

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Asia Pacific Telecom, Inc., a foreign
corporation, also d/b/a Asia Pacific
Networks, et al.,

Defendants.

No. 10 C 3168

Magistrate Judge Morton Denlow

**MOTION FOR APPROVAL AND PAYMENT OF FEES AND EXPENSES OF
RECEIVER AND RECEIVER'S PROFESSIONALS INCURRED FROM AUGUST 1,
2010 THROUGH AUGUST 31, 2011 AND FOR APPROVAL AND PAYMENT OF
OUTSTANDING FEES AND EXPENSES FROM FIRST EXPENSE PERIOD
PREVIOUSLY DENIED ON AN INTERIM BASIS**

Robb Evans & Associates LLC as Receiver of Asia Pacific Telecom, Inc., Repo, B.V., SBN Peripherals, Inc., and their affiliates, subsidiaries, divisions or telephone sales operations, hereby moves the Court for an order approving and authorizing payment of the fees and expenses of the Receiver and the Receiver's professionals incurred from August 1, 2010 through August 31, 2011 ("Second Expense Period") and for approval and payment of the fees and expenses incurred by the Receiver and the Receiver's professionals from the inception of the receivership (May 25, 2010) through July 31, 2010 ("First Expense Period") that were previously denied on an interim basis. This Motion is made pursuant to Local Rule 66.1. The Receiver specifically seeks approval and payment from the assets of the Receivership Defendants the following: (a) Receiver's fees of \$57,715.60 and expenses of \$10,303.52 incurred during the Second Expense Period, (b) legal fees and expenses of the Receiver's lead counsel McKenna Long & Aldridge LLP ("McKenna Firm") of \$70,478.90 incurred during the Second Expense Period, (c) legal fees and expenses of the Receiver's local counsel Shaw Gussis Fishman Glantz

Wolfson & Towbin LLC (“Shaw Firm”) of \$15,965.87 incurred during the Second Expense Period, and (d) Receiver’s fees of \$46,724.29, legal fees incurred to the McKenna Firm of \$7,746.07 and legal fees incurred to the Shaw Firm of \$7,824.50 during the First Expense Period which were not allowed on an interim basis. The total Receiver’s fees and expenses and legal fees and expenses for which approval and payment is sought in this Motion is \$216,758.75, of which \$62,294.86 pertains to the First Expense Period. The Receiver submits good cause exists for the relief sought in this Motion based on the following.

I. INTRODUCTION

This action is a civil enforcement proceeding filed by plaintiff Federal Trade Commission (“FTC”) against defendants Asia Pacific Telecom, Inc. d/b/a Asia Pacific Networks (“Asia Pacific”), Repo, B.V. (“Repo”), SBN Peripherals, Inc. dba SBN Dials (“SBN”), Johan Hendrik Smit Duyzentkunst, also known as Hans Smit (“Mr. Smit”) and Janneke Bakker-Smit Duyzentkunst (“Mrs. Smit”) (collectively “Defendants”), alleging violations of the FTC Act and regulations governing telemarketing activities. The FTC has specifically alleged the defendant companies, under the direction of the Smits, engaged in illegal “robocalling” by which millions of automated calls were placed to consumers with pre-recorded messages for various products. The products in question sold by Defendants’ clients include such items as extended automobile warranties and debt reduction services, and a number of Defendants’ clients were subject to FTC actions for fraudulent and deceptive trade practices involving those products. It is alleged that some of the consumers who received the illegal “robocalls” were on the FTC’s Do Not Call Registry, making the calls illegal for that reason as well as because they violate other telemarketing rules and laws against deceptive trade practices. The FTC alleges it has received thousands of consumer complaints regarding these “robocalls” placed through Defendants’ companies and that Defendants’ activities have caused millions of dollars in consumer losses.

Based on the FTC’s ex parte application and evidence submitted in support thereof, on May 25, 2010 the Court issued a Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why A Preliminary Injunction Should Not Issue (“Temporary Restraining Order”) (Dkt. No. 18). The Temporary Restraining Order appointed

Robb Evans & Associates LLC as the Temporary Receiver over Asia Pacific, Repo, and SBN and their affiliates, subsidiaries, divisions or telephone sales operations (“Receivership Defendants”). Temporary Restraining Order, Section VII. The Court subsequently extended the Temporary Restraining Order and conducted a hearing on the FTC’s application for a preliminary injunction on June 15, 2010, at which time the Court issued its Preliminary Injunction as to Defendants Asia Pacific Telecom, Inc. and Repo B.V. (“Asia/Repo Preliminary Injunction”) (Dkt. No. 34) pursuant to which the Receiver was named permanent receiver of Asia Pacific and Repo. Asia/Repo Preliminary Injunction, Section VII.

The Smits claimed that they were not affiliated with Asia Pacific and that they only were affiliated with SBN, which was in compliance with the FTC Act and regulations. However, the Receiver’s investigation of electronic and other business records of the Receivership Defendants revealed numerous records indicating Mr. Smit was in fact closely affiliated with and in control of Asia Pacific, and the financial records revealed that the Receivership Defendants Asia Pacific, Repo and SBN were operated closely together from a financial standpoint as detailed in the First Report of Robb Evans & Associates LLC as Receiver of the Receivership Defendants (“Receiver’s Report”) filed with the Court on June 29, 2010 (Dkt. No. 38). At the continued hearing on the FTC’s motion for a preliminary injunction conducted on July 1, 2010, the Court issued its Preliminary Injunction as to Defendants Johan Hendrik Smit Duyzentkunst, Janneke Bakker-Smit Duyzentkunst and SBN Peripherals, Inc. (“SBN Preliminary Injunction”) (Dkt. No. 43) pursuant to which the Receiver was appointed permanent receiver of SBN. SBN Preliminary Injunction, Section VII. The Asia/Repo Preliminary Injunction and SBN Preliminary Injunction are hereinafter referred to collectively as the “Injunctions.”

II. SUMMARY OF ADDITIONAL RELEVANT FACTS

A. Proceedings After Issuance of Injunctions and Appointment of Permanent Receiver

The Receiver has continued its investigation after its appointment as permanent receiver under the two Injunctions. In August 2010, the Receiver’s counsel participated in the deposition of Mr. Smit conducted pursuant to Section IX of the Injunctions. The Receiver’s investigation of

the close ties between Mr. Smit and all of the receivership entities, including Asia Pacific and potential receivership assets resulted in the Receiver assisting the FTC in obtaining recovery of \$1.2 million in funds of Asia Pacific from HSBC. The FTC's and Receiver's investigation further determined that Mr. Smit was using an e-mail account, Dalong_Chin@yahoo.com, when conducting certain telemarketing activities, that the account was associated with Asia Pacific and that the e-mail account in question and its records were therefore assets of the receivership. In December 2010, the FTC filed an unopposed motion to compel Yahoo! to turn over the e-mail account records for that account to the Receiver and to grant the Receiver full access to the e-mail account and all records pertaining to that account, which was granted.

The Receiver obtained access to the e-mail account based on that order, and after further investigation by the FTC and the Receiver, it was discovered that the e-mail records had been intentionally deleted before the records were turned over. The investigation into the Dalong_Chin@yahoo.com e-mail account resulted in the FTC filing an application to have defendants Mr. Smit and Mrs. Smit held in contempt of court for spoliation of evidence and violation of the Injunctions. In January 2011, the Receiver's representative Brick Kane submitted a declaration in connection with the FTC's contempt application and subsequently testified at the hearing conducted in April 2011. By order entered May 25, 2011, the Court held that Mr. Smit was in contempt of Court and had intentionally caused the e-mail account records to be deleted but denied the contempt application as to Mrs. Smit.

The FTC and the defendants have conducted extensive discovery in the case. The defendants issued subpoenas to the Receiver seeking records and computer servers, and they deposed the Receiver's representative Kenton Johnson in May 2011. The FTC filed a motion for partial summary judgment which was granted in part and denied in part by the Court's order entered July 26, 2011. After the July 26, 2011 order, the Receiver has been advised the parties have engaged in negotiations aimed at resolving the action, and the defendants have represented in pleadings recently filed with the Court that the parties are close to an agreement that would fully resolve the FTC's claims.

In August 2010, the defendants filed a motion for release of funds from the receivership estate and from the asset freeze against the individual defendants to pay for the defendants' legal fees and expenses in defending this litigation. The motion was initially scheduled for hearing on two-days' notice, the Receiver's local counsel appeared and the hearing was continued to allow the parties an opportunity to review and respond to the substance of the relief sought. The parties and the Receiver reached agreement on an interim payment of fees and costs to defense counsel and the share to be paid from the receivership estate funds. More recently, the Defendants made another motion for release of funds to pay defense counsel in May 2011, which was opposed by the FTC and by the Receiver. Based on the outcome of that hearing, the Receiver released \$75,000 to defense counsel from receivership assets in June 2011 and another \$5,000 in July 2011.

