recovered a Judgment against Wholesale Siding and Hendricks. (See Exhibit 7)

12. On September 15, 2008, a Supplemental Order was issued against Wholesale Siding by the Third District Court. (See Exhibit 8)

13. On September 15, 2008, a Supplemental Order was issued against Hendricks by the Third District Court. (See Exhibit 9)

14. Claimant has been unsuccessful in having the Supplemental Orders served upon Wholesale Siding and Hendricks. After attempts of service on eight separate dates, Claimant's process server returned an unsuccessful service return to Claimant's counsel stating that Hendricks is avoiding service. A copy of the return of attempted service is attached hereto as Exhibit 10.

15. As shown by Exhibits 1 and 2 as of November 25, 2008, \$682.20 is owed in interest on the Bringhurst claim (Lot 54, North Millcreek), and \$397.55 is owed in interest on the Haggerty claim (Lot 343, Raintree Village #3). This interest is in all likelihood in excess of those interest amounts the Lien Recovery Fund is authorized to pay.

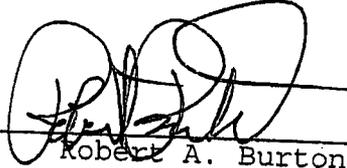
16. Burton Lumber's principal claim with the Fund is \$9,041.57 as to the respective properties described above. \$5,524.29 is attributable to the Bringhurst property and \$3,517.28 is attributable to the Haggerty property. Pre-judgment and post-judgment interest is owed to Burton Lumber. Burton Lumber requests that these amounts be calculated by the Lien Recovery Fund pursuant to DOPHL-AP-097 Revised 7/1/03. To assist Fund personnel in making that calculation, Exhibits 1 and 2 show the dates of the outstanding invoices on the respective properties.

17. Pre-judgment fees and costs, as specified in the Judgment, total \$1,922.50. Of this amount, \$937.27 in fees and \$237.37 in costs are attributable to the Bringhurst property (Lot 54, North Millcreek); and \$596.73 in fees and \$151.13 in costs re attributable to the Haggerty property (Lot 343, Raintree Village #3). (See Judgment, Exhibit 7).

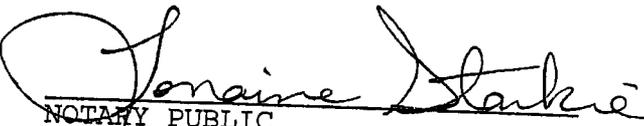
18. Actual post-judgment fees were incurred by me and my paralegal in the amount of \$1,557. However, pursuant to Utah Code Ann. § 38-11-203(3)(f), pre-judgment and post-judgment fees cannot exceed 15% of the claimed amount; therefore, post-judgment fees cannot be claimed.

19. Post-judgment costs have been incurred by plaintiff in the amount of \$142. \$86.76 is attributable to the Bringhurst property (Lot 54, North Millcreek), and \$55.24 is attributable to the Haggerty property (Lot 343, Raintree Village #3). (An Affidavit of Post-Judgment Costs is attached hereto as Exhibit 11).

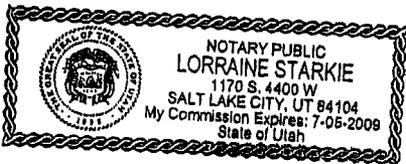
DATED this 15 day of December, 2008.


Robert A. Burton

SUBSCRIBED AND SWORN to before me this 15 day of
December, 2008.


NOTARY PUBLIC
Residing at Salt Lake City, UT

My Commission Expires:



Robert A. Burton (0516)
Paul E. Mayer (11715)
P.O. Box 27206
Salt Lake City, UT 84127-0206
Telephone: (801) 952-3732
Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

BURTON LUMBER & HARDWARE CO.,
a Utah corporation,

Plaintiff,

vs.

