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6 Attorneys for Receiver  
ROBB EVANS & ASSOCIATES LLC  
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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
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11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 PRICEWERT LLC dba 3FN.NET  
15 TRIPLE FIBER NETWORK, APS  
TELECOM, APX TELECOM, APS  
16 COMMUNICATIONS, and APS  
COMMUNICATION,

17 Defendants.  
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CASE NO. 09-CV-2407-RMW

Date: November 12, 2010

Time: 9:00 a.m.

Place: Courtroom 6

NOTICE OF MOTION AND MOTION  
FOR ORDER: (1) APPROVING  
RECEIVER'S FINAL REPORT AND  
ACCOUNTING; (2) APPROVING  
PROPOSED COMPROMISE OF  
DATAPIPE CLAIM; (3) APPROVING  
AND AUTHORIZING PAYMENT OF  
RECEIVER'S AND COUNSEL'S FEES  
AND EXPENSES FROM INCEPTION  
THROUGH CLOSING;  
(4) DISCHARGING RECEIVER,  
EXONERATING RECEIVER'S BOND  
AND RELATED RELIEF;  
(5) AUTHORIZING ABANDONMENT  
AND DESTRUCTION OF RECORDS  
AND ANY UNCLAIMED SERVERS;  
(6) GRANTING ANY OTHER RELIEF  
RELATED TO THE WIND UP OF THE  
ESTATE; AND (7) FOR  
DETERMINATION OF MOTION  
WITHOUT A HEARING PURSUANT  
TO LOCAL CIVIL RULE 7-1(b)

1 PLEASE TAKE NOTICE that unless otherwise ordered by the Court  
2 pursuant to the Receiver's request for determination of this Motion without a  
3 hearing under Local Civil Rule 7-1(b), the hearing on the Motion for Order: (1)  
4 Approving Receiver's Final Report and Accounting; (2) Approving Proposed  
5 Compromise of Controversy with Datapipe; (3) Approving and Authorizing  
6 Payment of Receiver's and Counsel's Fees and Expenses from Inception through  
7 Closing; (4) Discharging Receiver, Exonerating Receiver's Bond and for Related  
8 Relief; (5) Authorizing Abandonment and Destruction of Records and Any  
9 Unclaimed Servers; (6) Granting Any Other Relief Related to the Wind Up of the  
10 Estate; and (7) for Determination of Motion Without A Hearing Pursuant to Local  
11 Civil Rule 7-1(b) ("Wind Up Motion") filed by Robb Evans & Associates LLC,  
12 Receiver ("Receiver") will be conducted on November 12, 2010, at 9:00 a.m. in  
13 Courtroom 6 of the above-entitled Court located at 280 South 1st Street, San Jose,  
14 California 95113.

15 This Wind Up Motion seeks the following relief:

16 A. An order approving the Receiver's Final Report and Accounting  
17 attached as Exhibit 1 to the Declaration of M. Val Miller filed in support hereof,  
18 and approving and confirming all activities of the Receiver as described in the Final  
19 Report and Accounting and the Receiver's prior Interim Reports filed with the  
20 Court, including the Interim Reports filed July 15, 2009, July 29, 2009 and January  
21 14, 2010 filed by the Receiver as Temporary Receiver;

22 B. An order approving the Receiver's compromise of claim with  
23 Datapipe, the landlord of one of the colocation facilities used by defendant  
24 Pricewert LLC dba 3fn.net Triple Fiber Network, APS Telecom, APX Telecom,  
25 APS Communications, and APS Communication ("Pricewert") to house its servers,  
26 pursuant to which the Receiver shall pay Datapipe from receivership assets the sum  
27 of \$8,250.00 in full settlement of Datapipe's claim for unpaid rent for such  
28 colocation facility while the servers remained on Datapipe's premises;

1 C. An order approving and authorizing payment of Receiver's fees and  
2 expenses and Receiver's counsel's fees and expenses incurred in connection with  
3 the administration of the estate. The Receiver seeks approval and authorization for  
4 payment from receivership assets of total receivership fees and expenses incurred  
5 from the Receiver's initial appointment on June 15, 2009 through August 31, 2010  
6 and estimated fees and expenses to complete the administration of the estate in the  
7 total sum of \$142,371.86, including (a) actual and estimated Receiver's fees of  
8 \$73,491.97, (b) actual and estimated Receiver's costs of \$34,108.09, (c) actual and  
9 estimated attorneys' fees of \$34,690.05 incurred for the services of McKenna Long  
10 & Aldridge LLP ("McKenna Firm") as counsel for the Receiver from December 1,  
11 2009 through closing of the estate, and (d) actual costs incurred by the McKenna  
12 Firm of \$81.75. The fees and expenses of the Receiver and its counsel are  
13 summarized in the Receiver's Expense by Month and Fund Balance ("Final  
14 Accounting") attached as Tab 1 to the Final Report and Accounting, which is  
15 attached as Exhibit 1 to the Declaration of M. Val Miller ("Miller Declaration")  
16 filed in support of this Motion. Copies of the Receiver's billing records detailing  
17 the services rendered by the Receiver, its members and staff, from the inception of  
18 the case through August 31, 2010 are attached collectively as Exhibit 2 to the  
19 Miller Declaration. Copies of the billing records detailing the services rendered by  
20 the Receiver's counsel are attached collectively as Exhibit 1 to the Declaration of  
21 Gary Owen Caris ("Caris Declaration") filed in support of this Motion. Based on  
22 the administrative insolvency of the estate, as set forth in the Memorandum of  
23 Points and Authorities in support of the Wind Up Motion, the Receiver seeks  
24 authorization to pay in full the Third Party Costs, as defined in the Memorandum  
25 filed by the Receiver in support of the Wind Up Motion, including the settlement  
26 payment to Datapipe, and thereafter to pay the Receiver's and counsel's fees and  
27 expenses from the remaining assets of the receivership estate;

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1 D. Effective upon the completion of the Receiver's wind up of the estate  
2 and payment of administrative expenses and Third Party Costs as provided herein,  
3 an order (1) discharging the Receiver, its agents, employees, members, officers,  
4 independent contractors, attorneys and representatives; (2) discharging and  
5 releasing the Receiver, its agents, employees, members, officers, independent  
6 contractors, attorneys and representatives from all claims and liabilities arising out  
7 of and/or pertaining to the receivership herein, including without limitation all  
8 claims of (i) all third party claimants who had data, or claimed to have data located  
9 in data centers used, operated or controlled by Pricewert or on servers owned or  
10 controlled by Pricewert, including without limitation Tsuren LLC and Suren Ter-  
11 Saakov, (ii) all third party claimants who sought or could have sought recovery of  
12 data from any data centers used, operated or controlled by Pricewert and/or located  
13 on servers owned and/or controlled by Pricewert, including without limitation  
14 Tsuren LLC and Suren Ter-Saakov, (iii) all third party claimants who have claimed  
15 or could have claimed an ownership or other interest in one or more of the servers  
16 owned and/or controlled by Pricewert, or any component of such servers, including  
17 without limitation Tsuren LLC and Suren Ter-Saakov, and (iv) all claims that were  
18 or could have been asserted concerning the Receiver's activities, including without  
19 limitation the activities reflected in the Final Report and Accounting and Interim  
20 Reports filed July 15, 2009, July 29, 2009 and January 14, 2010 filed by the  
21 Receiver as Temporary Receiver, including without limitation claims by Tsuren  
22 LLC and Suren Ter-Saakov; (3) relieving the Receiver, its agents, employees,  
23 members, officers, independent contractors, attorneys and representatives of all  
24 duties and responsibilities pertaining to the receivership established in this action;  
25 and (4) exonerating the Receiver's bond;

26 E. An order authorizing the Receiver to dispose of the records of  
27 Pricewert, unless within 30 days after entry of the Order on this Wind Up Motion,  
28 the Receiver has been served with a request by the FTC for possession of the