As set forth hereafter, the Receiver has continued its asset investigation in the case. The Receiver has issued records subpoenas and attempted to subpoena various individuals to appear for deposition. At the end of the Second Expense Period, the Receiver was able to locate and serve a deposition subpoena on Tamika Curry and scheduled her deposition to be conducted on October 4, 2011. The defendants filed a motion to quash the deposition subpoena at the end of September 2011. The Receiver opposed the motion to quash, a hearing was conducted and the motion to quash was denied. The Receiver conducted the deposition on October 28, 2011.

The Court has held periodic status conferences since the Court's July 2011 ruling on the FTC's motion for partial summary judgment, and settlement documentation has been exchanged between the FTC and defendants. The next scheduled status conference has been set for December 1, 2011.

B. Prior and Current Fee Motions

The Injunctions each authorize the Receiver to employ attorneys as the Receiver deems necessary or advisable to assist the Receiver in carrying out its duties under the Injunctions. *See* Section VII.B.8 of each of the Injunctions. Section VII.G of each of the Injunctions provides for the Receiver and its counsel to receive reasonable compensation for their services and to be paid

from assets of the Receivership Entities pursuant to requests for payment of compensation filed with the Court and served on the parties periodically during the case.

This is the Receiver's second fee motion and covers the thirteen-month period from August 1, 2010 through August 31, 2011. The Receiver's first fee motion was filed in September 2010 and covered the period from the inception of the receivership on May 25, 2010 through July 31, 2010. The Court conducted a hearing on the first fee motion on September 30, 2010, with District Judge Hart presiding. The Court approved and awarded payment of all expenses of the Receiver and the Receiver's counsel and allowed payment of 50% of the fees incurred by the Receiver and Receiver's counsel during the First Expense Period on an interim basis. In ruling on the First Fee Motion, the Court stated concern about the amount of the fees incurred and requested for the First Expense Period. As the Receiver's Report reflects, the Receiver's members and staff spent considerable time taking possession of documents and electronic records, analyzing and developing extensive preliminary financial reports and summaries concerning the defendants' pre-receivership financial transactions, and reviewing and analyzing the receivership entities' business records and practices. These activities culminated in a detailed Receiver's Report (Doc. No. 38). In most equity receiverships, the initial stages of the receivership are particularly labor-intensive as the Receiver locates and takes possession of records and analyzes the generally voluminous accounting, banking, and business records of the receivership entities and prepares its report. Approximately \$1.3 million in assets have been added to the estate since the end of the First Expense Period.

This Motion is the Receiver's second fee motion. The Receiver seeks approval and payment of the Receiver's and counsel's fees and expenses incurred during the Second Expense Period. The Receiver also requests that the Court review, approve and award payment of the remaining 50% of the unpaid fees of the Receiver and the Receiver's counsel incurred during the First Expense Period.

II. SUMMARY OF SERVICES RENDERED BY THE RECEIVER AND ITS COUNSEL DURING THE SECOND EXPENSE PERIOD

The Receiver's fees and expenses and the status of receipts of the receivership estate through the end of the Second Expense Period are summarized in the financial summary entitled Administrative Expenses by Month and Fund Balance attached as Exhibit 1 to the Declaration of Brick Kane in support of this Motion. The Receiver's services are detailed in the billing/time records of the Receiver's members and staff attached collectively as Exhibit 2 to the Kane Declaration. The fees of the Receiver during the thirteen months comprising the Second Expense Period include Receiver's fees of \$23,879.90, accounting staff fees of \$18,548.40, investigative staff fees of \$102.00, IT Management fees of \$14,175.10 and support staff fees of \$1,010.20 for total Receiver's fees of \$57,715.60 for the period. The Receiver also incurred expenses during the period of \$10,303.52.

The Receiver has incurred legal fees to the Receiver's lead counsel, the McKenna Firm for the Second Expense Period of \$66,483.00 and expenses related to that firm's services of \$3,995.90. The McKenna Firm's fees and expenses are set forth in the time/billing records attached as Exhibit 1 to the Declaration of Gary Owen Caris filed in support of this Motion. In addition, the Receiver has incurred legal fees to the Shaw Firm, which has acted as the Receiver's local counsel in this case. The Receiver has incurred legal fees of \$15,790.50 and costs of \$175.37 for the Shaw Firm's services in the Second Expense Period, and the services of the Shaw Firm are detailed in the billing statements of that firm attached to the Caris Declaration collectively as Exhibit 2. The McKenna Firm and the Shaw Firm have undertaken distinct tasks in the case and have made every effort not to duplicate activities in the case. For example, the McKenna Firm has reviewed and prepared pleadings filed by the Receiver and handled most of the discovery in the case, and the Shaw Firm has prepared for and attended any hearings in the case in which the Receiver required legal counsel. The Shaw Firm has also assisted the Receiver and the McKenna Firm in obtaining certified copies of orders as necessary from the Court and in filing any motions, oppositions or other pleadings with the Court.

A. Investigation of Dalong_Chin@yahoo.com E-Mail Account and Violations of Injunctions

On June 29, 2011, the Receiver filed a detailed Receiver's Report (Doc. No. 38). The Receiver's Report detailed the results of the Receiver's initial investigation into the defendants business activities and financial transactions, and noted that certain business activities associated with Asia Pacific appeared to have been conducted through an e-mail address for Dalong_Chin@yahoo.com. The Receiver's Report suggested that there was substantial uncertainty that Dalong Chin was in fact a real person but that the name appeared to be one that was assumed in connection with certain business and telemarketing activities of the defendants, in particular Asia Pacific. The Receiver's Report also detailed the Receiver's investigation into the records recovered from Mr. Smit's home office, including Asia Pacific contracts and an electronic signature for Dalong Chin among numerous other records. The Receiver's investigation of Asia Pacific and Dalong Chin also included an investigation overseas in Hong Kong and by communication with one of the persons designated as a representative of Asia Pacific located in Saipan.

The Receiver's Report also included a preliminary financial analysis of the income and expenses of the receivership entities, the assets of the receivership entities and payments to Mr. Smit from the receivership entities. One of the Receiver's deputies also appeared in Court at the request of the FTC at the continued preliminary injunction hearing conducted July 1, 2010 and was prepared to testify if necessary. The Receiver's investigatory activities during the First Expense Period are set forth in more detail in the Receiver's Report and in the first fee motion, of which the Receiver requests the Court take judicial notice in further support of this second fee motion.

The Receiver's investigation continued in the Second Expense Period with the Receiver's counsel participating in the deposition of Mr. Smit in August 2010 which was conducted pursuant to Section IX of the Injunctions and was aimed at discovering information regarding assets and documents concerning the business transactions of the Defendants, among other things. The Receiver's counsel prepared for and attended the deposition of Mr. Smit. The

testimony from that deposition assisted in the subsequent prosecution of the contempt application against Mr. Smit.

Thereafter, the Receiver made attempts to gain access to the Dalong Chin e-mail account at Yahoo! but was unable to obtain access until the Court granted the FTC's unopposed motion to compel Yahoo! to turn over the e-mail account records to the Receiver. The Receiver determined the e-mail contents had been substantially deleted, leading to the FTC's contempt application against Mr. Smit and his spouse. The Receiver assisted in the FTC's contempt application by providing a declaration by Brick Kane in support of the application which was reviewed by the Receiver's counsel, and the Receiver's deputy, Brick Kane, prepared for and testified at the contempt hearing in April 2011. The Receiver's IT Management personnel assisted in the analysis of the Yahoo! e-mail account records and other sources of electronic communications available from the records gathered and preserved at the Smits' residence and a separate colocation facility in downtown Los Angeles addressed in the Receiver's Report.

The Receiver has also continued its asset investigation through records subpoenas issued by the Receiver's counsel. The Receiver's counsel has issued a total of five records subpoenas to four different financial institutions along with supplemental records requests for specific transaction documents subject to the subpoenas. These records provided evidence of unusual transfers of funds from Asia Pacific through third party accounts and unusual cash withdrawals from those accounts. At the end of the Second Expense Period in August 2011, the Receiver's counsel prepared deposition subpoenas for various individuals and attempted to serve those subpoenas to obtain their deposition testimony. The Receiver was able to locate and serve one deponent, Tamika Curry.

B. Receiver's Recovery of Receivership Funds

As set forth in the Receiver's Report and the Receiver's first fee motion, the Receiver's analysis of financial and banking records obtained from Smit's home office disclosed approximately \$272,000 in an overseas account that was property of the receivership entities. The Receiver caused Mrs. Smit to repatriate those assets and wire transfer those funds to the Receiver.

The Receiver's investigation of Dalong Chin and the relationship between Mr. Smit and all of the receivership entities, including Asia Pacific, assisted the FTC and resulted in \$1.2 million in additional funds held in overseas accounts held by Asia Pacific being returned to the receivership estate. In August 2010, the estate received a wire transfer in the sum of \$1 million and in September 2010 the estate received a wire transfer of an additional \$200,000 from Asia Pacific accounts at HSBC overseas. These transfers were facilitated by Erick Van Der Maas.

The Receiver located additional funds belonging to the receivership estate that were held in an account of SBN. Those funds, in excess of \$93,000, were turned over to the Receiver based on the Receiver's demands in January 2011. In all, during the Second Expense Period, over \$1.3 million has been turned over to the receivership estate.