A WHOLESALE SIDING & WINDOW
COMPANY, LLC, a Utah limited
liability company, SHEM HENDRICKS,
SCOTT J. BRINGHURST, JULIE A.
BRINGHURST, EARL O. HAGGERTY,
and Does 1-20,

Defendants.

MOTION AND ORDER IN
SUPPLEMENTAL
PROCEEDINGS

Civil No. 080904122

Judge Tyrone Medley

MOTION

In the above-entitled action, plaintiff moves the court for an order requiring Shem Hendricks, Registered Agent and Member of A WHOLESALE SIDING & WINDOW COMPANY, LLC. to appear before this court to answer questions under oath concerning the assets and property of A Wholesale Siding & Window Company, LLC, and to restrain A Wholesale Siding & Window Company, LLC from disposing of its non-exempt property pending the hearing. Judgment was entered by the Third District Court

EXHIBIT 8

on August 20, 2008 against defendant A Wholesale Siding & Window Company, LLC and Shem Hendricks, jointly and severally, in the amount of \$12,754.46, of which \$12,754.46 is still unpaid, together with post-judgment interest at the rate of 2% per month from July 25, 2008 forward, together with court costs and attorney's fees incurred through collection.

DATED this 9 day of September, 2008.

A handwritten signature in black ink, appearing to read "Robert A. Burton", written over a horizontal line.

Robert A. Burton,
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT A WHOLESALE SIDING & WINDOW COMPANY, LLC by and through its Registered Agent and Member, Shem Hendricks:

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown to answer questions under oath concerning the property of A Wholesale Siding & Window Company, LLC.

DATE: Tuesday, October 21, 2008 TIME: 2:00 p.m.

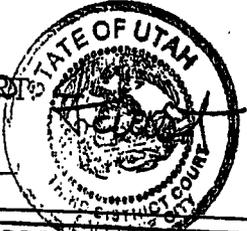
PLACE: Third District Court
450 South State Street, Courtroom W-32
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of A Wholesale Siding & Window Company's non-exempt property pending this hearing.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED this 15 day of September, 2008.

BY THE COURT
Robert [Signature]
By [Signature]
STAMP USED AT DIRECTION OF JUDGE



SERVE DEFENDANT'S REG. AGENT/MEMBER:

Shem Hendricks
2572 West 14200 South
Bluffdale, Utah 84065

Robert A. Burton (0516)
Paul E. Mayer (11715)
P.O. Box 27206
Salt Lake City, UT 84127-0206
Telephone: (801) 952-3732
Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

BURTON LUMBER & HARDWARE CO.,
a Utah corporation,

Plaintiff,

vs.

A WHOLESALE SIDING & WINDOW
COMPANY, LLC, a Utah limited
liability company, SHEM HENDRICKS,
SCOTT J. BRINGHURST, JULIE A.
BRINGHURST, EARL O. HAGGERTY,
and Does 1-20,

Defendants.

MOTION AND ORDER IN
SUPPLEMENTAL
PROCEEDINGS

Civil No. 080904122

Judge Tyrone Medley

MOTION

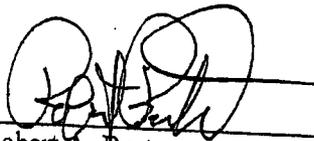
In the above-entitled action, plaintiff moves the court for an order requiring .

SHEM HENDRICKS to appear before this
court to answer questions under oath concerning his assets and property, and to restrain
Shem Hendricks from disposing of his non-exempt property pending the hearing.
Judgment was entered by the Third District Court on August 20, 2008 against defendant
A Wholesale Siding & Window Company, LLC and Shem Hendricks, jointly and

EXHIBIT 9

severally, in the amount of \$12,754.46, of which \$12,754.46 is still unpaid, together with post-judgment interest at the rate of 2% per month from July 25, 2008 forward, together with court costs and attorney's fees incurred through collection.

DATED this 9 day of September, 2008.