1 records or a subpoena by a law enforcement agency for the records, in which event  
2 the Receiver is authorized to turn over the original records to the FTC or a law  
3 enforcement agency in response to the request or subpoena;

4 F. An order authorizing the Receiver to turn over to Tsuren LLC at  
5 Tsuren LLC's expense the three servers previously claimed by Tsuren LLC  
6 (identified as SYS 135, SYS 234 and SYS 75 (the "Tsuren servers")), subject to the  
7 Receiver's receipt of payment by Tsuren LLC for the cost of shipping and delivery  
8 of the Tsuren servers to the location designated by Tsuren LLC, and authorizing the  
9 Receiver to abandon and destroy the Tsuren servers if, within 30 days after entry of  
10 the Order on this Wind Up Motion, Tsuren LLC has not submitted written  
11 instructions to the Receiver as to the location for delivery of the Tsuren servers and  
12 the payment for the shipping and delivery costs to that location; and

13 G. An order determining that the notice of this Wind Up Motion provided  
14 by the Receiver to all known potential creditors of Pricewert, including the notice  
15 provided to claimants asserting claims to records and servers, is deemed sufficient  
16 under the circumstances.

17 This Wind Up Motion is made pursuant to the Court's Order Appointing  
18 Liquidating Receiver and Entering Permanent Injunction and Monetary Judgment  
19 entered April 8, 2010 ("Liquidation Order") and Local Civil Rule 7-1, and this  
20 Wind Up Motion is made and based on this Notice of Motion and Motion, the  
21 supporting Memorandum of Points and Authorities filed concurrently herewith, the  
22 Miller Declaration, the Caris Declaration, the pleadings, records and files of the  
23 Court in this action of which the Receiver requests the Court judicial notice  
24 pursuant to Rule 201 of the Federal Rules of Evidence, the proposed order lodged  
25 concurrently herewith, and such other evidence and arguments as may be presented

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1 in support of the Receiver's Wind Up Motion hereafter and at any hearing on the  
2 Motion.

3  
4 Dated: September 30, 2010

MCKENNA LONG & ALDRIDGE LLP  
GARY OWEN CARIS  
LESLEY ANNE HAWES

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7 By: /s/ Gary Owen Caris

Gary Owen Caris  
Attorneys for Receiver  
Robb Evans & Associates LLC

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 PRICEWERT LLC dba 3FN.NET  
15 TRIPLE FIBER NETWORK, APS  
TELECOM, APX TELECOM, APS  
16 COMMUNICATIONS, and APS  
COMMUNICATION,

17 Defendants.  
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CASE NO. 09-CV-2407-RMW

Date: November 12, 2010  
Time: 9:00 a.m.  
Place: Courtroom 6

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR ORDER: (1)  
APPROVING RECEIVER'S FINAL  
REPORT AND ACCOUNTING; (2)  
APPROVING PROPOSED  
COMPROMISE OF DATAPIPE  
CLAIM; (3) APPROVING AND  
AUTHORIZING PAYMENT OF  
RECEIVER'S AND COUNSEL'S FEES  
AND EXPENSES FROM INCEPTION  
THROUGH CLOSING;  
(4) DISCHARGING RECEIVER,  
EXONERATING RECEIVER'S BOND  
AND RELATED RELIEF;  
(5) AUTHORIZING ABANDONMENT  
AND DESTRUCTION OF RECORDS  
AND ANY UNCLAIMED SERVERS;  
(6) GRANTING ANY OTHER RELIEF  
RELATED TO THE WIND UP OF THE  
ESTATE; AND (7) FOR  
DETERMINATION OF MOTION  
WITHOUT A HEARING PURSUANT  
TO LOCAL CIVIL RULE 7-1(b)

1 Robb Evans & Associates LLC, Receiver (“Receiver”) hereby submits the  
2 following Memorandum of Points and Authorities in support of its Motion for  
3 Order: (1) Approving Receiver’s Final Report and Accounting; (2) Approving  
4 Proposed Compromise of Controversy with Datapipe; (3) Approving and  
5 Authorizing Payment of Receiver’s and Counsel’s Fees and Expenses from  
6 Inception through Closing; (4) Discharging Receiver, Exonerating Receiver’s Bond  
7 and for Related Relief; (5) Authorizing Abandonment and Destruction of Records  
8 and Any Unclaimed Servers; (6) Granting Any Other Relief Related to the Wind  
9 Up of the Estate; and (7) for Determination of Motion Without A Hearing Pursuant  
10 to Local Civil Rule 7-1(b) (“Wind Up Motion”).

11 **I. STATEMENT OF ISSUES TO BE DECIDED**

12 The Receiver’s Wind Up Motion seeks an order approving the Receiver’s  
13 Final Report and Accounting and instructions and orders of the Court as detailed in  
14 the Motion relating to the termination of the receivership and the Receiver’s  
15 completion of the administration of the estate, including approval of a compromise  
16 with a collocation facility, approval and authorization for payment of Receiver’s  
17 and Counsel’s fees and expenses, discharge and release of the Receiver and  
18 authorization to abandon and destroy records and any remaining servers of  
19 Pricewert LLC dba 3fn.net Triple Fiber Network, APS Telecom, APX Telecom,  
20 APS Communications, and APS Communication (“Pricewert”).

21 **II. STATEMENT OF RELEVANT FACTS**

22 The defendant Pricewert operated three “data centers” pursuant to which  
23 Pricewert owned and operated computer servers located at three collocation  
24 facilities on which data of various third parties was stored. Third parties could  
25 access their data on the servers at the data centers remotely. Some of the data  
26 included harmful viruses, spyware and other similar electronic codes that could be  
27 used by third parties to cause injury to consumer and other computer users, and  
28 pursuant to an application by plaintiff FTC, the Court issued a temporary

1 restraining order to compel internet service providers and others to disconnect all of  
2 Pricewert's servers to prevent further harm to innocent consumers and other third  
3 party victims of the viruses and other malicious electronic codes disseminated from  
4 some of the Pricewert servers ("Temporary Restraining Order").

5 The Receiver was initially appointed as Temporary Receiver pursuant to the  
6 Court's Order Appointing Temporary Receiver entered June 15, 2009 ("Temporary  
7 Appointment Order"). The Temporary Appointment Order provided the Receiver  
8 with limited powers and duties to coordinate with the third parties impacted by the  
9 Temporary Restraining Order to examine the data on the Pricewert servers and  
10 provide access to the non-malicious data to the third parties affected by the shut  
11 down of the Pricewert servers.

12 Pricewert had no discernible assets, other than the servers. The FTC paid  
13 into the receivership estate established by the Temporary Appointment Order the  
14 sum of \$25,000 to help fund the fees and expenses of the Receiver for the  
15 performance of its powers and duties under the Temporary Appointment Order.  
16 The receivership estate is presently administratively insolvent.

17 The Receiver administered a claims process by which third parties could  
18 assert claims for recovery of the data on the Pricewert servers. Approximately 59  
19 claims for data were filed with the Receiver. Pursuant to the Temporary  
20 Appointment Order, the Receiver evaluated the claims by the third parties,  
21 evaluated the data stored on the Pricewert servers to confirm whether the data was  
22 considered harmful under the standards of the Temporary Appointment Order, and  
23 coordinated a process of providing a copy of the data to such third parties where the  
24 data was not harmful and the third parties provided a security deposit for payment  
25 to the estate for the reasonable cost of copying and return of the data. The  
26 Receiver's activities as Temporary Receiver in developing and administering this  
27 claim process and other matters are described in Interim Reports filed July 15,  
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1 2009, July 29, 2009 and January 14, 2010 filed by the Receiver as Temporary  
2 Receiver (collectively “Interim Reports”).

