



## AlaFile E-Notice

11-CV-2018-900431.00

Judge: BRIAN P HOWELL

To: BARNES NOEL STEVEN  
nbarnes@ago.state.al.us

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

STATE OF ALABAMA ET AL V. AMERICAN PLUMBING AND SEPTIC SERVICE, LLC E  
11-CV-2018-900431.00

The following matter was FILED on 3/12/2019 5:05:56 PM

**T001 GREENSKY, LLC**  
MOTION FOR ENTRY OF BRIEFING SCHEDULE  
[Filer: COX HALEY ANDREWS]

Notice Date: 3/12/2019 5:05:56 PM

KIM MCCARSON  
CIRCUIT COURT CLERK  
CALHOUN COUNTY, ALABAMA  
25 WEST 11TH STREET  
ANNISTON, AL, 36201

256-231-1750  
Kim.McCarson@alacourt.gov



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3/12/2019 5:05 PM  
11-CV-2018-900431.00  
CIRCUIT COURT OF  
CALHOUN COUNTY, ALABAMA  
KIM MCCARSON, CLERK

**STATE OF ALABAMA**

Revised 3/5/08

**Cas**

Unified Judicial System

11-CALHOUN

 District Court
  Circuit Court

CV21

**CIVIL MOTION COVER SHEET**
 STATE OF ALABAMA ET AL V. AMERICAN  
PLUMBING AND SEPTIC SERVICE, LLC E

*Name of Filing Party:* T001 - GREENSKY, LLC

*Name, Address, and Telephone No. of Attorney or Party. If Not Represented.*

 HALEY ANDREWS COX MS.  
400 20TH STREET NORTH  
BIRMINGHAM, AL 35203

*Attorney Bar No.:* AND095

 Oral Arguments Requested
**TYPE OF MOTION****Motions Requiring Fee**

- Default Judgment (\$50.00)  
Joinder in Other Party's Dispositive Motion  
(i.e. Summary Judgment, Judgment on the Pleadings,  
or other Dispositive Motion not pursuant to Rule 12(b))  
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative  
Summary Judgment (\$50.00)  
Renewed Dispositive Motion (Summary  
Judgment, Judgment on the Pleadings, or other  
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other \_\_\_\_\_  
pursuant to Rule \_\_\_\_\_ (\$50.00)

\*Motion fees are enumerated in §12-19-71(a). Fees  
pursuant to Local Act are not included. Please contact the  
Clerk of the Court regarding applicable local fees.

 Local Court Costs \$ 0
**Motions Not Requiring Fee**

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other Motion for Entry of Briefing Schedule  
pursuant to Rule n/a (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously  
with this motion an Affidavit of Substantial Hardship or if you  
are filing on behalf of an agency or department of the State,  
county, or municipal government. (Pursuant to §6-5-1 Code  
of Alabama (1975), governmental entities are exempt from  
prepayment of filing fees)

**Date:**  
3/12/2019 5:04:22 PM

Signature of Attorney or Party  
/s/ HALEY ANDREWS COX MS.

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

\*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



**IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA**

STATE OF ALABAMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CASE NO. CV18-900431
	)	
AMERICAN PLUMBING AND SEPTIC	)	
SERVICE, LLC, et al.,	)	
	)	
Defendants.	)	

**MOTION FOR ENTRY OF BRIEFING SCHEDULE**

Non-party GreenSky, LLC (“GreenSky”) is in receipt of the Receiver’s voluminous “Report of His Investigation of GreenSky Loans,” filed March 7, 2019 (“Receiver’s Report”). In the Receiver’s Report, the Receiver does not analyze each of the loans and make a loan-by-loan determination with respect to each loan. Instead, he lodges serious general allegations against GreenSky, which is not a party to this action, and requests extraordinary relief from the Court. Specifically, he recommends that the Court invalidate *all* American Plumbing’s customer loans that relate to GreenSky, *i.e.*, almost two hundred loans between lending institutions (like Regions Bank and others) that are not parties to this action and borrowers who are likewise not parties to this action. In addition, he also recommends that GreenSky be required to pay American Plumbing’s Receiver’s Estate “at least the value of all loans provided to [American Plumbing] customers.” Receiver’s Report at p. 20.

GreenSky disputes the Receiver’s substantive findings and requests a full and fair opportunity to respond. As a threshold matter, however, GreenSky asserts that there are significant legal (and perhaps even constitutional) problems with the Receiver’s requested relief that should be addressed before the Court moves on to the Receiver’s substantive allegations

against GreenSky. Those issues include, among others, (1) whether there are non-parties who are indispensable parties to any action entertaining the claims recommended by the Receiver, (2) whether there is any basis in law for the relief the Receiver is recommending, (3) whether any recovery by any borrower must be limited to the borrower's actual alleged damage, if any, and (4) whether any recovery must go to the borrower who suffered the alleged damage, not to American Plumbing's Estate.

The Court's Order of October 4, 2018, provided that, at the completion of the Receiver's investigation, "those [loans] that are suspected of being fraudulent will be addressed by the Court at a later hearing." The Receiver's Report contemplates that "[o]bviously, GreenSky will have an opportunity to challenge these recommendations..." Receiver's Report at p. 20. However, the Court has not yet had occasion to set out the procedure that it intends to follow after receipt of the Receiver's Report.

GreenSky respectfully requests that the Court enter a briefing schedule before scheduling any hearing so that GreenSky may first brief—and the Court may first consider—the serious *threshold* legal issues that are raised by the Receiver's Report. GreenSky requests that the Court grant it thirty (30) days to file a motion or brief addressing the significant legal concerns raised by the Receiver's Report; that the Receiver have twenty-one (21) days to respond to GreenSky's briefing; and that GreenSky then have fourteen (14) days to file a reply, if necessary.

*Then*, if the Court is inclined to move forward with the Receiver's substantive allegations and request for relief, GreenSky requests a scheduling conference with the Court, so that a schedule can be entered that affords GreenSky a reasonable opportunity to conduct its own investigation and discovery and then respond substantively to defend against the Receiver's allegations.

Respectfully submitted,

/s/ Haley A. Cox  
*Counsel for Non-Party GreenSky, LLC*

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**CERTIFICATE OF SERVICE**

I certify that on March 12, 2019, the foregoing was filed electronically through the Court's AlaFile system, thereby providing electronic notification to all counsel of record.

/s/ Haley A. Cox  
\_\_\_\_\_  
Of Counsel