C. Discovery Matters

The FTC and defendants sought a protective order in the case to protect confidential, personal identifying information and financial information that may be contained in documents produced or filed in the case and other similar confidential information. The Receiver and its counsel reviewed the terms and conditions of the proposed protective order, provided comments and agreed to be bound to its terms.

In addition to the Receiver's participating in the deposition of Mr. Smit, the defendants served the Receiver with discovery seeking substantial records and electronic data. The defendants also requested that a representative of the Receiver appear for deposition.

With respect to the production of documents, the Receiver's counsel analyzed the production requests and potential limitations and privileges pertaining to the documents sought. The production requests were broad and included not only records of the receivership defendants but also records pertaining to the Receiver's investigation. The Receiver's IT Management personnel initially reviewed and preserved records recovered from both the Smits' residence and a colocation facility in downtown Los Angeles. Later, during the Second Expense Period, the Receiver's IT Management personnel performed extensive searches to retrieve and prepare electronic data for turnover to the defendants in response to their discovery requests. The Receiver's counsel had a number of discussions with the defendants' counsel to address the

scope and nature of the records sought and coordinate the production of the records. The Receiver's counsel and the Receiver determined the responsive records, and the Receiver prepared the documents and servers with electronic data for production. The Receiver's counsel met with and prepared the Receiver's deputy, Kent Johnson, for his deposition and attended the deposition with the Receiver's deputy.

D. Defendants' Request for Payment of Defense Counsel Fees

Counsel for defendants have made multiple requests for payment of their defense costs from frozen assets of the individual defendants and from assets of the receivership estate. The Defendants' counsel has made two motions for release of funds to pay defense counsel fees and expenses. The Receiver and the Receiver's counsel have reviewed and evaluated the requests, the proper source of funding and the amounts. The Receiver and the FTC each filed oppositions to the second motion for release of funds. The Court later ordered the payment of \$160,000 in fees and expenses, and the Receiver released \$75,000 in June 2011 and another \$5,000 in July 2011 from receivership funds representing 50% of that sum. In total, \$163,000 in receivership funds have been paid to defense counsel from the receivership estate to date.

E. Receiver's Financial Reconstruction, Addressing 401K Plan and Other Administrative Tasks

The Receiver also continued its work to evaluate and reconstruct the financial transactions of the receivership defendants. The Receiver's accounting staff continued to analyze the financial and banking records available and update its analysis of the transfers and financial activities of the receivership defendants.

The Receiver and the Receiver's counsel, the McKenna Firm, have also addressed issues pertaining to a 401K plan sponsored by one of the receivership defendants, SBN Peripherals, Inc. The Receiver is required under applicable law to take certain administrative steps to terminate the 401K plan in light of the receivership entity's cessation of business and to distribute the plan assets. The McKenna Firm has assisted the Receiver in taking those administrative steps to wind up the plan, file necessary tax and other forms and distribute its funds.

The Receiver's accounting and other staff continue to handle administrative aspects of the case, including any tax returns for the receivership entities and performing bank reconciliations for the receivership funds. The Receiver continues to respond to calls that may be received from creditors or others with an interest in the estate.

F. Attorneys' Services

As addressed above, the McKenna Firm as lead counsel for the Receiver has addressed discovery by and propounded to the Receiver, including preparing for and appearing at two depositions during the Second Expense Period. The McKenna Firm prepared and served the Receiver's subpoenas for records and for third party witness depositions. The McKenna Firm has prepared the pleadings that have been filed in the case, including the Receiver's first fee motion and all supporting pleadings and the Receiver's opposition to the defendants' motion to release funds to defense counsel, as well as reviewing and assisting in revisions to the Receiver's Report and reviewing the Receiver's declaration filed in support of the contempt application. The McKenna Firm has also assisted the Receiver in terminating the 401K plan as well as provided advice and assistance in response to the numerous litigation and operational issues that have arisen during the Receiver's administration of the case and recovery of funds for the estate.

The Shaw Firm has performed substantially different tasks and has been responsible for attendance and argument on the Receiver's behalf at all hearings in the case at which the Receiver has been represented. The Shaw Firm has reviewed and filed the Receiver's pleadings with the Court and ensured compliance with local rules and practice in those filings. The Shaw Firm assisted the Receiver in responding to certain aspects of the discovery propounded to the Receiver based on its familiarity with one of the receivership estates for which the defendants sought records from the Receiver.

III. THE RECEIVER'S AND COUNSEL'S FEES ARE REASONABLE AND SHOULD BE PAID

It is a fundamental tenet of receivership law that expenses of administration incurred by the receiver, including those of the receiver, his counsel and others employed by him, constitute priority expenses for which compensation should be paid from the assets of the receivership. As

explained in the leading treatise Clark on Receivers:

The obligations and expenses which the court creates in its administration of the property are necessarily burdens on the property taken possession of, and this, irrespective of the question who may be the ultimate owner, or who may have the preferred lien, or who may invoke the receivership. The appointing court pledges its good faith that all duly authorized obligations incurred during the receivership shall be paid.

2 Clark, Ralph Ewing, A Treatise on the Law and Practice of Receivers § 637, p. 1052 (3rd ed. 1992).

The Receiver is an officer of the Court charged with many duties under the Court's receivership orders, many of which have no relationship to recovery of assets or increasing the funds available for distribution to creditors. The Court has broad discretion in determining the reasonableness of fees to be awarded a receiver. *See In re San Vicente Medical Partners Ltd.*, 962 F. 2d 1402, 1409-1410 (9th Cir. 1992). The Court may evaluate the time and effort expended by the Receiver with respect to specific projects and aspects of the administration of the estate, and may look to a number of different factors under the case law in approving receiver's and counsel's fees. *In re San Vicente Medical Partners Ltd.*, 962 F. 2d at 1409-1410. Because of the nature of the administrative and other services required in receiverships, the "benefit" a receiver confers on receivership property cannot be determined based solely on the increase or decrease in the value of property in the receiver's possession. As the Court explained in *Securities and Exchange Commission v. Elliott*, 953 F. 2d 1560, 1577 (11th Cir. 1992):

[I]t is sometimes difficult to ascertain what type of benefits a receiver has bestowed on receivership property. . . .

[A] benefit to a secured party may take more subtle forms than a bare increase in monetary value. Even though a receiver may not have increased, or prevented a decrease in, the value of the

collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation. [Citations omitted.]

Securities and Exchange Commission v. Elliott, 953 F. 2d at 1577.

The Receiver and counsel have performed numerous tasks and administrative duties as provided under the receivership orders, including investigating and analyzing voluminous business, financial and banking records pertaining to the receivership entities and their telemarketing activities and fraudulent transfers of funds. The Receiver has helped to recover almost \$1.6 million in funds in total. The Receiver performed extensive investigation into electronic files and records. The Receiver performed a reconstruction of the financial transactions of the receivership entities and their transfers and transactions with the Smits.

The Receiver has been assisted by counsel throughout the case. The Receiver's counsel has filed multiple sets of pleadings, helped prepare and respond to discovery, has participated in and defended depositions and has provided advice and assistance to the Receiver in its numerous administrative tasks. The Shaw Firm has appeared and represented the Receiver as necessary at those hearings, providing a cost-effective division of labor between the McKenna Firm as lead counsel and the Shaw Firm as local counsel.

This motion establishes that the Receiver, its staff and its counsel rendered reasonable and necessary services for the receivership estate since the commencement of the receivership that were beneficial to the estate. *See Federal Trade Commission v. Capital Acquisitions & Management Corp.*, 2005 U.S. Dist. LEXIS 18504 (N.D. Ill. August 26, 2005). The Receiver submits the fees are reasonable in light of the services rendered and the results obtained, and that the fees and expenses requested should be awarded in their entirety. As set forth above and in Exhibit 1 to the Declaration of Brick Kane in support of the Motion, there are sufficient assets in the receivership estate to allow for payment of the fees and expenses. After deducting the fees and expenses of the Receiver and its professionals sought in this motion, including those not approved on an interim basis incurred during the First Expense Period, as of August 31, 2011, the receivership estate had a net fund balance of almost \$1.1 million.

Under LR 66.1(a)(1), the Court has discretion to fix the allowance of compensation of the Receiver and its counsel. Pursuant to Section VII.G of the Injunctions, the Receiver has provided notice of this Motion by serving the parties to the case or their counsel and all other parties who have filed appearances in the case. In addition, the Receiver will post a copy of the Motion and supporting declarations, without copies of the voluminous time/billing records, on the Receiver's web site for this case (www.robbevans.com/html/asiapactel.html). In addition, the Receiver will provide a complete copy of the Motion to any interested party who requests a copy, to the extent that party has not been served with the Motion.