3         The Receiver had numerous communications with one of the claimants,  
4 Tsuren LLC and its principal Suren Ter-Saakov (“Saakov”), regarding their claim  
5 for recovery of data and three servers on which such data was located. Tsuren LLC  
6 and Saakov asserted that the Receiver was not complying with the Temporary  
7 Appointment Order in a motion for issuance of an order to show cause as to why  
8 the Receiver should not be held in contempt for its alleged non-compliance with  
9 that order (“Tsuren Contempt Motion”) and sought to intervene in the case. The  
10 Tsuren Contempt Motion was originally set for hearing in January 2010 and then  
11 continued by two stipulations. The Receiver employed the firm of McKenna Long  
12 & Aldridge LLP (“McKenna Firm”) in response to the disputes that arose with  
13 Tsuren LLC and Saakov, including those set forth in the Tsuren Contempt Motion.  
14 The sole assets of Pricewert consisted of the computer servers housed at three  
15 colocation facilities. On February 26, 2010, the Court held a hearing on plaintiff  
16 FTC’s motion for default judgment and for the appointment of a liquidating  
17 receiver to dispose of Pricewert’s servers. At that hearing, the Court indicated  
18 preliminarily that the allegations raised with respect to the Tsuren Contempt  
19 Motion did not appear to be matters appropriate for contempt and that the Receiver  
20 was not required to file any written response to the motion and that no further  
21 proceedings would be held on that motion unless advised to do so by the Court.  
22 The Court never issued an order to show cause.

23         On April 8, 2010, the Court entered the Order Appointing Liquidating  
24 Receiver and Entering Permanent Injunction and Monetary Judgment (“Liquidation  
25 Order”). Pursuant to the Liquidation Order, the Receiver was authorized to  
26 liquidate the Pricewert servers. The Receiver administered a claims process  
27 pertaining to the servers in accordance with the Liquidation Order. Although  
28 throughout the case Tsuren LLC and Saakov had at all times identified three servers

1 (SYS 135, SYS 234 and SYS 75 (the “Tsuren servers”)) which they claimed an  
2 interest in and had previously demanded data and possession of those servers, in  
3 connection with the Liquidation Order claims process, they suddenly for the first  
4 time asserted a claim to eight servers.

5 The Receiver began organizing the liquidation of the Pricewert servers at  
6 auction and in connection therewith required access to the colocation facilities to  
7 recover the servers for auction. Two of the landlords were cooperative and the  
8 Receiver recovered the servers from those locations. A third landlord, Datapipe,  
9 refused to grant the Receiver access to the facility and release the servers based on  
10 claims for use and occupancy of the colocation facility for the servers located there,  
11 asserting a claim for over \$60,000 as a condition to allowing the Receiver access to  
12 the facility to recover the servers to the Receiver. The Receiver’s counsel  
13 ultimately negotiated a proposed settlement of the Datapipe claim, subject to Court  
14 approval, so that the Receiver could recover custody of the servers to conduct the  
15 auction. The Receiver agreed to a payment to Datapipe of \$8,250 in full satisfaction  
16 of its claim from the assets of the receivership estate.

17 Prior to conducting the auction of the servers, the Receiver’s counsel made  
18 numerous attempts to contact Tsuren LLC through its counsel regarding the servers  
19 subject to Tsuren LLC’s claim. Eventually, Tsuren LLC informally agreed to  
20 accept the original three servers and dropped its claim to the other five servers.  
21 However, the Receiver has not been able to get Tsuren LLC to advise the Receiver  
22 where it wanted the three servers sent. The Receiver withheld from the auction the  
23 three Tsuren servers, and continues to wait for mailing instructions from Tsuren  
24 LLC.

25 The auction was conducted the week of August 23, 2010. Since the auction  
26 was conducted, the Receiver’s counsel has made additional requests for Tsuren  
27 LLC to either pick up the Tsuren servers or advise the Receiver where the Tsuren  
28 servers should be delivered and arrange for payment of the shipping and delivery

1 costs. These requests have not been responded to. For this reason, the Receiver  
2 seeks as part of this Motion an order authorizing the Receiver to destroy the three  
3 Tsuren servers if Tsuren has not picked up the servers from the Receiver or  
4 arranged and paid the cost of shipping and delivery of the three Tsuren servers to  
5 Tsuren within 30 days of the entry of the Order on this Motion.

6 The receivership estate is insolvent and does not have sufficient funds to pay  
7 the administrative expenses incurred in full; rather, there will be a substantial  
8 shortfall in the amounts necessary to satisfy the Receiver's and counsel's fees and  
9 expenses. The Receiver's Final Accounting, attached as Tab 1 to the Receiver's  
10 Final Report and Accounting, which is Exhibit 1 to the Declaration of M. Val  
11 Miller ("Miller Declaration") in support of this Motion, identifies the two  
12 Receiver's costs owed to third parties, Datapipe, in the negotiated sum of \$8,250,  
13 and for computer and technical services already paid, in the amount of \$28,191.10,  
14 for a total of \$36,441.10 ("Third Party Costs"). The Receiver proposes to pay  
15 Datapipe in full in the negotiated settlement amount from available receivership  
16 assets upon entry of an order on this Motion. After payment of the Third Party  
17 Costs in full, the Receiver anticipates having funds on hand of \$37,384.00 for  
18 payment of the Receiver's and counsel's fees and expenses. Given the financial  
19 status of the estate and the lack of funds for payment of Receiver's and counsel's  
20 fees, the Receiver is requesting that the Motion be determined by the Court without  
21 oral argument to avoid the Receiver and counsel incurring additional fees in  
22 appearing at a hearing.

23 The Receiver's services in this case are detailed in the billing records  
24 attached as Exhibit 2 to the Miller Declaration and are reflected and summarized in  
25 the three Interim Reports and the Final Report and Accounting prepared by the  
26 Receiver's office. The Receiver had to address numerous claims of third parties to  
27 the data on the servers and several issues with claimant Tsuren LLC and its  
28 principal Saakov. The Receiver organized and supervised the auction of the servers

1 and dealt with the landlords in the colocation facilities. For these services, the  
2 Receiver has incurred actual fees through August 31, 2010 of \$66,292.05. The  
3 Receiver anticipates incurring additional fees of approximately \$7,199.92 from  
4 September 1, 2010 through the closing of the case. The Receiver has also incurred  
5 costs, other than Third Party Costs, of \$5,807.07 and anticipates incurring an  
6 additional \$109.92 in Receiver's costs in connection with the closing.

7 The services of counsel for the Receiver, the McKenna Firm, are detailed in  
8 the billing records attached as Exhibit 1 to the Declaration of Gary Owen Caris  
9 ("Caris Declaration") filed in support of this motion. The McKenna Firm assisted  
10 the Receiver in addressing Tsuren LLC and Saakov and the claims and allegations  
11 made in the Tsuren Contempt Motion. The Receiver's counsel appeared at the  
12 hearing on February 26, 2010 on the FTC's motion for entry of a default judgment  
13 and to appoint the Receiver as liquidating receiver to sell the Pricewert servers.  
14 The McKenna Firm assisted the Receiver in negotiating a resolution of claims by  
15 Datapipe, in reviewing the Final Report and Accounting and in preparing and filing  
16 this Motion. The McKenna Firm has incurred attorneys' fees and costs through  
17 August 31, 2010 of \$21,271.80, and anticipates incurring additional fees estimated  
18 at \$13,500.00 from September 1, 2010 through the closing of the estate.

19 The Receiver and its counsel agree that the Third Party Costs shall be paid in  
20 full from the receivership assets, and that payment of the Receiver's fees and costs  
21 and counsel's fees and costs shall be made from the remaining receivership assets  
22 estimated to be \$37,384.00.