Robert A. Burton,
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT SHEM HENDRICKS:

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown to answer questions under oath concerning his property.

DATE: Tuesday, October 21, 2008 TIME: 2:00 p.m.

PLACE: Third District Court
450 South State Street, Courtroom W-32
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of his non-exempt property pending this hearing.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED this 15 day of September, 2008.

BY THE COURT
Robert P. Stewart
JMA
By _____
CLERK
STAMP USED AT DIRECTION OF JU



SERVE DEFENDANT:
Shem Hendricks
2572 West 14200 South
Bluffdale, Utah 84065

STATE OF UTAH)
County of Salt Lake):SS

BURTON LUMBER AND HARDWARE CO.
Plaintiff

vs

SHEM HENDRICKS AND A WHOLESALE SIDING & WINDOW COMPANY, LLC
Defendant.

I received the within and hereto annexed Motion and Order in Supplemental Proceedings for Shem Hendricks and A wholesale Siding and Window Company, LLC on the 23rd day of September 2008. I have attempted service on Mr. Hendricks on September 24, 25, 27, 29, 30, and on October 1, 7, and 9. In every case but one I have been unable to get anyone to answer the door. On the 27th of October a son, about 10 years old, answered the door. It appears that he was at home alone and he would not give me any information as to when I could catch his father or mother at home. He said that they worked a lot, that their schedules changed often, and he did not know when they would be at home. He also said that I could not call them at work and would not give me a telephone number. I have attempted service at all times of the day and evening with no success. It appears that Mr. Hendricks is avoiding service. I am, therefore, returning this document unserved.

If I can be of further assistance please let me know.


Process Server

Case #: 080904122
Matter #:

3 Trips @ 24 Miles \$ 108.00 Mileage

_____ Other

\$ 108.00

_____ Total

EXHIBIT 10

THIS IS A WATERMARKED PAPER. TO BE ABLE TO REPRODUCE THIS DOCUMENT, YOU MUST USE A WATERMARKED PAPER. THIS DOCUMENT WAS COPIED FROM A BACKGROUND OF WHITE PAPER.

STATE OF UTAH

RICHARD K. ELLIS, UTAH STATE TREASURER
DIVISION OF FINANCE, 2110 STATE OFFICE BUILDING, SALT LAKE CITY, UTAH 84114
STATE VENDORS



Warrant Number
F 8329908

PAYABLE ON
UTAH STATE TREASURER
SALT LAKE CITY, UTAH 84114
31-289
1240

PAY Two Thousand One Hundred Eighty Five And 03/100 Dollars

VOID ONE YEAR FROM DATE
01-28-2009

PAY THIS AMOUNT
\$2185.03**

TO THE ORDER OF:

BURTON LUMBER & HARDWARE
PO BOX 27206
SALT LAKE CITY, UT 84127-0206

Richard Beckwith
DIVISION OF FINANCE

⑈0008329908⑈ ⑆124002890⑆ 153100367736⑈

DETACH BEFORE CASHING
STATE OF UTAH, Division of Finance
2110 State Office Building, Salt Lake City UT 84114

000LRF

Dept	Voucher #	Invoice # / Description	Amount
670	93000000785	2008-1113-06 / LRF PAYMENT	2,185.03

STATE OF UTAH

Received 1-19-09

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN
RECOVERY FUND CLAIM OF BURTON
LUMBER & HARDWARE
("CLAIMANT") REGARDING THE
CONSTRUCTION BY BIG BROTHER
CONSTRUCTION INC ("NONPAYING
PARTY") ON THE RESIDENCE OF
STUART BRINK & PATTI
MONTGOMERY ("HOMEOWNER")
LOCATED AT 3056 W 2325 S, WEST
HAVEN, UTAH

ORDER

Claim No. LRF-2008-1113-06

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:

1. The incident residence is an "owner-occupied residence" as defined in UTAH CODE ANN. § 38-11-102(18);
2. The owner of the incident residence entered into a written contract with an original contractor licensed or exempt from licensure pursuant to Utah Code Title 58, Chapter 55, a real estate developer, or a factory built housing retailer as provided in UTAH CODE ANN. § 38-11-204(4)(a);
3. The homeowner paid the original contractor, real estate developer, or factory built housing retailer in full according to the terms of the contract and any modifications thereto as required by UTAH CODE ANN. § 38-11-204(4)(b);

THIS WARRANT IS PRINTED ON SECURITY PAPER. HOLD TO LIGHT TO VERIFY. DO NOT ACCEPT WITHOUT NOTING WATERMARK. DOCUMENT HAS COLORED BACKGROUND ON WHITE PAPER.

STATE OF UTAH

RICHARD K. ELLIS, UTAH STATE TREASURER
DIVISION OF FINANCE, 2110 STATE OFFICE BUILDING, SALT LAKE CITY, UTAH 84114
STATE VENDORS



Warrant Number
F 8329907

PAYABLE ON
UTAH STATE TREASURER
SALT LAKE CITY, UTAH 84114
31-289
1240

PAY Three Thousand Three Hundred Sixty Seven And 67/100 Dollars

VOID ONE YEAR FROM DATE

01-28-2009

PAY THIS AMOUNT

\$3367.67**

TO THE ORDER OF:

BURTON LUMBER & HARDWARE
PO BOX 27206
SALT LAKE CITY, UT 84127-0206

Richard K. Ellis
DIVISION OF FINANCE

⑈0008329907⑈ ⑆124002890⑆ 153100367736⑈

DETACH BEFORE CASHING
STATE OF UTAH, Division of Finance
2110 State Office Building, Salt Lake City UT 84114

000LRF

Dept	Voucher #	Invoice # / Description	Amount
670	93000000784	2008-1113-05 / LRF PAYMENT	3,367.67

Received 1-19-09

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY FUND CLAIM OF BURTON LUMBER & HARDWARE ("CLAIMANT") REGARDING THE CONSTRUCTION BY BIG BROTHER CONSTRUCTION INC ("NONPAYING PARTY") ON THE RESIDENCE OF TJ BAIN ("HOMEOWNER") LOCATED AT 1714 E 6850 S, UINTAH, UTAH	ORDER
	Claim No. LRF-2008-1113-05

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:

1. The incident residence is an "owner-occupied residence" as defined in UTAH CODE ANN. § 38-11-102(18);
2. The owner of the incident residence entered into a written contract with an original contractor licensed or exempt from licensure pursuant to Utah Code Title 58, Chapter 55, a real estate developer, or a factory built housing retailer as provided in UTAH CODE ANN. § 38-11-204(4)(a);
3. The homeowner paid the original contractor, real estate developer, or factory built housing retailer in full according to the terms of the contract and any amendments thereto as required by UTAH CODE ANN. § 38-11-204(4)(b);

- 1 -

AFFIDAVIT

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

I, ROBERT A. BURTON, being duly sworn on oath depose and say:

1. I am Legal Counsel for Claimant, Burton Lumber & Hardware Co.

2. This Affidavit and the attached documents pertain to the Burton Lumber & Hardware Co. ("Burton Lumber")/Big Brother Construction, Inc. ("Big Brother Construction") claim which has been filed with the Lien Recovery Fund (Fund) with regard to the Second District Court lawsuit, Weber County, and should be referred to in connection with said claim.

3. Between December 13, 2006 and February 12, 2008, Burton Lumber supplied building materials to real property owned by Big Brother Construction and T.J. Bain ("Bain") located at 1714 East 6850 South, Uintah, Utah, more particularly known as: All of Lot 13-R, River Ridge Subdivision, Uintah City, Weber County, Utah (Serial No. 07-667-0013). Burton Lumber's customer, Big Brother Construction, was the general contractor on this job. The last materials were delivered by Burton Lumber to the property on February 12, 2008. (See Customer Aging attached as Exhibit 1).