IV. CONCLUSION AND PRAYER FOR RELIEF

Based on this Motion, on the supporting declarations of Brick Kane and Gary Owen Caris filed and served concurrently herewith, on the pleadings, records and files of the Court of which the Receiver requests the Court take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence, including without limitation the Receiver's Report (Doc. No. 38), the Temporary Restraining Order, the Asia/Repo Preliminary Injunction and the SBN Preliminary Injunction, and the Receiver's first fee motion (Doc. Nos. 67, 68, 70, 71, 75 (Order) and 99 (transcript of September 30, 2010 hearing on motion)) and on such additional oral and documentary evidence and arguments of counsel as may be presented by the Receiver in support of this Motion, the Receiver respectfully requests that the Court grant relief as follows:

1. That the Court determine that notice of this Motion and the opportunity for hearing by the interested parties, by service of the Motion on all parties to this action and all other persons who have requested special notice, as reflected in the ECF records, and posting of the Motion and the supporting declarations¹ on the Receiver's web site is appropriate and sufficient under the circumstances;

¹ Copies of the declarations will be posted to the Receiver's web site without copies of the billing statements for the Receiver and counsel because of the volume of those materials. A complete copy of the Motion with copies of such billing statements will be provided upon written request to the Receiver or its counsel.

2. That the Court approve all fees and expenses of the Receiver and its professionals incurred during the Second Expense Period, as reflected in this Motion, and that the Court authorize payment thereof from the assets of the receivership estate;

3. That the Court approve and authorize payment of the remaining unpaid fees and expenses of the Receiver and the Receiver's attorneys incurred during the First Expense Period as set forth above in this Motion and addressed in detail in the first fee motion (Doc. Nos. 67, 68, 70, 71, 75 (Order) and 99 (transcript of September 30, 2010 hearing on motion)); and

4. For such other and further relief as the Court may deem just and proper.

DATED: November 10, 2011

Respectfully Submitted,

McKENNA LONG & ALDRIDGE LLP

By: /s/ Gary Owen Caris

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and have made every effort not to duplicate activities in the case. For example, the McKenna Firm has reviewed and prepared pleadings filed by the Receiver and handled most of the discovery in the case, and the Shaw Firm has prepared for and attended any hearings in the case in which the Receiver required legal counsel. The Shaw Firm has also assisted the Receiver and the McKenna Firm in obtaining certified copies of orders as necessary from the Court and in filing any motions, oppositions or other pleadings with the Court.

3. This declaration is filed in support of the Receiver's motion for approval and payment of fees and expenses of the Receiver and its professionals incurred during the period from August 1, 2010 through August 31, 2011 ("Second Expense Period). The Receiver has incurred attorneys' fees of Receiver's lead counsel, the McKenna Firm for the Second Expense Period of \$66,483.00 and expenses related to that firm's services of \$3,995.90. The McKenna Firm's fees and expenses are set forth in the time/billing records attached as Exhibit 1 to the Declaration of Gary Owen Caris filed in support of this Motion. In addition, the Receiver has incurred legal fees to the Shaw Firm, which has acted as the Receiver's local counsel in this case. The Receiver has incurred legal fees of \$15,790.50 and costs of \$175.37 for the Shaw Firm's services in the Second Expense Period. The services of the McKenna Firm are detailed in the McKenna Firm's billing statements attached hereto collectively as Exhibit 1, and the services of the Shaw Firm are detailed in the billing statements of that firm attached hereto collectively as Exhibit 2. The time records, Exhibits 1 and 2, as well as the time records for the Receiver and his staff and accountants, have been redacted where appropriate to preserve descriptions containing confidential, tactical, strategic, investigatory, attorney-client privileged and/or attorney work-product information.

4. The Court conducted a hearing on the first fee motion on September 30, 2010, with District Judge Hart presiding. The Court approved and awarded payment of all expenses of the Receiver and the Receiver's counsel and allowed payment of 50% of the fees incurred by the Receiver and Receiver's counsel during the First Expense Period on an interim basis.

5. In August 2010, I participated in the deposition of Mr. Smit conducted pursuant to Section IX of the Preliminary Injunctions which was aimed at discovering information regarding

assets and documents concerning the Defendants' business transactions, among other things. In addition, in August 2010, the defendants filed a motion for release of funds from the receivership estate and from the asset freeze against the individual defendants to pay for the defendants' legal fees and expenses in defending this litigation. The motion was initially scheduled for hearing on two-days' notice. The Receiver's local counsel, Ira Bodenstein of the Shaw Firm, appeared, and the hearing was continued to allow the parties an opportunity to review and respond to the substance of the relief sought. The parties and the Receiver reached agreement on an interim payment of fees and costs to defense counsel and the share to be paid from the receivership estate funds. More recently, the Defendants made another motion for release of funds to pay defense counsel in May 2011, to which my firm prepared and filed written opposition on behalf of the Receiver. Opposition was also filed by the FTC.

6. The FTC and defendants sought a protective order in the case to protect confidential, personal identifying information and financial information that may be contained in documents produced or filed in the case and other similar confidential information. The Receiver and my firm reviewed the terms and conditions of the proposed protective order, provided comments and agreed to be bound to its terms.

7. The defendants also served the Receiver with discovery seeking substantial records and electronic data. The defendants also requested that a representative of the Receiver appear for deposition. With respect to the production of documents, the McKenna Firm analyzed the production requests and potential limitations and privileges pertaining to the documents sought. The production requests were broad and included not only records of the receivership defendants but also records pertaining to the Receiver's investigation. The McKenna Firm had a number of discussions with the defendants' counsel to address the scope and nature of the records sought and coordinate the production of the records. The Receiver with the assistance and advice of my firm determined the responsive records for production. I also met with and prepared the Receiver's deputy, Kenton Johnson, for his deposition and attended the deposition with the Receiver's deputy.

8. My firm has issued a total of five records subpoenas to four different financial institutions along with supplemental records requests for specific transaction documents subject to the subpoenas. These records provided evidence of unusual transfers of funds from Asia Pacific Telecom through third party accounts and unusual cash withdrawals from those accounts. At the end of the Second Expense Period, my firm was able to locate and serve a deposition subpoena on Tamika Curry and scheduled her deposition to be conducted on October 4, 2011. The defendants filed a motion to quash the deposition subpoena at the end of September 2011. The Receiver opposed the motion to quash, a hearing was conducted and the motion to quash was denied. On behalf of the Receiver, I conducted the deposition on October 28, 2011.

9. The McKenna Firm has also addressed with the Receiver issues pertaining to a 401K plan sponsored by one of the receivership defendants, SBN Peripherals, Inc.. The McKenna Firm has assisted the Receiver in taking the necessary administrative steps to wind up the plan, file necessary tax and other forms and distribute its funds.

10. In terms of the division of labor between the McKenna Firm and the Shaw firm, the McKenna Firm as lead counsel for the Receiver has addressed discovery by and propounded to the Receiver, including preparing for and appearing at two depositions during the Second Expense Period. The McKenna Firm prepared and served the Receiver's subpoenas for records and for third party witness depositions. The McKenna Firm has prepared the pleadings that have been filed in the case, including the Receiver's first fee motion and all supporting pleadings and the Receiver's opposition to the defendants' motion to release funds to defense counsel, as well as reviewing and assisting in revisions to the Receiver's Report and reviewing the Receiver's declaration filed in support of the contempt application. The McKenna Firm has also assisted the Receiver in terminating the 401K plan as well as provided advice and assistance in response to the numerous litigation and operational issues that have arisen during the Receiver's administration of the case and recovery of funds for the estate.


11. The Shaw Firm has performed substantially different tasks and has been responsible for attendance and argument on the Receiver's behalf at all hearings in the case at which the Receiver has been represented. The Shaw Firm has reviewed and filed the Receiver's

pleadings with the Court and ensured compliance with local rules and practice in those filings. The Shaw Firm assisted the Receiver in responding to certain aspects of the discovery propounded to the Receiver based on its familiarity with one of the receivership estates for which the defendants sought records from the Receiver.

12. Lesley Hawes and I have represented the Receiver through the McKenna Firm and are lead counsel for the Receiver. I have practiced for over 30 years and Lesley Hawes has practiced for over 25 years. Our practices have involved a range of complex state, federal and bankruptcy court litigation matters. I have specialized in representing receivers in federal equity receiverships for over twelve years, and Lesley Hawes has specialized in representation of receivers in federal equity receiverships for approximately ten years. I believe the fees requested by this motion are reasonable given the nature and quality of the services rendered and the time expended.

13. I am a partner in the McKenna Firm and am familiar with the methods and procedures used to create, record and maintain billing records for the firm's clients. The billing summaries attached hereto as Exhibit 1 are prepared from computerized time records prepared contemporaneously with the services rendered by each attorney and paralegal billing time to this matter. These computerized records are prepared in the ordinary course of business by the attorneys and paralegals employed by the firm who have a business duty to accurately record their time spent and services rendered on the matters on which they perform work. The time records are transferred into a computerized billing program that generates monthly invoices under the supervision of the firm's accounting department. Based upon my experience with the firm, I know the firm's methods and procedures for recording and accounting for time and services for its clients are reliable and accurate.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 9 day of November 2011 at Los Angeles, California.



GARY OWEN CARIS

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Asia Pacific Telecom, Inc., a foreign
corporation, also d/b/a Asia Pacific
Networks, et al.,

Defendants.