1 **III. THE RECEIVER SEEKS APPROVAL AND CONFIRMATION OF**  
2 **ITS ACTIVITIES IN THE CASE, APPROVAL AND PAYMENT OF**  
3 **RECEIVER'S AND COUNSEL'S FEES AND EXPENSES,**  
4 **DISCHARGE AND OTHER RELATED RELIEF AND**  
5 **INSTRUCTIONS FOR THE WIND UP OF THE ESTATE**

6 The Receiver is entitled to have the Court review and approve the Receiver's  
7 reports of activities and confirm its activities during the course of the receivership.  
8 *See 2 Clark on Receivers* § 383.1, pp. 643-644 (3rd ed. 1992) ("A receiver's  
9 account and report is for the purpose of informing the appointing court and parties  
10 interested of the receiver's stewardship. Since the receiver is the court's officer, the  
11 court may at its own instance approve or disapprove the report of the receiver").  
12 The Receiver seeks approval of the Receiver's Final Report and Accounting and its  
13 activities described therein.

14 The Receiver seeks Court approval of all of the fees and expenses of the  
15 Receiver and Receiver's counsel as detailed in the billing records attached to the  
16 supporting declarations and as estimated in the Accounting, Tab 1 to the Final  
17 Report and Accounting. The Receiver further seeks authority to pay such fees and  
18 expenses from receivership assets. In light of the work performed during the case  
19 and the work the Receiver anticipates from September 1, 2010 through closing of  
20 the estate, the Receiver submits that its fees and costs and those of its counsel are  
21 reasonable and should be approved and authorized for payment to the extent funds  
22 exist.

23 Court approval of the Receiver's actions and requests is consistent with  
24 federal receivership practice as required by Federal Rule of Civil Procedure,  
25 Rule 66. *See, 2 Clark on Receivers*, § 383.1 (3d ed. 1959). The Court has wide  
26 latitude in supervising the Receiver and may provide for the administration of the  
27 receivership as it deems appropriate. *13 Moore's Federal Practice*, § 66.06[4][a],  
28 p. 66-22 (Matthew Bender 3d ed. Rev. 2008).

1           The Receiver's discharge should expressly discharge the Receiver from all  
2 claims, causes of action and liabilities asserted or that could have been asserted by  
3 Tsuren LLC and Saakov against the Receiver in connection with the Receiver's  
4 administration of the receivership estate. The claims are not meritorious, and  
5 Tsuren LLC will soon obtain the Tsuren servers that it previously requested from  
6 the Receiver and that were in part the subject of the Tsuren Contempt Motion, if  
7 Tsuren LLC advises the Receiver where they should be mailed and pays for their  
8 shipping. Given the financial condition of the estate and the status of the  
9 proceeding, the discharge requested by the Receiver is appropriate.

10           The relief sought in this Motion will promote the orderly and prompt wind up  
11 of the receivership estate in an expeditious and cost-effective manner. The relief  
12 sought is customary and appropriate in closing a receivership estate, discharging the  
13 receiver and exonerating the Receiver's bond. The instructions regarding the  
14 disposition of the three Tsuren servers are necessary under the circumstances given  
15 that Tsuren LLC's counsel has ceased responding to the Receiver's counsel's  
16 communications and that neither Tsuren LLC's counsel nor Tsuren LLC or Saakov  
17 has made arrangements to obtain possession of the Tsuren servers from the  
18 Receiver despite several attempts at contact by the Receiver's counsel.

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1 **IV. CONCLUSION**

2 The Receiver respectfully requests that the Court grant the Motion and all  
3 relief set forth therein for the reasons set forth in the Motion, this Memorandum and  
4 the supporting declarations filed concurrently herewith.

5  
6 Dated: September 30, 2010

MCKENNA LONG & ALDRIDGE LLP  
GARY OWEN CARIS  
LESLEY ANNE HAWES

7  
8  
9 By: /s/ Gary Owen Caris

Gary Owen Caris  
Attorneys for Receiver  
Robb Evans & Associates LLC

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7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 FEDERAL TRADE COMMISSION,  
12 Plaintiff,

13 v.

14 PRICEWERT LLC dba 3FN.NET  
15 TRIPLE FIBER NETWORK, APS  
TELECOM, APX TELECOM, APS  
16 COMMUNICATIONS, and APS  
COMMUNICATION,  
17 Defendants.  
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CASE NO. 09-CV-2407-RMW

Date: November 12, 2010  
Time: 9:00 a.m.  
Place: Courtroom 6

DECLARATION OF GARY OWEN CARIS IN SUPPORT OF MOTION FOR ORDER: (1) APPROVING RECEIVER'S FINAL REPORT AND ACCOUNTING; (2) APPROVING PROPOSED COMPROMISE OF DATAPIPE CLAIM; (3) APPROVING AND AUTHORIZING PAYMENT OF RECEIVER'S AND COUNSEL'S FEES AND EXPENSES FROM INCEPTION THROUGH CLOSING; (4) DISCHARGING RECEIVER, EXONERATING RECEIVER'S BOND AND RELATED RELIEF; (5) AUTHORIZING ABANDONMENT AND DESTRUCTION OF RECORDS AND ANY UNCLAIMED SERVERS; (6) GRANTING ANY OTHER RELIEF RELATED TO THE WIND UP OF THE ESTATE; AND (7) FOR DETERMINATION OF MOTION WITHOUT A HEARING PURSUANT TO LOCAL CIVIL RULE 7-1(b)

1 I, Gary Owen Caris, declare:

2 1. I am an attorney at law duly admitted to practice before the courts of  
3 the State of California and before the United States District Court for the Northern  
4 District of California and am a member of the firm of McKenna Long & Aldridge  
5 LLP ("McKenna Firm"), counsel for Robb Evans & Associates LLC as Receiver in  
6 this case. I am one of the attorneys with primary responsibility for the  
7 representation of the Receiver in this matter. If called upon to testify as to the facts  
8 set forth in this declaration, I could and would testify competently thereto as the  
9 facts are true and within my personal knowledge.

10 2. The Receiver initially engaged the McKenna Firm as its counsel in  
11 December 2009 to assist the Receiver in addressing disputes that arose with Tsuren  
12 LLC and Suren Ter-Saakov ("Saakov"). Tsuren LLC and Saakov asserted that the  
13 Receiver was not complying with the Court's Order Appointing Temporary  
14 Receiver entered June 15, 2009 ("Temporary Appointment Order") in a motion for  
15 issuance of an order to show cause as to why the Receiver should not be held in  
16 contempt for its alleged non-compliance with that order ("Tsuren Contempt  
17 Motion") and sought to intervene in the case. The Tsuren Contempt Motion was  
18 originally set for hearing in January 2010 and then continued by two stipulations  
19 which I signed on the Receiver's behalf.

20 3. On February 26, 2010, the Court held a hearing on plaintiff FTC's  
21 motion for default judgment and for the appointment of a liquidating receiver to  
22 dispose of Pricewert's servers which I attended as counsel for the Receiver. At that  
23 hearing, the Court indicated preliminarily that the allegations raised with respect to  
24 the Tsuren Contempt Motion did not appear to be matters appropriate for contempt  
25 and that the Receiver was not required to file any written response to the motion  
26 and that no further proceedings would be held on that motion unless advised to do  
27 so by the Court. The Court never issued an order to show cause.

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1           4.     On April 8, 2010, the Court entered the Order Appointing Liquidating  
2 Receiver and Entering Permanent Injunction and Monetary Judgment (“Liquidation  
3 Order”). Pursuant to the Liquidation Order, the Receiver was authorized to  
4 liquidate the Pricewert servers. Although throughout the case Tsuren LLC and  
5 Saakov had at all times identified three servers (SYS 135, SYS 234 and SYS 75  
6 (the “Tsuren servers”)) which they claimed an interest in and had previously  
7 demanded data and possession of those servers, in connection with the Liquidation  
8 Order claims process, for the first time they asserted a claim to eight servers. Prior  
9 to conducting the auction of the servers, I made numerous attempts to contact  
10 Tsuren LLC through its counsel regarding the servers subject to Tsuren LLC’s  
11 claim. Eventually, Tsuren LLC informally agreed to accept the original three  
12 servers and dropped its claim to the other five servers. The Receiver withheld from  
13 the auction the three Tsuren servers. However, since the auction was conducted, I  
14 have made additional requests for Tsuren LLC to advise the Receiver where the  
15 Tsuren servers should be delivered. My requests have not been responded to, and  
16 the Receiver continues to wait for instructions from Tsuren LLC on the shipping of  
17 these servers.

