

# EXECUTION FORMS

## COLLECTION OF THE JUDGMENT

If Plaintiff wins a Judgment, either by default or by trial, Plaintiff may proceed to the actual collection of the Judgment. If the Defendant wins a Judgment, Defendant has the same rights and remedies for collection as the Plaintiff.

Payment of the Judgment is due immediately and payment should be made directly to the Plaintiff. If the parties wish to negotiate a payment plan for the payment of the Judgment, they may do so. The Court will not handle payments or collection. The Judgment is good for 10 years. The parties are advised that if payment is not made voluntarily, there will be costs associated with collection of the Judgment. The Plaintiff must pay the costs initially, but the costs will be added to the Judgment, so the Defendant will ultimately pay the costs when the Judgment is fully collected. Collection of a Judgment can be difficult, time consuming, and costly for both sides. Some costs and difficulties can be avoided if both parties communicate and are reasonable with each other regarding collection.

## WRIT OF EXECUTION

If the Plaintiff does not receive payments in a timely manner or if no payment arrangement is made, Plaintiff may ask the Court to issue a **Writ of Execution**. *(form provided)* A Writ of Execution is an order to the Sheriff or levying officer to assist Plaintiff's collection process. Plaintiff may execute against a savings or checking account, personal property (not a necessity of life), wages, vehicles, campers, or other assets of the Defendant.

Plaintiff will be required to fill out a Praecipe specifically identifying "what" Plaintiff wants to execute against. This includes bank name and address, title and identification numbers, color, make, model and number and any other information that will **specifically identify** the property or item to be seized. Plaintiff must advise the Sheriff or levying officer where the property you wish to have seized is located and any and all other pertinent information.

Plaintiff must research the item Plaintiff wants to have seized to be sure that the item is free from lien. If there is a lien on an item, Plaintiff will be responsible to the lienholder for the amount due.

There is an additional **fee** required for service of the Writ of Execution by the Sheriff or levying officer. These costs can be added to the Judgment as accruing costs. If personal property is seized, the property will be sold at Sheriff's sale and the proceeds, less the costs of sale, will be given to Plaintiff. Any monies collected, such as wages or money retrieved from a savings or checking account, will be distributed to Plaintiff, after the Sheriff or levying officer collects his costs.

When Plaintiff files Writ of Execution, Plaintiff may not get the entire amount due the

first time. It may be necessary to file more than one execution. The Debtor is allowed to withhold a certain percentage from execution to support his family or for the necessities of life. A writ of execution is good for 120 days. Only one writ of execution may be issued at one time. A return of Writ of Execution, with or without anything being received, must be filed with the Court before another Writ of Execution may be issued. A Writ of Execution may be served by any Sheriff in any county of the state.

Writs of Execution are not general - - you **MUST provide specific information** regarding the assets to be seized.

The Writ of Execution must be accompanied by a **Notice of Execution, Praecipe,** and **Notice of Seizure.** *(forms provided)*

### **SUBPOENA DUCES TECUM AND SUPPLEMENTAL HEARING**

If the Plaintiff does not have adequate information regarding Defendant's assets to execute upon, the Plaintiff may have Defendant served with a **Subpoena Duces Tecum.** *(form provided)* There is an additional **fee** to serve the subpoena on Defendant. The subpoena will require Defendant to appear before the Court at a supplemental hearing where Plaintiff can question Defendant to obtain the necessary information to execute on Defendant's property. The subpoena can also require the Defendant to bring specific documents, such as titles to motor vehicles, payroll records, bank statements, etc.

The Subpoena Duces Tecum must be accompanied by a **Praecipe.** *(form provided)*

The Judgment is good for 10 years, so although Plaintiff may have been unable to collect on the Judgment recently, if the debtor should get a job within the time limit, Plaintiff may execute any time within the 10 years. The Judgment will also be recorded against the debtor's credit record.

Plaintiff may also file a "Certificate of Transcript of Docket" with the Clerk of the District Court that will place a lien on any real property (land or home) that the debtor may have. The property cannot be sold without satisfaction of the Judgment prior to sale.

If the Judgment is for automobile damages resulting from an accident and the debtor makes no effort to satisfy the Judgment within 60 days, Plaintiff has an additional alternative. Plaintiff may request that the Driver Improvement Bureau in Helena suspend the debtor's driver's license and/or vehicle registration pursuant to section 61-6-121 MCA.