No. 10 C 3168

Magistrate Judge Morton Denlow

**DECLARATION OF BRICK KANE IN SUPPORT OF MOTION FOR APPROVAL AND
PAYMENT OF FEES AND EXPENSES OF RECEIVER AND RECEIVER'S
PROFESSIONALS INCURRED FROM AUGUST 1, 2010 THROUGH AUGUST 31, 2011
AND FOR APPROVAL AND PAYMENT OF OUTSTANDING FEES AND EXPENSES
FROM FIRST EXPENSE PERIOD PREVIOUSLY DENIED ON AN INTERIM BASIS**

I, Brick Kane, declare:

1. I am the President and Chief Operating Officer of Robb Evans & Associates LLC, the entity that has been appointed as Receiver of defendants Asia Pacific Telecom, Inc. d/b/a Asia Pacific Networks ("Asia Pacific"), Repo, B.V. ("Repo"), SBN Peripherals, Inc. d/b/a SBN Dials ("SBN"), and their affiliates, subsidiaries, divisions or telephone sales operations ("Receivership Defendants"). I have personal knowledge of the matters set forth in this declaration or have gained knowledge of these matters based upon my supervision of other members and staff of Robb Evans & Associates LLC involved in the day to day management of this receivership estate. If called upon to testify as to these matters, I could and would competently testify thereto.

2. On May 25, 2010, the Court issued a Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why A Preliminary Injunction Should Not Issue ("Temporary Restraining Order"). The Temporary Restraining Order appointed Robb Evans & Associates LLC as the Temporary Receiver over Asia Pacific, Repo, and SBN and their

affiliates, subsidiaries, divisions or telephone sales operations (“Receivership Defendants”). On June 15, 2010, the Court issued its Preliminary Injunction as to Defendants Asia Pacific Telecom, Inc. and Repo B.V. (“Asia/Repo Preliminary Injunction”) pursuant to which the Receiver was named permanent receiver of Asia Pacific and Repo. At a continued hearing on the FTC’s motion for a preliminary injunction conducted on July 1, 2010, the Court issued its Preliminary Injunction as to Defendants Johan Hendrik Smit Duyzentkunst, Janneke Bakker-Smit Duyzentkunst and SBN Peripherals, Inc. (“SBN Preliminary Injunction”) pursuant to which the Receiver was appointed permanent receiver of SBN. The Asia/Repo Preliminary Injunction and SBN Preliminary Injunction are hereinafter referred to collectively as the “Injunctions.”

3. This declaration is filed in support of the Receiver’s second motion for approval and payment of fees and expenses of the Receiver and the Receiver’s professionals covering the period from August 1, 2010 through August 31, 2011 (“Second Expense Period”). The Receiver’s motion also seeks approval and authorization for payment of the remaining unpaid fees of the Receiver and the Receiver’s professionals incurred from the inception of the receivership through July 31, 2010 (“First Expense Period”), representing 50% of the fees incurred by the Receiver and his professionals during the First Expense Period, which were denied on an interim basis. For this Second Expense Period, the Receiver seeks approval and authorization to pay from receivership assets Receiver’s fees of \$57,715.60 and expenses of \$10,303.52 incurred during the Second Expense Period, legal fees and expenses of the Receiver’s lead counsel McKenna Long & Aldridge LLP (“McKenna Firm”) of \$70,478.90 incurred during the Second Expense Period, and legal fees and expenses of the Receiver’s local counsel Shaw Gussis Fishman Glantz Wolfson & Towbin LLC (“Shaw Firm”) of \$15,965.87 incurred during the Second Expense Period.

4. The Receiver also seeks approval and payment of Receiver’s fees of \$46,724.29, legal fees incurred to the McKenna Firm of \$7,746.07 and legal fees incurred to the Shaw Firm of \$7,824.50 during the First Expense Period which were not allowed on an interim basis. In ruling on the First Fee Motion, the Court stated concern about the amount of the fees incurred and requested for the First Expense Period. As the Receiver’s Report reflects, the Receiver’s

members and staff spent considerable time taking possession of documents and electronic records, analyzing and developing extensive preliminary financial reports and summaries concerning the defendants' pre-receivership financial transactions, and reviewing and analyzing the receivership entities' business records and practices. These activities culminated in a detailed Receiver's Report (Doc. No. 38). In most equity receiverships, the initial stages of the receivership are particularly labor-intensive as the Receiver locates and takes possession of records and analyzes the generally voluminous accounting, banking, and business records of the receivership entities and prepares its report. Approximately \$1.3 million in assets have been added to the estate since the end of the First Expense Period.

5. The Receiver's and counsel's fees and expenses and the status of receipts of the receivership estate during the Second Expense Period are summarized in the financial summary entitled Administrative Expenses by Month and Fund Balance ("Administrative Expense Summary") attached hereto as Exhibit 1. The Receiver's services are detailed in the billing/time records of the Receiver's members and staff attached hereto collectively as Exhibit 2. The Receiver's time records have been redacted by the Receiver's counsel to protect attorney-client privileged and other confidential or sensitive communications and information, as explained in the Declaration of Gary Owen Caris filed in support of this fee motion. The fees of the Receiver during the Second Expense Period include Receiver's fees of \$23,879.90, accounting staff fees of \$18,548.40, investigative staff fees of \$102.00, IT Management fees of \$14,175.10 and support staff fees of \$1,010.20 for total Receiver's fees of \$57,715.60 for the period. The Receiver also incurred expenses during the period of \$10,303.52. The Receiver's counsel's fees are addressed in the Declaration of Gary Owen Caris in support of this motion.

6. On June 29, 2011, the Receiver filed a detailed Receiver's Report (Doc. No. 38). The Receiver's Report detailed the results of the Receiver's initial investigation into the defendants business activities and financial transactions, and noted that certain business activities associated with Asia Pacific appeared to have been conducted through an e-mail address for Dalong_Chin@yahoo.com. The Receiver's Report indicates that there was substantial uncertainty that Dalong Chin was in fact a real person but that the name appeared to be one that

was assumed in connection with certain business and telemarketing activities of the defendants, in particular Asia Pacific. The Receiver's Report also detailed the Receiver's investigation into the records recovered from Mr. Smit's home office, including Asia Pacific contracts and an electronic signature for Dalong Chin among numerous other records. The Receiver's investigation of Asia Pacific and Dalong Chin also included an investigation overseas in Hong Kong and by communication with one of the persons designated as a representative of Asia Pacific located in Saipan.

7. The Receiver's Report also included a preliminary financial analysis of the income and expenses of the receivership entities, the assets of the receivership entities and payments to Mr. Smit from the receivership entities. The Receiver's representative, Kenton Johnson, appeared in Court at the request of the FTC at the continued preliminary injunction hearing conducted July 1, 2010 and was prepared to testify if necessary. The Receiver's investigatory activities during the First Expense Period are set forth in more detail in the Receiver's Report and in the first fee motion, of which the Receiver requests the Court take judicial notice in further support of this second fee motion.

8. During the Second Expense Period, the Receiver's investigation continued with the Receiver's counsel participating in the deposition of Mr. Smit in August 2010. Further, the Receiver's IT Management staff made attempts to gain access to the Dalong Chin e-mail account at Yahoo! but was unable to obtain access until the Court granted the FTC's unopposed motion to compel Yahoo! to turn over the e-mail account records to the Receiver. The Receiver's IT Management personnel assisted in the analysis of the Yahoo! e-mail account records and other sources of electronic communications available from the records gathered and preserved at the Smits' residence and a separate colocation facility in downtown Los Angeles addressed in the Receiver's Report. The Receiver determined the e-mail contents of the Dalong Chin e-mail account with Yahoo! had been substantially deleted, leading to the FTC's contempt application against Mr. Smit and his spouse. The Receiver assisted in the FTC's contempt application by providing a declaration by me in support of the application which was reviewed by the Receiver's counsel, and I prepared for and testified at the contempt hearing in April 2011.

9. The Receiver's members and staff have also continued their asset investigation through records subpoenas issued by the Receiver's counsel. The Receiver's counsel has issued a total of five records subpoenas to four different financial institutions along with supplemental records requests for specific transaction documents subject to the subpoenas. These records were analyzed by the Receiver and provided evidence of unusual transfers of funds from Asia Pacific through third party accounts and unusual cash withdrawals from those accounts. At the end of the Second Expense Period in August 2011, the Receiver's counsel prepared deposition subpoenas for various individuals and attempted to serve those subpoenas to obtain their deposition testimony. The Receiver was able to locate and serve one deponent, Tamika Curry.

10. The Receiver's analysis of financial and banking records obtained from Smit's home office disclosed approximately \$272,000 in an overseas account that was property of the receivership entities. The Receiver caused Mr. Smit to repatriate those assets and wire transfer those funds to the Receiver during the First Expense Period. The Receiver's investigation of Dalong Chin and the relationship between Mr. Smit and all of the receivership entities, including Asia Pacific, assisted the FTC and resulted in \$1.2 million in additional funds held in overseas accounts held by Asia Pacific being returned to the receivership estate during the Second Expense Period. In August 2010, the estate received a wire transfer in the sum of \$1 million and in September 2010 the estate received a wire transfer of an additional \$200,000 from Asia Pacific accounts at HSBC overseas. These transfers were facilitated by Erick Van Der Maas.