18           5.     When the Receiver began organizing the liquidation of the Pricewert  
19 servers, the Receiver required access to the colocation facilities to recover the  
20 servers for auction. Two of the landlords were cooperative and the Receiver  
21 recovered the servers from those locations. A third landlord, Datapipe, refused to  
22 grant the Receiver access to the facility and release the servers based on claims for  
23 use and occupancy of the colocation facility for the servers located there, asserting  
24 a claim for over \$60,000 as a condition to allowing the Receiver access to the  
25 facility to recover the servers to the Receiver. I began negotiations with Datapipe  
26 to resolve the dispute, and I ultimately negotiated a proposed settlement of the  
27 Datapipe claim, subject to Court approval, so that the Receiver could recover  
28 custody of the servers to conduct the auction. The Receiver agreed to a payment to

1 Datapipe of \$8,250 in full satisfaction of its claim from the assets of the  
2 receivership estate.

3 6. The Receiver has incurred attorneys' fees and cost of \$21,271.80 for  
4 the services of the McKenna Firm during the receivership through August 31, 2010.  
5 The services of the McKenna Firm are detailed in the McKenna Firm's billing  
6 statements attached hereto collectively as Exhibit 1. The McKenna Firm's time  
7 records, Exhibit 1, as well as the time records for the Receiver and his staff and  
8 accountants, have been redacted where appropriate to preserve descriptions  
9 containing confidential attorney-client privileged and/or attorney work-product  
10 information. The McKenna Firm anticipates incurring additional fees estimated at  
11 \$13,500.00 from September 1, 2010 through the closing of the estate, including fees  
12 for the preparation and filing of the Wind Up Motion.

13 7. Lesley Hawes and I have represented the Receiver through the  
14 McKenna Firm and are primary counsel for the Receiver. I have practiced for over  
15 30 years and Lesley Hawes has practiced for over 25 years. Our practices have  
16 involved a range of complex state, federal and bankruptcy court litigation matters. I  
17 have specialized in representing receivers in federal equity receiverships for over  
18 ten years, and Lesley Hawes has specialized in representation of receivers in federal  
19 equity receiverships for approximately seven years. I believe the fees requested by  
20 this motion are reasonable given the nature and quality of the services rendered and  
21 the time expended.

22 8. I am a partner in the McKenna Firm and am familiar with the methods  
23 and procedures used to create, record and maintain billing records for the firm's  
24 clients. The billing summaries attached hereto as Exhibit 1 are prepared from  
25 computerized time records prepared contemporaneously with the services rendered  
26 by each attorney and paralegal billing time to this matter. These computerized  
27 records are prepared in the ordinary course of business by the attorneys and  
28 paralegals employed by the firm who have a business duty to accurately record their

1 time spent and services rendered on the matters on which they perform work. The  
2 time records are transferred into a computerized billing program that generates  
3 monthly invoices under the supervision of the firm's accounting department. Based  
4 upon my experience with the firm, I know the firm's methods and procedures for  
5 recording and accounting for time and services for its clients are reliable and  
6 accurate.

7 I declare under penalty of perjury that the foregoing is true and correct  
8 and that this declaration was executed this 28th day of September 2010 at Los  
9 Angeles, California.

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12 GARY OWEN CARIS  
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6 Attorneys for Receiver  
ROBB EVANS & ASSOCIATES LLC  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 FEDERAL TRADE COMMISSION,  
12 Plaintiff,

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14 PRICEWERT LLC dba 3FN.NET  
15 TRIPLE FIBER NETWORK, APS  
TELECOM, APX TELECOM, APS  
16 COMMUNICATIONS, and APS  
COMMUNICATION,

17 Defendants.  
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CASE NO. 09-CV-2407-RMW

Date: November 12, 2010

Time: 9:00 a.m.

Place: Courtroom 6

DECLARATION OF M. VAL MILLER  
IN SUPPORT OF MOTION FOR  
ORDER: (1) APPROVING  
RECEIVER'S FINAL REPORT AND  
ACCOUNTING; (2) APPROVING  
PROPOSED COMPROMISE OF  
DATAPIPE CLAIM; (3) APPROVING  
AND AUTHORIZING PAYMENT OF  
RECEIVER'S AND COUNSEL'S FEES  
AND EXPENSES FROM INCEPTION  
THROUGH CLOSING;  
(4) DISCHARGING RECEIVER,  
EXONERATING RECEIVER'S BOND  
AND RELATED RELIEF;  
(5) AUTHORIZING ABANDONMENT  
AND DESTRUCTION OF RECORDS  
AND ANY UNCLAIMED SERVERS;  
(6) GRANTING ANY OTHER RELIEF  
RELATED TO THE WIND UP OF THE  
ESTATE; AND (7) FOR  
DETERMINATION OF MOTION  
WITHOUT A HEARING PURSUANT  
TO LOCAL CIVIL RULE 7-1(b)

1 I, M. Val Miller, declare:

2 1. I am a member of Robb Evans & Associates LLC, the duly appointed  
3 Receiver ("Receiver") in this case. I am one of the senior members of the  
4 Receiver's staff with primary responsibility for the activities of the Receiver. I  
5 have personal knowledge of the matters set forth in this declaration, and if I were  
6 called upon to testify as to these matters, I could and would competently testify  
7 based upon my personal knowledge.

8 2. I am one of the members of the Receiver with primary responsibility  
9 for the supervision of the receivership estate in this case and the implementation of  
10 the powers and duties of the Receiver as Temporary Receiver under the Court's  
11 Order Appointing Temporary Receiver entered June 15, 2009 ("Temporary  
12 Appointment Order") and the Receiver's liquidation and other duties under the  
13 Order Appointing Liquidating Receiver and Entering Permanent Injunction and  
14 Monetary Judgment ("Liquidation Order") entered April 8, 2010. The facts set  
15 forth in this declaration are within my personal knowledge or I have gained  
16 knowledge of such facts from my services in supervising the receivership estate.

17 3. The defendant Pricewert LLC dba 3fn.net Triple Fiber Network, APS  
18 Telecom, APX Telecom, APS Communications, and APS Communication  
19 ("Pricewert") Pricewert operated three "data centers" pursuant to which Pricewert  
20 owned and operated computer servers located at three colocation facilities on which  
21 data of various third parties was stored. Third parties could access their data on the  
22 servers at the data centers remotely. Some of the data included harmful viruses,  
23 spyware and other similar electronic codes that could be used by third parties to  
24 cause injury to consumer and other computer users, and pursuant to an application  
25 by plaintiff FTC, the Court issued a temporary restraining order to compel internet  
26 service providers and others to disconnect all of Pricewert's servers to prevent  
27 further harm to innocent consumers and other third party victims of the viruses and  
28

1 other malicious electronic codes disseminated from some of the Pricewert servers  
2 (“Temporary Restraining Order”).

3 4. The Receiver was initially appointed as Temporary Receiver pursuant  
4 to the Temporary Appointment Order. The Temporary Appointment Order  
5 provided the Receiver with limited powers and duties to coordinate with the third  
6 parties impacted by the Temporary Restraining Order to examine the data on the  
7 Pricewert servers and provide access to the non-malicious data to the third parties  
8 affected by the shut down of the Pricewert servers.