4. Between August 23, 2007 and August 29, 2007, Burton Lumber supplied building materials to real property owned by Stuart Brink Montgomery and Patti Montgomery ("Montgomery") located at 3056 West 2325 South, West Haven, Utah, more particularly known as: All of Lot 221, Secrist Acres Subdivision Phase 2 (Serial No. 15-422-0021). Burton Lumber's customer, Big Brother Construction, was the general contractor on this job. The last materials were delivered by Burton Lumber to the property on August 29, 2007. (See Customer Aging attached as Exhibit 2).

5. Big Brother Construction was a general contractor licensed as such by the State of Utah during the time Burton Lumber supplied materials to the real properties set forth above. (See Exhibit 3 attached hereto).

6. Payment was not made to Burton Lumber by Big Brother Construction on the Weber County properties. Therefore, within 90 days of last materials provided to the respective properties, Burton Lumber recorded Mechanic's Liens against the above-described properties with the Weber County Recorder.

7. Payment was still not made to Burton Lumber by Big Brother Construction. Therefore, on May 21, 2008, Burton Lumber filed a Complaint in the Second District Court, Weber County, against Wilson Scott. (See Complaint attached hereto as Exhibit 4)

8. Plaintiff filed its lawsuit in this matter on May 21, 2008. This date was within the earlier of 180 days from the date Burton Lumber filed Notices of Claim as to the respective real properties under Section 38-1-7 Utah Code Annotated or 270 days from the completion of the original contract as to the respective real properties pursuant to Subsection 38-1-7(1) Utah Code Annotated.

9. On August 18, 2008, Burton Lumber recovered a Judgment against Big Brother Construction and Michael J. Landrum (See Exhibit 5)

10. On August 26, 2008, Burton Lumber received a partial payment of \$1,336 that it applied to pay off all presently accrued interest on the Bain property and to pay down principal. This payment left the principal amount owing on this property of \$2,612.24 and, as stated, paid off all accrued interest as of that date.

11. On September 10, 2008, a Motion and Order in Supplemental Proceedings was issued by the Court against Big Brother Construction. (See Exhibit 6 attached hereto).

12. On September 10, 2008, a Motion and Order in Supplemental Proceedings was issued by the Court against Michael J. Landrum. (See Exhibit 7 attached hereto).

13. The Davis County Sheriff was unable to serve Big Brother Construction and Michael Landrum because Big Brother Construction had closed its offices and Michael Landrum had moved out of State. (See Exhibit 8 attached hereto).

14. Because Burton Lumber was aware of a previous checking account maintained by Big Brother Construction, Burton Lumber's counsel had the Court issue a Writ of Garnishment against the checking account of Big Brother Construction. The Garnishment was served upon the Garnishee, First National Bank, on September 24, 2008. On October 13, 2008, Burton Lumber's counsel received a check in the amount of \$1,485.29 as a result of the garnishment on Big Brother's account. The check was applied to pay down various miscellaneous invoices for materials provided to defendants on projects other than the ones described above. There are no additional funds available in this bank account.

15. Burton Lumber's Judgment against Big Brother Construction and Michael Landrum documents costs and attorney's fees as of the date of Judgment. Post-judgment attorney's fees were incurred by me and my paralegal, Lorraine Starkie, in the amount of \$1,383. Post-judgment costs have been incurred in the amount of \$150. Total pre-judgment and post-judgment fees have exceeded 15% of qualified services (Utah Code Ann. § 38-11-203(3)(f)). However, an Affidavit of Post-Judgment Fees and Costs is attached hereto as Exhibit 9 for information purposes only as to post-judgment fees.