**Plaintiff MUST notify the Court as soon as the Judgment is satisfied (paid in full).** Plaintiff must file a Notice of Satisfaction of Judgment. *(form provided)* Plaintiff will be responsible if the Judgment is satisfied and NOT cleared from the Debtor's record in Court and may be held liable for damages.

## **Writ of Execution form instructions**

The numbers below are instructions for the corresponding numbered blanks on the Writ of Execution form.

- (1) Print your name as Plaintiff.
- (2) Print the name of the Defendant or Defendants.
- (3) Fill in the case number that has been assigned by the Court.
- (4) Fill in the date of the order granting you Judgment.
- (5) Fill in the amount of the original Judgment.
- (6) Fill in any interest that has accrued from the date of Judgment. The rate of interest is 10% per year.
- (7) Fill in any accrued costs since Judgment, such as additional service fees, or other costs of collection.
- (8) Fill in any payments or moneys that you have collected from Defendant to date.
- (9) Add lines (5), (6), and (7), then subtract line (8) and fill in the total amount presently owing.
- (10) Describe the property to be seized. You must be specific. If it is funds you are seeking with the writ, you must clearly identify the funds and whomever is in possession of the funds. For example, funds in a savings account must be identified by the account number, proper name of the bank possessing the funds and a correct address for the bank. If you are seeking some form of personal property, such as a vehicle, electronic equipment, or tools, you must clearly identify the property. Describe the property by color, make, model, serial or vin number, etc.

Leave the rest of the form blank. The Clerk of Court will complete the remaining information.

\* \* \* You must have an original Writ of Execution and 2 copies.

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

4.11.2014

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<p>(1) _____, Plaintiff(s),</p>	)	
vs.	)	Cause No. (3) _____
	)	<b>WRIT OF EXECUTION</b>
(2) _____, Defendant(s).	)	

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THE STATE OF MONTANA TO THE SHERIFF, CONSTABLE, OR LEVYING OFFICER OF SWEET GRASS COUNTY

WHEREAS, on the (4) \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Plaintiff recovered a Judgment in the above entitled cause against Defendant as follows:

Judgment in the amount of:	(5)\$ _____
Accrued Interest:	(6)\$ _____
Accrued Costs:	(7)\$ _____
Less Credits:	(8)\$ _____
<b>Total Presently owed:</b>	<b>(9)\$ _____</b>

Together with all costs of execution (and/or) for personal property described as follows:

(10) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW, you, the Sheriff, Constable, or Levying Officer, are hereby required to make this sum due on the judgment, with interest, and costs, to satisfy the judgment out of the personal property of the Defendant not exempt from execution on the day on which the judgment was docketed in the county, or at any time hereafter, and return this writ within 120 days after your receipt hereof, with you have done endorsed hereon.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Justice of the Peace

## **Notice of Execution form instructions**

The numbers below are instructions for the corresponding numbered blanks on the Notice of Execution form.

- (1) Print your name as Plaintiff.
- (2) Print the name of the Defendant or Defendants.
- (3) Fill in the case number that has been assigned by the Court.
- (4) Fill in the full name of the bank, business, company, corporation, or individual that has the funds or property that you are attempting to collect.
- (5) Print the name of the Defendant or Defendants.
- (6) Print Defendant's social security number.
- (7) Fill in the amount presently owed, which should be the same amount that appears on line (9) of the Writ of Execution.

Leave the rest of the form blank. The Constable or process server will complete the remaining information.

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

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(1) \_\_\_\_\_, )  
Plaintiff(s), ) Cause No. (3) \_\_\_\_\_  
vs. )  
(2) \_\_\_\_\_, )  
Defendant(s). )

4.11.2014

**NOTICE OF EXECUTION**

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**FAILURE TO ABIDE BY THIS EXECUTION CONSTITUTES  
CONTEMPT OF COURT**

To the Manager, Bookkeeper, Teller, Treasurer, Paymaster, or Clerk of: (4) \_\_\_\_\_

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YOU WILL TAKE NOTICE that all moneys, goods, credits, effects due or owing by you to the following Defendant, (5) \_\_\_\_\_, SS# (6) \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_, all other personal property in your possession or under your control, belonging to the said Defendant named in the Execution, of which the annexed is a copy, is by me attached, and you are hereby notified to pay or transfer the same to myself enough funds from the wages, commissions, or whatever funds are due the Defendant to satisfy a Judgment of record in the amount of (7) \$ \_\_\_\_\_, plus my fees for service and mileage.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Sheriff / Constable / Process Server

## **Praecipe form instructions**

The numbers below are instructions for the corresponding numbered blanks on the Praecipe form.