9 5. The Receiver’s deputies and I administered a claims process by which  
10 third parties could assert claims for recovery of the data on the Pricewert servers.  
11 Approximately 59 claims for data were filed with the Receiver. Pursuant to the  
12 Temporary Appointment Order, the Receiver evaluated the claims by the third  
13 parties, evaluated the data stored on the Pricewert servers to confirm whether the  
14 data was considered harmful under the standards of the Temporary Appointment  
15 Order, and coordinated a process of providing a copy of the data to such third  
16 parties where the data was not harmful and the third parties provided a security  
17 deposit for payment to the estate for the reasonable cost of copying and return of  
18 the data. The Receiver’s activities as Temporary Receiver in developing and  
19 administering this claim process and other matters are described in Interim Reports  
20 filed July 15, 2009, July 29, 2009 and January 14, 2010 filed by the Receiver as  
21 Temporary Receiver (collectively “Interim Reports”).

22 6. The Receiver had numerous communications with one of the  
23 claimants, Tsuren LLC and its principal Suren Ter-Saakov (“Saakov”), regarding  
24 their claim for recovery of data and three servers on which such data was located.  
25 Tsuren LLC and Saakov asserted that the Receiver was not complying with the  
26 Temporary Restraining Order in a motion for issuance of an order to show cause as  
27 to why the Receiver should not be held in contempt for its alleged non-compliance  
28 with that order (“Tsuren Contempt Motion”) and sought to intervene in the case.

1 The Tsuren Contempt Motion was originally set for hearing in January 2010 and  
2 then continued by two stipulations. The Receiver employed the firm of McKenna  
3 Long & Aldridge LLP (“McKenna Firm”) in response to the disputes that arose  
4 with Tsuren LLC and Saakov, including those set forth in the Tsuren Contempt  
5 Motion. The Court never issued an order to show cause.

6 7. The sole assets of Pricewert consisted of the computer servers housed  
7 at three colocation facilities. The receivership estate was insolvent, and the FTC  
8 paid \$25,000 to the receivership estate at the inception of the receivership. On  
9 April 8, 2010, the Court entered the Order Appointing Liquidating Receiver and  
10 Entering Permanent Injunction and Monetary Judgment (“Liquidation Order”).  
11 Pursuant to the Liquidation Order, the Receiver was authorized to liquidate the  
12 Pricewert servers. The Receiver administered a claims process pertaining to the  
13 servers in accordance with the Liquidation Order.

14 8. The Receiver began organizing the liquidation of the Pricewert servers  
15 at auction and in connection therewith required access to the colocation facilities to  
16 recover the servers for auction. Two of the landlords were cooperative and the  
17 Receiver recovered the servers from those locations. A third landlord, Datapipe,  
18 refused to grant the Receiver access to the facility and release the servers based on  
19 claims for use and occupancy of the colocation facility for the servers located there,  
20 asserting a claim for over \$60,000 as a condition to allowing the Receiver access to  
21 the facility to recover the servers to the Receiver. The Receiver’s counsel  
22 ultimately negotiated a proposed settlement of the Datapipe claim, subject to Court  
23 approval, so that the Receiver could recover custody of the servers to conduct the  
24 auction. The Receiver agreed to a payment to Datapipe of \$8,250 in full  
25 satisfaction of its claim from the assets of the receivership estate.

26 9. The only third party who asserted a claim to any of the servers was  
27 Tsuren LLC and Saakov. Although throughout the case Tsuren LLC and Saakov  
28 had at all times identified only three servers (SYS 135, SYS 234 and SYS 75 (the

1 “Tsuren servers”)) which they claimed an interest in and had previously demanded  
2 data and possession of those servers, in connection with the Liquidation Order  
3 claims process, for the first time they asserted a claim to eight servers. Eventually,  
4 Tsuren LLC informally agreed to accept the original three servers and dropped its  
5 claim to the other five servers. The Receiver withheld from the auction the three  
6 Tsuren servers. The auction was conducted the week of August 23, 2010. As of  
7 the date of this declaration, Tsuren LLC and Saakov have not made arrangements to  
8 pick up the Tsuren servers or to pay the Receiver the cost of delivery and shipment.

9 10. The receivership estate is insolvent and does not have sufficient funds  
10 to pay the administrative expenses incurred in full; rather, there will be a substantial  
11 shortfall in the amounts necessary to satisfy the Receiver’s and counsel’s fees and  
12 expenses. Attached hereto as Exhibit 1 is the Receiver’s Final Report and  
13 Accounting, with the Final Accounting attached as Tab 1 thereto. The Final  
14 Accounting identifies the two Receiver’s costs owed to third parties, Datapipe, in  
15 the negotiated sum of \$8,250, and for computer and technical services, already  
16 paid, in the amount of \$28,191.10, for a total of \$36,441.10 (“Third Party Costs”)  
17 which the Receiver proposes to pay Datapipe in the full negotiated amount from  
18 available receivership assets upon entry of an order on this Motion. After payment  
19 of the Third Party Costs in full, the Receiver anticipates having funds on hand of  
20 \$37,384.00 for payment of the Receiver’s and counsel’s fees and expenses. Given  
21 the financial status of the estate and the lack of funds for payment of Receiver’s and  
22 counsel’s fees, the Receiver is requesting that the Motion be determined by the  
23 Court without oral argument to avoid the Receiver and counsel incurring additional  
24 fees in appearing at a hearing.

25 11. The Receiver’s services in this case are detailed in the redacted billing  
26 records attached as hereto collectively Exhibit 2, as well as in the three Interim  
27 Reports and the Final Report and Accounting. The Receiver had to address  
28 numerous claims of third parties to the data on the servers and several issues with

1 claimant Tsuren LLC and its principal Saakov. The Receiver organized and  
2 supervised the auction of the servers and dealt with the landlords in the colocation  
3 facilities. For these services, the Receiver has incurred actual fees through August  
4 31, 2010 of \$66,292.05. The Receiver anticipates incurring additional fees of  
5 approximately \$7,199.92 from September 1, 2010 through the closing of the case.  
6 The Receiver has also incurred costs, other than Third Party Costs, of \$5,807.07  
7 and anticipates incurring an additional \$109.92 in Receiver's costs in connection  
8 with the closing.

9 12. As a member of Robb Evans & Associates LLC, I am familiar with the  
10 methods and procedures used by the Receiver and its staff and employees to record  
11 the time spent rendering services to receivership estates over which the Receiver  
12 has been appointed. The records attached hereto as Exhibit 2 are regularly prepared  
13 by the members, staff and employees of the Receiver at or about the time of the  
14 services rendered and each of whom has a business duty to accurately record the  
15 information regarding their services set forth in these records. The records are  
16 reviewed by the Receiver's accounting staff and summarized in the Receiver's  
17 Final Accounting, Tab 1 to Exhibit 1 hereto. Based upon my experience with Robb  
18 Evans & Associates LLC, I believe the Receiver's methods and procedures for  
19 recording and accounting for time and services for the receivership estates over  
20 which it has been appointed are reliable and accurate.

21 I declare under penalty of perjury that the foregoing is true and correct and  
22 that this declaration was executed this 28 day of September, 2010 at Las Vegas,  
23 Nevada.

24   
25 M. VAL MILLER  
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**EXHIBIT 1**

**ROBB EVANS & ASSOCIATES LLC**

**Receiver of**

**Pricewert LLC also d/b/a 3FN.net, et al.**

**REPORT OF RECEIVER'S ACTIVITIES  
JUNE 15, 2009 THROUGH SEPTEMBER 30, 2010**

This report covers the activities of the Receiver<sup>1</sup> since the inception of the receivership. This is the final Report to the Court on the status of the receivership. It does not constitute an audit of financial condition and is intended only to provide information for use by the Court in assessing the status of the receivership.