16. As shown by Exhibits 1 and 2, as of October 25, 2008, \$104.48 is owed in interest on the Big Brother/Bain claim (Lot 13-R River Ridge), and \$1,009.26 is owed in interest on the Montgomery claim (Lot 221, Secrist). Interest on the Montgomery claim is in all likelihood in excess of the interest amount the Lien Recovery Fund is authorized to pay.

17. The amount owed to Burton Lumber for principal on the Bain property totals \$2,612.24, and the amount owed to Burton Lumber for principal on the Montgomery property totals \$1,641.58. Pre-judgment and post-judgment interest is owed to Burton Lumber. Burton Lumber requests that these amounts be calculated by the Lien Recovery Fund pursuant to DOPHL-AP-097 Revised 7/1/03. To assist Fund personnel in making that calculation, Exhibits 1 and 2 show the dates of the outstanding invoices on the respective properties.

18. Pre-judgment fees and costs, as specified in the Judgment, total \$1,279.50. Of this amount, \$466.03 in fees and \$123.18 in costs are attributable to the Big Brother/Bain property (Lot 13-R, River Ridge), and \$306.33 in fees and \$80.97 in costs are attributable to the Montgomery property (Lot 221, Secrist).

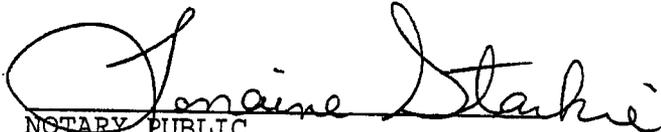
19. Post-judgment costs have been incurred by plaintiff in the amount of \$150. \$76.13 is attributable to the Big Brother/Bain property (13-R, River Ridge), and \$47.85 is attributable to the Montgomery property (Lot 221, Secrist). (See Exhibit 9) The remainder of the costs were attributable to the miscellaneous invoices for which Judgment was entered that were not included in the Bain property or the Montgomery property.

DATED this 12 day of November, 2008.



Robert A. Burton

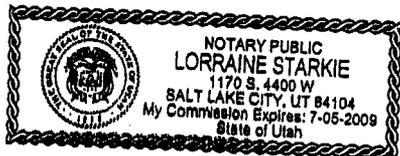
SUBSCRIBED AND SWORN to before me this 12 day of November, 2008.



NOTARY PUBLIC

Residing at Salt Lake City, UT

My Commission Expires: 7-5-09



Robert A. Burton (0516)
Paul E. Mayer (11715)
P.O. Box 27206
Salt Lake City, UT 84127-0206
Telephone: (801) 952-3732
Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
WEBER COUNTY, STATE OF UTAH

BURTON LUMBER & HARDWARE CO.,
a Utah corporation,

Plaintiff,

vs.

BIG BROTHER CONSTRUCTION, INC., a
Utah corporation, MICHAEL J.
LANDRUM, T.J. BAIN, STUART BRINK
MONTGOMERY, PATTI MONTGOMERY,
and DOES 1-20,

Defendants.

MOTION AND ORDER
IN SUPPLEMENTAL
PROCEEDINGS

Civil No.080903288

Judge Baldwin

MOTION

In the above-entitled action, plaintiff moves the court for an order requiring Michael J. Landrum, President and Director of **BIG BROTHER CONSTRUCTION, INC.** to appear before this court to answer questions under oath concerning the assets and property of Big Brother Construction, Inc., and to restrain Big Brother Construction, Inc. from disposing of its non-exempt property pending the hearing. Judgment was entered by the Second District Court on August 18, 2008 against defendant Big Brother

EXHIBIT 6

Construction, Inc. and Michael J. Landrum, jointly and severally, in the amount of \$9,710.47, of which \$8,374.47 is still unpaid, together with post-judgment interest at the rate of 2% per month from August 25, 2008 forward, together with court costs and attorney's fees incurred through collection.

DATED this 9 day of September, 2008.