- (1) Print your name as Plaintiff.
- (2) Print your mailing address and phone number.
- (3) Print your name as Plaintiff.
- (4) Print the name of the Defendant or Defendants.
- (5) Fill in the case number that has been assigned by the Court.
- (6) Print the name of the Defendant or Defendants.
- (7) Print Defendant's social security number.
- (8) Fill in the full name of the bank, business, company, corporation, or individual that has the funds or property that you are attempting to collect and the complete physical address.
- (9) Fill in the amount presently owed, which should be the same amount that appears on line (9) of the Writ of Execution.
- (10) Fill in the date you are signing the Praecipe.
- (11) Sign the Praecipe.
- (12) Print your mailing address, town, state, zip code, and your telephone number.

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(ZIP) \_\_\_\_\_

Phone: \_\_\_\_\_

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

(3) \_\_\_\_\_,

Plaintiff(s),

vs.

(4) \_\_\_\_\_,

Defendant(s).

)  
)  
)  
)  
)  
)  
)

Cause No. (5) \_\_\_\_\_

**PRAECIPE**

4.11.2014

TO THE SHERIFF, CONSTABLE, OR PROCESS SERVER,

Please levy the attached Execution upon the wages, commissions, funds or personal property of the Defendant, (6) \_\_\_\_\_, SS# (7) \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ at his or her employment or banks, etc. at the following address: (8) \_\_\_\_\_

and take into your possession enough funds to satisfy a Judgment of Record in the amount of (9)\$ \_\_\_\_\_, plus your fees for service and mileage. If wages, comply with the applicable Federal Regulations as they pertain to the garnishments.

DATED this (10) \_\_\_\_\_ day of (10) \_\_\_\_\_, 20\_\_\_\_.

(11) \_\_\_\_\_  
Plaintiff

Plaintiff(s) Address:

(12) \_\_\_\_\_  
\_\_\_\_\_ (ZIP) \_\_\_\_\_

Phone: \_\_\_\_\_



## **Notice of Seizure form instructions**

The numbers below are instructions for the corresponding numbered blanks on the Notice of Seizure form.

- (1) Print your name as Plaintiff.
- (2) Print the name of the Defendant or Defendants.
- (3) Fill in the case number that has been assigned by the Court.
- (4) Put the Defendant's name and address.

Leave the rest of the form blank. The Constable or process server will complete the remaining information.

You must include an envelope (#10 business envelope 4.12" x 9.5") properly addressed to Defendant with appropriate postage with the Notice of Seizure so that the Constable or process server can mail a copy to Defendant.

\* \* \* You must have an original Notice of Seizure and 1 copy.

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

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(1) _____, Plaintiff(s),	)	
vs.	)	Cause No. (3) _____
(2) _____, Defendant(s).	)	<b>NOTICE OF SEIZURE</b>
	)	

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4.11.2014

A Writ of Execution has been issued by the above entitled court. The Sheriff, Constable, or Process Server has been instructed to levy that execution upon your property, not exempt by law, to satisfy the Judgment upon which the Writ of Execution is based.

Pursuant to that Writ of Execution, the following wages, monies, or property was seized:

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**NOTICE OF PROPERTY EXEMPT FROM CREDITORS**

Under the law **SOME PROPERTY IS EXEMPT FROM SEIZURE**. Below are listed many common types of exempt property to help YOU decide whether the property is exempt. NOTE: The lists below do NOT contain all possible exemptions. The exemptions listed below do NOT apply to property used as collateral under a note or security interest. Further information may be obtained by examining Title 25, Chapter 13, Part 6, Montana Code Annotated.

1. Wages and Support Payment

Under federal and state law, your wages are exempt up to the larger of the following:

- a. 75% of your net wages; or
- b. 30 times the federal minimum hourly wage for each work week.

NOTE: If you are required to pay maintenance or support for any person, only 50% to 65% of your wages may be exempt, depending on the circumstances.

1. Cash Assistance from the Government

General cash assistance from the government is entirely exempt (for example, Social Security, veterans' pensions, AFDC, and disability payments are entirely exempt). Child support payments may be entirely exempt. The money from any of these sources may be exempt even if it is deposited into a bank account.

1. Motor Vehicle

A truck or car is exempt up to a value of \$2,500.