**Overview**

On June 15, 2009, the Court entered an Order Appointing Temporary Receiver (Order). The Temporary Receiver took control of the computer servers and ancillary computer equipment housed at three computer colocation facilities in San Jose, CA. The Temporary Receiver administered a third party claims process to accept and evaluate the claims of third parties whose data was stored on the Defendant's data servers and coordinated the release of copies of such data to third parties whose data did not appear to relate to the conduct prohibited by the Temporary Restraining Order or otherwise contain harmful data. The Temporary Receiver filed several brief interim reports to the Court on July 15, 2009, July 29, 2009 and January 14, 2010.

On April 8, 2010, the Court entered an Order Appointing Liquidating Receiver and Entering Permanent Injunction and Monetary Judgment (Liquidating Order). The Liquidating Order directed the Receiver to, among other things, take control of Pricewert's servers and related equipment and after complying with various notice requirements and securely deleting the electronic data take all steps necessary to liquidate the assets of Pricewert.

As set forth below, the receivership estate is insolvent.

**Notice of Intent to Destroy**

Counsel for the Federal Trade Commission complied with the first notice requirement under Section V.1. of the Liquidating Order by providing notice of our intent to destroy the electronic data stored on the Defendant's servers to Special Agent Chris Calderon of the Federal Bureau of Investigation.

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<sup>1</sup> Reference to the Receiver in this report means the Receiver, the Receiver's Deputies, its staff, and its counsel.

The Receiver provided notice to all entities that had submitted a claim for the return of electronic data. Notice was provided through electronic mail and overnight delivery to all third party claimants as required by Section V.2.

The Receiver's counsel provided notice of the intent to destroy to Tsuren, LLC's counsel, Kronenberger Burgoyne, LLP. Counsel for Tsuren LLC did not object to the sale of the servers, but did file a claim with the Receiver for eight servers. The Receiver's counsel had a series of communications with counsel for Tsuren LLC. Tsuren LLC informally agreed to a return of the three servers that Tsuren consistently described in his communications to the Court and in his submissions to the Receiver. The Receiver still has possession of these three servers (SYS 135, SYS 234 and SYS 75) and advised counsel for Tsuren that the Receiver was prepared to ship the servers as directed by Tsuren LLC, but has yet to receive any instructions from Tsuren LLC. Shipping costs of the servers will need to be paid by Tsuren LLC.

After waiting for the ten-day time period to file objections, the Receiver initiated the liquidation process.

### **Liquidation Process**

The only known assets of the Receivership Defendants were computer servers and ancillary computer equipment housed at three computer colocation facilities in San Jose, CA.

The Receiver engaged the services of an auctioneer, R. L. Spear Co., and coordinated with the three colocation facilities to allow access to the computer equipment to the auctioneer so he could uninstall and retrieve the servers and ancillary computer equipment. Two of the three colocation facilities cooperated fully with the Receiver and allowed the auction company to remove the Pricewert equipment.

The third facility, DataPipe, refused to allow access to the Receiver and initially demanded past rental payments in excess of \$60,000. The Receiver served a copy of the Liquidation Order on representatives of DataPipe and advised DataPipe that refusal to provide immediate access to the equipment violated the Liquidation Order, specifically Section VI. of the Liquidation Order. As a result of DataPipe's refusal to comply with the Liquidation Order and allow access to the equipment, the liquidation process was delayed and the Receiver's counsel was engaged to negotiate a settlement. The Receiver's counsel reached an agreement to pay DataPipe \$8,250.00 and requests authority from the Court to pay these funds at the conclusion of the receivership.

The auction company made a second trip to San Jose to retrieve the computer equipment and conducted an auction on August 24, 2010. Gross sales totaled \$52,084.05. After payment of a 10% seller's premium, and a fee for securely deleting

electronic data, moving expenses, and advertising costs totaling \$13,491.96, the net proceeds to the estate were \$33,523.68.

### **Final Accounting**

Under Tab 1 is the Receiver's final accounting. The Receivership Estate is insolvent.

The Receiver requests that the Court:

1. Approve and ratify the activities of the Receiver;
2. Approve the fees and expenses of the receivership estate described in the final accounting, including the fees and expenses of the Receiver; exonerate the Receiver's Bond; and
3. Discharge the Receiver and its members, officers, employees, agents, attorneys and representatives and relieve it of all duties, liabilities, and responsibilities in this proceeding.

Respectfully submitted,

/s/

Robb Evans & Associates LLC  
Receiver

**TAB 1**

Robb Evans & Associates, LLC, Receiver of Pricewert LLC, et al.  
**Receiver's Expense by Month and Fund Balance**  
 From Inception (June 15, 2009) to August 31, 2010 and Estimate to Close

	Jun 30, 09	Jul 31, 09	Aug 31, 09	Sep 30, 09	Oct 31, 09	Nov 30, 09	Dec 31, 09	Jan 31, 10	Feb 28, 10	Mar 31, 10	Apr 30, 10
<b>Auction proceeds</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Costs Reimbursement</b>	0.00	9,959.00	0.00	0.00	0.00	2,000.00	0.00	0.00	0.00	0.00	0.00
<b>Initial Fund from FTC</b>	0.00	0.00	25,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Retainer</b>	0.00	0.00	2,000.00	0.00	0.00	2,000.00	0.00	0.00	0.00	0.00	0.00
<b>Total Collections</b>	0.00	9,959.00	27,000.00	0.00	0.00	4,000.00	0.00	0.00	0.00	0.00	(657.50)
<b>Expense</b>											(657.50)
<b>Third Party Payments</b>											
<b>Computer Services/Support</b>	0.00	10,003.45	14,264.24	1,117.50	1,155.25	455.35	30.00	32.70	0.00	30.00	60.00
<b>Rent Payment to Datapipe</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Third Party Payments</b>	0.00	10,003.45	14,264.24	1,117.50	1,155.25	455.35	30.00	32.70	0.00	30.00	60.00
<b>Receiver's Fees &amp; Costs</b>											
<b>Receiver's Fees</b>											
<b>Receiver</b>											
<b>R. Evans</b>	0.00	162.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>V. Miller</b>	10,773.00	6,915.00	1,568.70	434.70	302.40	283.50	2,116.80	1,776.60	4,082.40	623.70	3,345.30
<b>B. Kane</b>	1,025.00	425.00	175.00	0.00	0.00	25.00	25.00	350.00	75.00	0.00	0.00
<b>A. Jen</b>	94.50	56.70	0.00	113.40	75.60	0.00	113.40	0.00	0.00	0.00	0.00
<b>Total Receiver</b>	11,892.50	7,258.70	1,743.70	548.10	378.00	308.50	2,255.20	2,126.60	4,157.40	623.70	3,345.30
<b>Senior &amp; Accounting Support</b>											
<b>L. Lee</b>	0.00	0.00	0.00	18.90	0.00	18.90	18.90	0.00	0.00	18.90	0.00
<b>N. Wolf</b>	60.00	225.00	100.00	100.00	35.00	35.00	70.00	35.00	60.00	5.00	85.00
<b>C. DeCius</b>	0.00	15.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Senior &amp; Accounting Support</b>	60.00	240.00	100.00	118.90	35.00	53.90	88.90	35.00	60.00	23.90	85.00
<b>IT Management</b>											
<b>E. Roop</b>	6,650.00	7,387.50	1,962.50	437.50	1,400.00	450.00	1,750.00	1,112.50	800.00	350.00	650.00
<b>K. Chapin</b>	190.75	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	79.85
<b>Total IT Management</b>	6,840.75	7,387.50	1,962.50	437.50	1,400.00	450.00	1,750.00	1,112.50	800.00	350.00	729.85
<b>Support Staff</b>	190.60	33.50	8.70	30.00	0.00	15.00	0.00	4.00	0.00	0.00	258.40
<b>Total Receiver's Fees</b>	18,983.85	14,919.70	3,814.90	1,134.50	1,813.00	827.40	4,094.10	3,278.10	5,017.40	997.60	4,418.55
<b>Receiver's Costs</b>											
<b>Travel Expense</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	762.20	0.00	0.00
<b>Postage/Delivery</b>	0.00	0.00	23.38	0.00	0.44	0.44	0.00	0.00	0.00	0.00	0.00
<b>Bond Filing Service</b>	334.10	0.00	0.00	0.00	0.00	0.00	0.00	35.97	0.00	0.00	1,835.32
<b>Receiver's Bond</b>	200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Supplies/Telephone</b>	32.34	22.77	22.39	14.72	1.26	19.20	16.15	21.56	0.00	0.00	0.00
<b>Total Receiver's Costs</b>	566.44	22.77	45.77	14.72	1.70	19.64	16.15	57.53	21.84	0.00	0.00
									784.04		1,835.32