11. During the Second Expense Period, the Receiver located additional funds belonging to the receivership estate that were held in an account of SBN Peripherals. Those funds, in excess of \$93,000, were turned over to the Receiver based on the Receiver's demands in January 2011. In all, during the Second Expense Period, over \$1.3 million has been turned over to the receivership estate.

12. The Receiver also continued its work to evaluate and reconstruct the financial transactions of the receivership defendants. The Receiver's accounting staff continued to analyze the financial and banking records available and update its analysis of the transfers and financial activities of the receivership defendants.

13. The Receiver and the Receiver's counsel, the McKenna Firm, have also addressed issues pertaining to a 401K plan sponsored by one of the receivership defendants, SBN Peripherals, Inc. The Receiver is required under applicable law to take certain administrative steps to terminate the 401K plan in light of the receivership entity's cessation of business and to distribute the plan assets.

14. The Receiver's accounting and other staff continue to handle administrative aspects of the case, including any tax returns for the receivership entities and performing bank reconciliations for the receivership funds. The Receiver continues to respond to calls that may be received from creditors or others with an interest in the estate.

15. The FTC and defendants sought a protective order in the case to protect confidential, personal identifying information and financial information that may be contained in documents produced or filed in the case and other similar confidential information. The Receiver and its counsel reviewed the terms and conditions of the proposed protective order, provided comments and agreed to be bound to its terms.

16. In addition to the Receiver's participating in the deposition of Mr. Smit, the defendants served the Receiver with discovery seeking substantial records and electronic data. The defendants also requested that a representative of the Receiver appear for deposition.

17. With respect to the production of documents, the Receiver's counsel analyzed the production requests and potential limitations and privileges pertaining to the documents sought. The production requests were broad and included not only records of the receivership defendants but also records pertaining to the Receiver's investigation. The Receiver's IT Management personnel initially reviewed and preserved records recovered from the Smits' residence and also from a colocation facility in downtown Los Angeles. During the Second Expense Period, the Receiver's IT Management personnel performed extensive searches to retrieve and prepare electronic data for turnover to the defendants in response to their discovery requests. The Receiver's counsel had a number of discussions with the defendants' counsel to address the scope and nature of the records sought and coordinate the production of the records. The Receiver's counsel and the Receiver determined the responsive records, and the Receiver

prepared the documents and servers with electronic data for production. The Receiver's counsel met with and prepared the Receiver's deputy, Kenton Johnson, for his deposition and attended the deposition with the Receiver's deputy.

18. Counsel for defendants have made multiple requests for payment of their defense costs from frozen assets of the individual defendants and from assets of the receivership estate. The Defendants' counsel has made two motions for release of funds to pay defense counsel fees and expenses. The Receiver and the Receiver's counsel have reviewed and evaluated the requests, the proper source of funding and the amounts. The Receiver and the FTC each filed oppositions to the second motion for release of funds. The Court later ordered the payment of \$160,000 in fees and expenses, and the Receiver released \$75,000 in June 2011 and another \$5,000 in July 2011 from receivership funds representing 50% of that sum. In total, \$163,000 in receivership funds have been paid to defense counsel from the receivership estate to date.

19. The assets of the estate are sufficient to pay the fees and expenses requested in this Motion. After deducting all of the fees and expenses of the Receiver and its professionals sought in this motion, as of August 31, 2011, the receivership estate had a net fund balance of almost \$1.1 million.

20. The Receiver intends to provide notice of this fee motion by its counsel serving the fee motion on the parties to the case or their counsel. In addition, the Receiver will post a copy of the fee motion and supporting declarations, without copies of the voluminous time/billing records, on the Receiver's web site for this case at www.robbevans.com/html/asiapactel.html. The Receiver will also provide a complete copy of the fee motion to any interested party who requests a copy, to the extent that party has not been served with the fee motion.

21. As a member of Robb Evans & Associates LLC, I am familiar with the methods and procedures used by the Receiver and its staff and employees to record the time spent rendering services to receivership estates over which the Receiver has been appointed. The records attached hereto as Exhibit 2 are regularly prepared by the members, staff and employees of the Receiver at or about the time of the services rendered and each of whom has a business

duty to accurately record the information regarding their services set forth in these records. The records are reviewed by the Receiver's accounting staff and summarized in the Receiver's Administrative Expense Summary attached hereto as Exhibit 1. Based upon my experience with Robb Evans & Associates LLC, I believe the Receiver's methods and procedures for recording and accounting for time and services for the receivership estates over which it has been appointed are reliable and accurate.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 9 day of November, 2011 at Sun Valley, California.

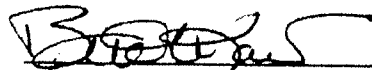

BRICK KANE

EXHIBIT 1

ROBB EVANS & ASSOCIATES LLC
 Receiver of
Asia Pacific Telecom, Inc., et al.
Administrative Expenses by Month and Fund Balance
 From Inception (May 25, 2010) to August 31, 2011

	Previously Reported	Aug 10	Sep 10	Oct 10	Nov 10	Dec 10	Jan 11	Feb 11	Mar 11	Apr 11
Funds Collected										
Funds Transferred In										
SBN/Repo										
AMEX-Mer- SBN Peripher-#3378272	3,388.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Repo B.V. #559150932 (Euro A/C)	966.03	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Repo B.V. #505018489	271,973.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CNB #022100882 SBN Peripherals	0.00	0.00	0.00	0.00	0.00	93,177.57	0.00	0.00	0.00	0.00
Innovative-SBN Peripheral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,383.69	0.00	0.00
Total SBN/Repo	276,327.03	0.00	0.00	0.00	0.00	93,177.57	0.00	1,383.69	0.00	0.00
HSBC - Asia Pac Telecom	0.00	1,000,000.00	200,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Funds Transferred In	276,327.03	1,000,000.00	200,000.00	0.00	0.00	0.00	93,177.57	1,383.69	0.00	0.00
Expense										
Asset Preservation										
Miscellaneous Expense	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Payments to Kelley Drye & Waite	0.00	38,412.75	0.00	11,551.82	0.00	33,576.01	0.00	0.00	0.00	0.00
Payroll Expenses	10,109.71	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Payroll Processing Fee	39.00	75.37	99.00	39.00	46.00	39.00	39.00	112.00	39.00	39.00
Payment to Accountant per Order	3,250.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Fees/Licenses	550.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Property Taxes	1,524.77	0.00	0.00	4,777.67	0.00	0.00	0.00	4,777.66	0.00	4,777.66
State Tax	800.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Repairs & Maintenance	9,800.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Asset Preservation	26,073.48	38,488.12	99.00	16,368.49	46.00	33,615.01	39.00	9,696.83	39.00	4,816.66
Receiver's Fees & Costs										
Receiver's Fees										
Receiver Fees										
B. Kane	15,500.00	550.00	550.00	400.00	625.00	275.00	250.00	275.00	175.00	6,125.00
K. Johnson	13,305.60	1,852.20	1,398.60	132.30	1,455.30	774.90	812.70	1,266.30	170.10	94.50

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V. Miller	5,518.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
A. Jen	2,362.50	567.00	415.80	113.40	226.80	0.00	94.50	245.70	207.90	434.70
Total Receiver Fees	36,686.90	2,969.20	2,364.40	645.70	2,307.10	1,049.90	1,157.20	1,787.00	553.00	6,654.20
Accounting Staff										
P. Chung	27,480.60	1,436.40	907.20	302.40	850.50	18.90	2,079.00	0.00	207.90	4,214.70
L. Lee	4,725.00	56.70	94.50	0.00	0.00	37.80	283.50	37.80	56.70	18.90
F. Jen	283.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N. Wolf	425.00	285.00	325.00	370.00	110.00	170.00	225.00	240.00	55.00	215.00
Total Accounting Staff	32,914.10	1,778.10	1,326.70	672.40	960.50	226.70	2,587.50	277.80	319.60	4,448.60
Investigative Staff										
W. Wu	1,512.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Investigative Staff	1,512.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
IT Management										
E. Roop	19,562.50	0.00	62.50	0.00	812.50	6,150.00	0.00	5,775.00	0.00	0.00
K. Chapin	1,304.18	0.00	75.41	0.00	0.00	0.00	0.00	785.17	0.00	39.92
Total IT Management	20,866.68	0.00	137.91	0.00	812.50	6,150.00	0.00	6,560.17	0.00	39.92
Support Staff	1,468.90	160.90	118.00	55.10	26.00	46.50	36.20	93.00	76.10	179.30
Total Receiver's Fees	93,448.58	4,908.20	3,947.01	1,373.20	4,106.10	7,473.10	3,780.90	8,717.97	948.70	11,322.02
Receiver's Costs										
Computer/Web hosting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	357.69	1,945.66	0.00
Bank Fees	30.00	(30.00)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Moving/Storage	1,215.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Asset/Credit searches	45.96	249.83	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Supplies/Telephone	70.17	46.71	33.33	30.80	34.58	30.90	37.74	36.19	24.07	24.30
Bond Fees	1,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Postage/Delivery	165.80	6.22	0.00	84.68	31.52	0.00	0.00	61.61	135.42	31.30
Copying/Reproduction	594.24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,215.65
Travel Expense	7,254.72	0.00	0.00	0.00	0.00	0.00	53.00	933.73	0.00	2,549.37
Total Receiver's Costs	10,375.89	272.76	33.33	115.48	66.10	30.90	90.74	1,409.22	2,105.15	4,820.62