Robert A. Burton,
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT BIG BROTHER CONSTRUCTION,
INC. by and through its President and Director, Michael J. Landrum:

IT IS ORDERED that, pursuant to the foregoing motion and good cause
appearing, you appear in person before this Court at the time and place shown to answer
questions under oath concerning the property of Big Brother Construction, Inc.

DATE: Tuesday, Oct. 14, 2008 TIME: 1:30 p.m.

PLACE: Second District Court, Weber County
2525 Grant Avenue, Courtroom 2C
Ogden, Utah

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise
dispose of Big Brother Construction's non-exempt property pending this hearing.

If you have been personally served with this order and you fail to appear, the
court may order a warrant for your arrest.

DATED this 10 day of September, 2008.

BY THE COURT:

CLERK

Paul J. Walker
By: Barb Seep



SERVE DEFENDANT'S PRESIDENT/DIRECTOR:

Michael J. Landrum
1558 W. Hillfield Rd., #4
Layton, Utah 84041

Robert A. Burton (0516)
Paul E. Mayer (11715)
P.O. Box 27206
Salt Lake City, UT 84127-0206
Telephone: (801) 952-3732
Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
WEBER COUNTY, STATE OF UTAH

BURTON LUMBER & HARDWARE CO.,
a Utah corporation,

Plaintiff,

vs.

BIG BROTHER CONSTRUCTION, INC., a
Utah corporation, MICHAEL J.
LANDRUM, T.J. BAIN, STUART BRINK
MONTGOMERY, PATTI MONTGOMERY,
and DOES 1-20,

Defendants.

MOTION AND ORDER
IN SUPPLEMENTAL
PROCEEDINGS

Civil No.080903288

Judge Baldwin

MOTION

In the above-entitled action, plaintiff moves the court for an order requiring MICHAEL J. LANDRUM to appear before this court to answer questions under oath concerning his assets, and to restrain Michael J. Landrum from disposing of his non-exempt property pending the hearing. Judgment was entered by the Second District Court on August 18, 2008 against defendant Big Brother Construction, Inc. and Michael J. Landrum, jointly and severally, in the amount of \$9,710.47, of which \$8,374.47 is still

EXHIBIT 7

unpaid, together with post-judgment interest at the rate of 2% per month from August 25, 2008 forward, together with court costs and attorney's fees incurred through collection.

DATED this 9 day of September, 2008.



Robert A. Burton,
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT MICHAEL J. LANDRUM:

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown to answer questions under oath concerning his property.

DATE: Tuesday, Oct. 14, 2008 TIME: 1:30 p.m.

PLACE: Second District Court, Weber County
2525 Grant Avenue, Courtroom 2C
Ogden, Utah

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED this 10 day of September, 2008.

BY THE COURT:
PARLEY R. BALDWIN

CLERK

By: Barb Seef

SERVE DEFENDANT:
Michael J. Landrum
1558 W. Hillfield Rd., #4
Layton, Utah 84041

**Davis County Sheriff's Department
Return of Service**

STATE OF UTAH)
) SS.
COUNTY OF DAVIS)

I hereby certify and return that I received the attached Motion & order on 09/16/2008 00:00 and that paper could not be served for the following reason:

Plaintiff:
BURTON LUMBER & HARDWARE CO

Defendant:
BIG BROTHER CONSTRUCTION INC, MICHAEL J
LANDRUM, TJ BAIN, STUART BRINK
MONTGOMERY, DATTY MONTGOMERY

BIG BROTHER CONTRUCTION IS CLOSED DOWN PER TELEPHONE CALL FROM MIKE. HE IS IN ANOTHER STATE AND IS FILING FOR BANKRUPTCY.

Dated at Farmington, County of Davis, State of Utah this 09/18/2008 11:09:22

BUD E. COX, Sheriff of Davis County, State of Utah

By Deputy Sheriff: George Cannon/RS
CANNON, GEORGE WOC

Court file # 080903288
Paper # 81475

EXHIBIT 8