Robb Evans & Associates, LLC, Receiver of Pricewater LLC, et al.  
**Receiver's Expense by Month and Fund Balance**  
 From Inception (June 15, 2009) to August 31, 2010 and Estimate to Close

	<u>Jun 30, 09</u>	<u>Jul 31, 09</u>	<u>Aug 31, 09</u>	<u>Sep 30, 09</u>	<u>Oct 31, 09</u>	<u>Nov 30, 09</u>	<u>Dec 31, 09</u>	<u>Jan 31, 10</u>	<u>Feb 28, 10</u>	<u>Mar 31, 10</u>	<u>Apr 30, 10</u>
Legal Fees & Costs											
McKenna-Fees	0.00	0.00	0.00	0.00	0.00	0.00	1,272.60	2,883.77	9,561.78	1,428.75	1,122.75
McKenna-Costs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.08	41.33
<b>Total Legal Fees &amp; Costs</b>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,272.60</u>	<u>2,883.77</u>	<u>9,561.78</u>	<u>1,433.83</u>	<u>1,164.08</u>
Total Receiver's Fees & Costs	19,550.29	14,942.47	3,860.67	1,149.22	1,814.70	847.04	5,382.85	6,219.40	15,363.22	2,431.43	7,417.95
Total Expense	19,550.29	24,945.92	18,124.91	2,266.72	2,969.95	1,302.39	5,412.85	6,252.10	15,363.22	2,461.43	7,477.95
Fund Balance(Deficit)	<u>(19,550.29)</u>	<u>(14,986.92)</u>	<u>8,875.09</u>	<u>(2,266.72)</u>	<u>(2,969.95)</u>	<u>2,697.61</u>	<u>(5,412.85)</u>	<u>(6,252.10)</u>	<u>(15,363.22)</u>	<u>(2,461.43)</u>	<u>(8,135.45)</u>

Robb Evans & Associates, LLC, Receiver of Pricewert LLC, et al.  
**Receiver's Expense by Month and Fund Balance**  
 From Inception (June 15, 2009) to August 31, 2010 and Estimate to Close

	May 31, 10	Jun 30, 10	Jul 31, 10	Aug 31, 10	6/15/2009 to 8/31/10	Estimate to Close	TOTAL
<b>Auction proceeds</b>	0.00	0.00	0.00	0.00	0.00	33,523.68	33,523.68
<b>Costs Reimbursement</b>	0.00	0.00	0.00	0.00	11,959.00	0.00	11,959.00
<b>Initial Fund from FTC</b>	0.00	0.00	0.00	0.00	25,000.00	0.00	25,000.00
<b>Retainer</b>	0.00	0.00	0.00	0.00	3,342.50	0.00	3,342.50
<b>Total Collections</b>	0.00	0.00	0.00	0.00	40,301.50	33,523.68	73,825.18
<b>Expense</b>							
<b>Third Party Payments</b>							
<b>Computer Services/Support</b>	0.00	0.00	1,042.61	0.00	28,191.10	0.00	28,191.10
<b>Rent Payment to Datapipe</b>	0.00	0.00	0.00	0.00	0.00	8,250.00	8,250.00
<b>Total Third Party Payments</b>	0.00	0.00	1,042.61	0.00	28,191.10	8,250.00	36,441.10
<b>Receiver's Fees &amp; Costs</b>							
<b>Receiver's Fees</b>							
R. Evans	0.00	0.00	0.00	0.00	162.00	0.00	162.00
V. Miller	699.30	2,192.40	1,436.40	434.70	36,684.90	2,268.00	38,952.90
B. Kane	0.00	25.00	25.00	0.00	2,150.00	500.00	2,650.00
A. Jen	0.00	0.00	0.00	0.00	453.60	2,079.00	2,532.60
<b>Total Receiver</b>	699.30	2,217.40	1,461.40	434.70	39,450.50	4,847.00	44,297.50
<b>Senior &amp; Accounting Support</b>							
L. Lee	18.90	0.00	0.00	0.00	94.50	189.00	283.50
N. Wolf	15.00	15.00	15.00	65.00	920.00	750.00	1,670.00
C. DeCius	0.00	0.00	0.00	0.00	15.00	75.00	90.00
<b>Total Senior &amp; Accounting Support</b>	33.90	15.00	15.00	65.00	1,029.50	1,014.00	2,043.50
<b>IT Management</b>							
E. Roop	300.00	362.50	1,025.00	287.50	24,925.00	750.00	25,675.00
K. Chapin	31.05	0.00	0.00	0.00	301.65	88.92	390.57
<b>Total IT Management</b>	331.05	362.50	1,025.00	287.50	25,226.65	838.92	26,065.57
<b>Support Staff</b>							
<b>Total Receiver's Fees</b>	22.00	17.20	6.00	0.00	585.40	500.00	1,085.40
<b>Total Receiver's Fees</b>	1,086.25	2,612.10	2,507.40	787.20	66,292.05	7,199.92	73,491.97
<b>Receiver's Costs</b>							
<b>Travel Expense</b>	0.00	0.00	0.00	0.00	762.20	0.00	762.20
<b>Postage/Delivery</b>	2,154.98	0.00	0.00	0.00	4,050.53	50.00	4,100.53
<b>Bond Filing Service</b>	0.00	0.00	0.00	0.00	334.10	0.00	334.10
<b>Receiver's Bond</b>	0.00	200.00	0.00	0.00	400.00	0.00	400.00
<b>Supplies/Telephone</b>	30.74	20.09	9.55	27.63	260.24	59.92	320.16
<b>Total Receiver's Costs</b>	2,185.72	220.09	9.55	27.63	5,807.07	109.92	5,916.99

Robb Evans & Associates, LLC, Receiver of Pricewater LLC, et al.  
**Receiver's Expense by Month and Fund Balance**  
 From Inception (June 15, 2009) to August 31, 2010 and Estimate to Close

	<u>May 31, 10</u>	<u>Jun 30, 10</u>	<u>Jul 31, 10</u>	<u>Aug 31, 10</u>	<u>6/15/209 to 8/31/10</u>	<u>Estimate to Close</u>	<u>TOTAL</u>
Legal Fees & Costs							
McKenna-Fees	544.50	2,394.45	1,534.50	446.95	21,190.05	13,500.00	34,690.05
McKenna-Costs	0.22	27.80	7.32	0.00	81.75	0.00	81.75
<b>Total Legal Fees &amp; Costs</b>	<u>544.72</u>	<u>2,422.25</u>	<u>1,541.82</u>	<u>446.95</u>	<u>21,271.80</u>	<u>13,500.00</u>	<u>34,771.80</u>
Total Receiver's Fees & Costs	3,816.69	5,254.44	4,058.77	1,261.78	93,370.92	20,809.84	114,180.76
Total Expense	3,816.69	5,254.44	5,101.38	1,261.78	121,562.02	29,059.84	150,621.86
Fund Balance(Deficit)	<u>(3,816.69)</u>	<u>(5,254.44)</u>	<u>(5,101.38)</u>	<u>(1,261.78)</u>	<u>(81,260.52)</u>	<u>4,463.84</u>	<u>(76,796.68)</u>