ROBB EVANS & ASSOCIATES LLC
 Receiver of
 Asia Pacific Telecom, Inc., et al.
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 From Inception (May 25, 2010) to August 31, 2011

	Previously Reported	Aug 10	Sep 10	Oct 10	Nov 10	Dec 10	Jan 11	Feb 11	Mar 11	Apr 11
Legal Fees & Costs										
McKenna Long & Aldridge										
Fees	15,492.15	18,071.55	11,893.95	1,993.50	1,051.65	848.25	2,544.75	9,832.95	1,196.10	805.50
Costs	1,939.45	2,134.07	18.79	0.00	6.28	4.50	3.60	537.96	0.00	0.00
Total McKenna Long & Aldridge	17,431.60	20,205.62	11,912.74	1,993.50	1,057.93	852.75	2,548.35	10,370.91	1,196.10	805.50
Shaw Gussis Fishman Glantz										
Fees	15,649.00	7.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Costs	835.96	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Shaw Gussis Fishman Glantz	16,484.96	7.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Legal Fees & Costs	33,916.56	20,213.12	11,912.74	1,993.50	1,057.93	852.75	2,548.35	10,370.91	1,196.10	805.50
Total Receiver's Fees & Costs	137,741.03	25,394.08	15,893.08	3,482.18	5,230.13	8,356.75	6,419.99	20,498.10	4,249.95	16,948.14
Total Expense	163,814.51	63,882.20	15,992.08	19,850.67	5,276.13	41,971.76	6,458.99	30,194.93	4,288.95	21,764.80
Net Transactions		938,535.68	206,480.63	(19,850.67)	(5,021.34)	(41,789.26)	86,820.53	(28,709.28)	(4,163.84)	(21,356.09)
Fund Balance	112,512.52									

ROBB EVANS & ASSOCIATES LLC
 Receiver of
 Asia Pacific Telecom, Inc., et al.
Administrative Expenses by Month and Fund Balance
 From Inception (May 25, 2010) to August 31, 2011

	May 11	Jun 11	Jul 11	Aug 11	8/1/10- 8/31/11	TOTAL
Funds Collected						
Funds Transferred In						
SBN/Repo						
AMEX-Mer- SBN Peripher-#3378272	0.00	0.00	0.00	0.00	0.00	3,388.00
Repo B.V. #559150932 (Euro A/C)	0.00	0.00	0.00	0.00	0.00	966.03
Repo B.V. #505018489	0.00	0.00	0.00	0.00	0.00	271,973.00
CNB #022100882 SBN Peripherals	0.00	0.00	0.00	0.00	93,177.57	93,177.57
Innovative-SBN Peripheral	0.00	0.00	0.00	0.00	1,383.69	1,383.69
Total SBN/Repo	0.00	0.00	0.00	0.00	94,561.26	370,888.29
HSBC - Asia Pac Telecom	0.00	0.00	0.00	0.00	1,200,000.00	1,200,000.00
Total Funds Transferred In	0.00	0.00	0.00	0.00	1,294,561.26	1,570,888.29
Pmt from Omega Services -SBN	0.00	0.00	0.00	0.00	22,472.71	22,472.71
Interest Income	345.94	357.58	346.14	357.78	2,531.10	2,531.10
Misc. Income	0.00	0.00	0.00	0.00	2,469.24	2,469.24
Total Funds Collected	345.94	357.58	346.14	357.78	1,322,034.31	1,598,361.34
Expense						
Asset Preservation						
Miscellaneous Expense	0.00	0.00	0.00	0.00	714.57	714.57
Payments to Kelley Drye & Warre	0.00	75,000.00	5,000.00	0.00	163,540.58	163,540.58
Payroll Expenses	0.00	0.00	0.00	0.00	4,092.60	14,202.31
Payroll Processing Fee	46.00	0.00	0.00	7.00	580.37	619.37
Payment to Accountant per Order	0.00	0.00	0.00	0.00	0.00	3,250.00
Fees/Licenses	0.00	0.00	0.00	0.00	0.00	550.00
Property Taxes	0.00	0.00	0.00	0.00	14,332.99	15,857.76
State Tax	0.00	0.00	0.00	0.00	0.00	800.00
Repairs & Maintenance	0.00	0.00	0.00	0.00	0.00	9,800.00
Total Asset Preservation	46.00	75,000.00	5,000.00	7.00	183,261.11	209,334.59
Receiver's Fees & Costs						
Receiver's Fees						
Receiver Fees						
B. Kane	325.00	225.00	25.00	75.00	9,875.00	25,375.00
K. Johnson	1,908.90	567.00	226.80	56.70	10,716.30	24,021.90

ROBB EVANS & ASSOCIATES LLC
 Receiver of
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 From Inception (May 25, 2010) to August 31, 2011

	May 11	Jun 11	Jul 11	Aug 11	8/1/10- 8/31/11	TOTAL
V. Miller	0.00	0.00	0.00	0.00	0.00	5,518.80
A. Jen	132.30	283.50	113.40	453.60	3,288.60	5,651.10
Total Receiver Fees	<u>2,366.20</u>	<u>1,075.50</u>	<u>365.20</u>	<u>585.30</u>	<u>23,879.90</u>	<u>60,566.80</u>
Accounting Staff						
P. Chung	1,474.20	3,005.10	359.10	0.00	14,855.40	42,336.00
L. Lee	340.20	151.20	245.70	0.00	1,323.00	6,048.00
F. Jen	0.00	0.00	0.00	0.00	0.00	283.50
N. Wolf	120.00	65.00	10.00	180.00	2,370.00	2,795.00
Total Accounting Staff	<u>1,934.40</u>	<u>3,221.30</u>	<u>614.80</u>	<u>180.00</u>	<u>18,548.40</u>	<u>51,462.50</u>
Investigative Staff						
W. Wu	0.00	0.00	0.00	102.00	102.00	1,614.00
Total Investigative Staff	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>102.00</u>	<u>102.00</u>	<u>1,614.00</u>
IT Management						
E. Roop	312.50	0.00	100.00	0.00	13,212.50	32,775.00
K. Chapin	62.10	0.00	0.00	0.00	962.60	2,266.78
Total IT Management	<u>374.60</u>	<u>0.00</u>	<u>100.00</u>	<u>0.00</u>	<u>14,175.10</u>	<u>35,041.78</u>
Support Staff	142.70	29.50	4.50	42.40	1,010.20	2,479.10
Total Receiver's Fees	<u>4,817.90</u>	<u>4,326.30</u>	<u>1,084.50</u>	<u>909.70</u>	<u>57,715.60</u>	<u>151,164.18</u>
Receiver's Costs						
Computer/Web hosting	0.00	0.00	0.00	0.00	2,303.35	2,303.35
Bank Fees	0.00	148.50	0.00	0.00	118.50	148.50
Moving/Storage	0.00	0.00	0.00	0.00	0.00	1,215.00
Asset/Credit searches	0.00	0.00	12.61	0.00	262.44	308.40
Supplies/Telephone	25.46	23.75	25.40	12.76	385.99	456.16
Bond Fees	0.00	1,000.00	0.00	0.00	1,000.00	2,000.00
Postage/Delivery	110.30	0.44	0.00	0.00	461.49	627.29
Copying/Reproduction	0.00	0.00	0.00	0.00	2,215.65	2,809.89
Travel Expense	0.00	0.00	0.00	0.00	3,556.10	10,810.82
Total Receiver's Costs	<u>135.76</u>	<u>1,172.69</u>	<u>38.01</u>	<u>12.76</u>	<u>10,303.52</u>	<u>20,679.41</u>

ROBB EVANS & ASSOCIATES LLC

Receiver of

Asia Pacific Telecom, Inc., et al.