1. Necessary Personal and Household Property

Personal property such as clothing, household furnishings, animals, and crops are exempt up to \$4,500 total value. (Each item must be worth less than \$600)

1. Tools of Trade

Tools of trade are exempt up to \$3,000 total value.

1. Homestead

your family home may be exempt up to \$100,000. However, to claim this exemption, you must file a form called a Declaration of Homestead with the County Clerk and Recorder.

NOTE REGARDING BANKRUPTCY: If you currently have a case in bankruptcy court, the only valid writ is one issued by the bankruptcy court.

**NOTICE OF RIGHT TO HEARING AND PROCEDURE  
FOR RETURN OF PROPERTY**

If you believe the Sheriff, Constable, or Process Server has taken exempt property, you may request a hearing to determine whether the property is exempt. YOU MUST REQUEST A HEARING WITHIN TEN (10) DAYS (EXCLUDING HOLIDAYS AND WEEKENDS) FROM THE DATE OF SERVICE OF THIS NOTICE AND MUST COMPLY WITH § 25-13-212 MCA. At the hearing you may explain why you believe the property taken is exempt. The judgment creditor may also present evidence. The judge will then decide if the property should be returned to you.

This is an attempt to collect a debt. Any information obtained will be used for that purpose.

**CERTIFICATE OF MAILING**

The undersigned certifies that on \_\_\_\_\_, 20\_\_\_\_, a true and correct copy of the foregoing notice was ( ) personally served ( ) mailed to the Defendant by depositing a copy thereof in the U.S. mail, postage prepaid, addressed as follows: (Plaintiff to provide fully addressed envelope with postage prepaid)

Defendant's Address:

(4) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (ZIP) \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Sheriff / Constable / Process Server

## **Subpoena Duces Tecum form instructions**

The numbers below are instructions for the corresponding numbered blanks on the Subpoena Duces Tecum form.

- (1) Print your name as Plaintiff.
- (2) Print the name of the Defendant or Defendants.
- (3) Fill in the case number that has been assigned by the Court.
- (4) Print the name of the Defendant or Defendants.

Leave the rest of the form blank. The Clerk of Court will complete the remaining information.

\* \* \* You must have an original Subpoena Duces Tecum and 2 copies.

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

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(1) \_\_\_\_\_, )  
Plaintiff(s), ) Cause No. (3) \_\_\_\_\_  
vs. )  
(2) \_\_\_\_\_, ) **SUBPOENA DUCES TECUM**  
Defendant(s). )

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4.11.2014

THE STATE OF MONTANA TO: (4) \_\_\_\_\_

YOU ARE HEREBY COMMANDED to appear before the above-entitled Court in the Sweet Grass County Courthouse on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m., to testify and produce the following;

- All payroll records for the last 90 days showing wages and earnings of the Defendant.
- All banking records and statements for the last 90 days showing check account and savings account balances and deposits in which Defendant has had an interest.
- All titles to motor and recreational vehicles, including mobile homes, motorcycles, boats and trailers upon which Defendant's name appears as an owner of record and/or in which the Defendant has an interest.
- All deeds to any and all real property in which Defendant has an interest and/or upon which Defendant's name appears as an owner of record.
- A listing and inventory of any and all other assets in which Defendant has an interest and/or upon which Defendant's name appears as an owner of record.

**NOTICE TO DEFENDANT: If you fail to appear** in Court at the above date and time, a warrant will be issued for your arrest and **you will be arrested and brought before the Court** for hearing. Upon failure to appear or fail to provide the required information you may be held in contempt of Court and may be fined up to \$500 or jailed for up to 30 days.

DATED \_\_\_\_\_, 20\_\_\_\_.

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Justice of the Peace

## Praecipe form instructions

The numbers below are instructions for the corresponding numbered blanks on the Praecipe form.

\* \* \* **Please note** that the information on this form will be used by the process server to find the Defendant to serve your papers. The more information you provide, the better the chances that the process server can serve the papers quickly and less expensively.

- (1) Print your name as Plaintiff.
- (2) Print your mailing address and phone number.
- (3) Print your name as Plaintiff.
- (4) Print the name of the Defendant or Defendants.
- (5) Fill in the case number that has been assigned by the Court.
- (6) Check the appropriate box to indicate whether it is the Defendant that is to be served, or, in the case of a subpoena, some other individual. If it is a separate individual, please print the appropriate name in the blank provided.
- (7) Print the home address or business address and phone numbers of the person you want served. If you do not have this information, it will be very difficult for the process server to accomplish service. If adequate information is not provided, the process server may return the documents as unable to serve.
- (8) Print the place of business or work of the person you want served, if known.
- (9) Print the address of the place of business or work of the person you want served.
- (10) Provide as much identifying information as possible. Often, individuals will attempt to avoid service of process and may lie to the process server about their identity. Any information you can provide to the process server to help identify the person to be served may help accomplish service if such is the case.
- (11) Provide any information known about the vehicles driven by the person to be served.
- (12) List any places frequented by the individual, such as a favorite bar or hangout.
- (13) List any persons who may know where the individual is, such as relatives or friends and any information, such as address or phone number, so that they can be reached.
- (14) Fill in the date you are signing the Praecipe.
- (15) Sign the Praecipe.

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(ZIP) \_\_\_\_\_

Phone: \_\_\_\_\_

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

4.11.2014

(3) \_\_\_\_\_,

Plaintiff(s),

vs.

(4) \_\_\_\_\_,

Defendant(s).

Cause No. (5) \_\_\_\_\_

**PRAECIPE FOR SERVICE OF  
PROCESS**

TO: (6) ( ) SHERIFF ( ) PROCESS SERVER: \_\_\_\_\_:

Please serve the attached Subpoena Duces Tecum upon the Defendant(s).

Home Address (7) \_\_\_\_\_ (city) \_\_\_\_\_ Home Phone \_\_\_\_\_

Place of Work (8) \_\_\_\_\_ Hours \_\_\_\_\_

Work Address (9) \_\_\_\_\_ (city) \_\_\_\_\_ Work Phone \_\_\_\_\_

Identifying Characteristics: (10)

SS # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ DOB \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Sex: Male / Female

Race \_\_\_\_\_ Height \_\_\_\_\_ Weight \_\_\_\_\_

Hair Color \_\_\_\_\_ Eye Color \_\_\_\_\_ Tattoos \_\_\_\_\_

Other Information: \_\_\_\_\_

Vehicles: (11)

Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_ Plate # \_\_\_\_\_ Yr. \_\_\_\_\_

Description \_\_\_\_\_

Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_ Plate # \_\_\_\_\_ Yr. \_\_\_\_\_

Description \_\_\_\_\_

Other location where the individual may be found: (12) \_\_\_\_\_

Persons who may know the individual's whereabouts: (13) \_\_\_\_\_

DATED this (14) \_\_\_\_\_ day of (14) \_\_\_\_\_, 20\_\_\_\_.

(15) \_\_\_\_\_  
Plaintiff

## Satisfaction of Judgment form instructions

The numbers below are instructions for the corresponding numbered blanks on the Satisfaction of Judgment form.

- (1) Print your name as Plaintiff.
- (2) Print your mailing address and phone number.
- (3) Print your name as Plaintiff.
- (4) Print the name of the Defendant or Defendants.
- (5) Fill in the case number that has been assigned by the Court.
- (6) Fill in the date you are signing the Praecipe.
- (7) Sign the Satisfaction of Judgment.
- (8) Put the Defendant's name and address and **mail a copy of the Satisfaction of Judgment to the Defendant.**
- (9) Sign the Certificate of Service.

File the original Satisfaction of Judgment with the Court.



(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_  
Phone: \_\_\_\_\_

IN THE JUSTICE COURT  
CITY OF BIG TIMBER, SWEET GRASS COUNTY, STATE OF MONTANA  
BEFORE JESSIE CONNOLLY JUSTICE OF THE PEACE

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(3) \_\_\_\_\_, )  
Plaintiff(s), ) Cause No. (5) \_\_\_\_\_  
vs. ) **SATISFACTION OF JUDGMENT**  
(4) \_\_\_\_\_, )  
Defendant(s). )

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4.11.2014

For sufficiently valuable consideration paid to the Plaintiff(s) by the Defendant(s) in the above-entitled action, the Clerk of the above-named Court is requested to enter Satisfaction of said judgment on the record. The Plaintiff acknowledges full and complete satisfaction of the Judgment entered in the above-entitled action.

DATED this (6) \_\_\_\_\_ day of (6) \_\_\_\_\_, 20\_\_\_\_.

(7) \_\_\_\_\_  
Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Satisfaction of Judgment was served upon the Defendant(s) or Defendant's attorney by placing the same in the U.S. mail, postage prepaid, addressed as follows:

Defendant(s) Address:

(8) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(ZIP) \_\_\_\_\_

(9) \_\_\_\_\_  
Plaintiff