Administrative Expenses by Month and Fund Balance

From Inception (May 25, 2010) to August 31, 2011

	May 11	Jun 11	Jul 11	Aug 11	8/1/10- 8/31/11	TOTAL
Legal Fees & Costs						
McKenna Long & Aldridge						
Fees	9,373.95	4,228.65	1,790.55	2,851.65	66,483.00	81,975.15
Costs	916.49	72.50	169.91	131.80	3,995.90	5,935.35
Total McKenna Long & Aldridge	<u>10,290.44</u>	<u>4,301.15</u>	<u>1,960.46</u>	<u>2,983.45</u>	<u>70,478.90</u>	<u>87,910.50</u>
Shaw Gussis Fishman Glantz						
Fees	13,598.00	0.00	2,185.00	0.00	15,790.50	31,439.50
Costs	173.45	0.00	1.92	0.00	175.37	1,011.33
Total Shaw Gussis Fishman Glantz	<u>13,771.45</u>	<u>0.00</u>	<u>2,186.92</u>	<u>0.00</u>	<u>15,965.87</u>	<u>32,450.83</u>
Total Legal Fees & Costs	<u>24,061.89</u>	<u>4,301.15</u>	<u>4,147.38</u>	<u>2,983.45</u>	<u>86,444.77</u>	<u>120,361.33</u>
Total Receiver's Fees & Costs	<u>29,015.55</u>	<u>9,800.14</u>	<u>5,269.89</u>	<u>3,905.91</u>	<u>154,463.89</u>	<u>292,204.92</u>
Total Expense	<u>29,061.55</u>	<u>84,800.14</u>	<u>10,269.89</u>	<u>3,912.91</u>	<u>337,725.00</u>	<u>501,539.51</u>
Net Transactions	<u>(28,715.61)</u>	<u>(84,442.56)</u>	<u>(9,923.75)</u>	<u>(3,555.13)</u>	<u>984,309.31</u>	<u>1,096,821.83</u>
Fund Balance						

ROBB EVANS & ASSOCIATES LLC

Receiver of

Asia Pacific Telecom, Inc., et al.

Administrative Expenses by Month and Fund Balance

From Inception (May 25, 2010) to August 31, 2011

	Previously Reported, Approved and Paid	Previously Reported but Withheld	8/1/10- 8/31/11	TOTAL
Funds Collected				
Funds Transferred In				
SBN/Repo				
AMEX-Mer- SBN Peripher-#3378272	3,388.00	0.00	0.00	3,388.00
Repo B.V. #559150932 (Euro A/C)	966.03	0.00	0.00	966.03
Repo B.V. #505018489	271,973.00	0.00	0.00	271,973.00
CNB #022100882 SBN Peripherals	0.00	0.00	93,177.57	93,177.57
Innovative-SBN Peripheral	0.00	0.00	1,383.69	1,383.69
Total SBN/Repo	<u>276,327.03</u>	<u>0.00</u>	<u>94,561.26</u>	<u>370,888.29</u>
HSBC - Asia Pac Telecom	0.00	0.00	1,200,000.00	1,200,000.00
Total Funds Transferred In	<u>276,327.03</u>	<u>0.00</u>	<u>1,294,561.26</u>	<u>1,570,888.29</u>
Pmt from Omega Services -SBN	0.00	0.00	22,472.71	22,472.71
Interest Income	0.00	0.00	2,531.10	2,531.10
Misc. Income	0.00	0.00	2,469.24	2,469.24
Total Funds Collected	<u>276,327.03</u>	<u>0.00</u>	<u>1,322,034.31</u>	<u>1,598,361.34</u>
Expense				
Asset Preservation				
Miscellaneous Expense	0.00	0.00	714.57	714.57
Payments to Kelley Drye & Warre	0.00	0.00	163,540.58	163,540.58
Payroll Expenses	10,109.71	0.00	4,092.60	14,202.31
Payroll Processing Fee	39.00	0.00	580.37	619.37
Payment to Accountant per Order	3,250.00	0.00	0.00	3,250.00
Fees/Licenses	550.00	0.00	0.00	550.00
Property Taxes	1,524.77	0.00	14,332.99	15,857.76
State Tax	800.00	0.00	0.00	800.00
Repairs & Maintenance	9,800.00	0.00	0.00	9,800.00
Total Asset Preservation	<u>26,073.48</u>	<u>0.00</u>	<u>183,261.11</u>	<u>209,334.59</u>
Receiver's Fees & Costs				
Receiver's Fees				
Receiver Fees				
B. Kane	7,750.00	7,750.00	9,875.00	25,375.00
K. Johnson	6,652.80	6,652.80	10,716.30	24,021.90
V. Miller	2,759.40	2,759.40	0.00	5,518.80
A. Jen	1,181.25	1,181.25	3,288.60	5,651.10
Total Receiver Fees	<u>18,343.45</u>	<u>18,343.45</u>	<u>23,879.90</u>	<u>60,566.80</u>
Accounting Staff				
P. Chung	13,740.30	13,740.30	14,855.40	42,336.00
L. Lee	2,362.50	2,362.50	1,323.00	6,048.00
F. Jen	141.75	141.75	0.00	283.50
N. Wolf	212.50	212.50	2,370.00	2,795.00
Total Accounting Staff	<u>16,457.05</u>	<u>16,457.05</u>	<u>18,548.40</u>	<u>51,462.50</u>

ROBB EVANS & ASSOCIATES LLC
Receiver of
Asia Pacific Telecom, Inc., et al.
Administrative Expenses by Month and Fund Balance
From Inception (May 25, 2010) to August 31, 2011

	<u>Previously Reported, Approved and Paid</u>	<u>Previously Reported but Withheld</u>	<u>8/1/10- 8/31/11</u>	<u>TOTAL</u>
Investigative Staff				
W. Wu	756.00	756.00	102.00	1,614.00
Total Investigative Staff	<u>756.00</u>	<u>756.00</u>	<u>102.00</u>	<u>1,614.00</u>
IT Management				
E. Roop	9,781.25	9,781.25	13,212.50	32,775.00
K. Chapin	652.09	652.09	962.60	2,266.78
Total IT Management	<u>10,433.34</u>	<u>10,433.34</u>	<u>14,175.10</u>	<u>35,041.78</u>
Support Staff	734.45	734.45	1,010.20	2,479.10
Total Receiver's Fees	<u>46,724.29</u>	<u>46,724.29</u>	<u>57,715.60</u>	<u>151,164.18</u>
Receiver's Costs				
Computer/Web hosting	0.00	0.00	2,303.35	2,303.35
Bank Fees	30.00	0.00	118.50	148.50
Moving/Storage	1,215.00	0.00	0.00	1,215.00
Asset/Credit searches	45.96	0.00	262.44	308.40
Supplies/Telephone	70.17	0.00	385.99	456.16
Bond Fees	1,000.00	0.00	1,000.00	2,000.00
Postage/Delivery	165.80	0.00	461.49	627.29
Copying/Reproduction	594.24	0.00	2,215.65	2,809.89
Travel Expense	7,254.72	0.00	3,556.10	10,810.82
Total Receiver's Costs	<u>10,375.89</u>	<u>0.00</u>	<u>10,303.52</u>	<u>20,679.41</u>
Legal Fees & Costs				
McKenna Long & Aldridge				
Fees	7,746.08	7,746.07	66,483.00	81,975.15
Costs	1,939.45	0.00	3,995.90	5,935.35
Total McKenna Long & Aldridge	<u>9,685.53</u>	<u>7,746.07</u>	<u>70,478.90</u>	<u>87,910.50</u>
Shaw Gussis Fishman Glantz				
Fees	7,824.50	7,824.50	15,790.50	31,439.50
Costs	835.96	0.00	175.37	1,011.33
Total Shaw Gussis Fishman Glantz	<u>8,660.46</u>	<u>7,824.50</u>	<u>15,965.87</u>	<u>32,450.83</u>
Total Legal Fees & Costs	<u>18,345.99</u>	<u>15,570.57</u>	<u>86,444.77</u>	<u>120,361.33</u>
Total Receiver's Fees & Costs	<u>75,446.17</u>	<u>62,294.86</u>	<u>154,463.89</u>	<u>292,204.92</u>
Total Expense	<u>101,519.65</u>	<u>62,294.86</u>	<u>337,725.00</u>	<u>501,539.51</u>
Net Transactions		<u>(62,294.86)</u>	<u>984,309.31</u>	
Fund Balance	<u>174,807.38</u>			<u>1,096,821.83</u>

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Asia Pacific Telecom, Inc., a foreign
corporation, also d/b/a Asia Pacific
Networks, et al.,

Defendants.

No. 10 C 3168

Magistrate Judge Morton Denlow

NOTICE OF MOTION

PLEASE TAKE NOTICE that on November 30, 2011 at 9:15 a.m., Robb Evans & Associates LLC as Receiver of Asia Pacific Telecom, Inc., Repo, B.V., SBN Peripherals, Inc., and their affiliates, subsidiaries, divisions or telephone sales operations, will present the Receiver's **Motion for Approval and Payment of Fees and Expenses of Receiver and Receiver's Professionals Incurred from August 1, 2010 Through August 31, 2011 and for Approval and Payment of Outstanding Fees and Expenses From First Expense Period Previously Denied on An Interim Basis**, which is being served concurrently herewith, before Magistrate Judge Morton Denlow, in Room 1350, the room usually occupied by him as a Courtroom in the U.S. Courthouse, 219 S. Dearborn Street, Chicago, IL. or in his absence, before

such judge sitting in his place and stead and shall pray for the entry of an order in conformity with the prayer of said pleading, AT WHICH TIME AND PLACE you may appear if you so see fit.

DATED: November 9, 2011

Respectfully Submitted,

McKENNA LONG & ALDRIDGE LLP

By: /s/ Gary Owen Caris

McKenna Long & Aldridge, LLP
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Attorneys for Receiver Robb Evans &
Associates LLC

DATED: November 9, 2011

SHAW GUSSIS FISHMAN GLANTZ WOLFSON
& TOWBIN LLC

By: /s/ Ira Bodenstein

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