

1 GARY OWEN CARIS (SBN 088918)  
gcaris@mckennalong.com  
2 LESLEY ANNE HAWES (SBN 117101)  
lhawes@mckennalong.com  
3 MCKENNA LONG & ALDRIDGE LLP  
300 South Grand Avenue, 14th Floor  
4 Los Angeles, CA 90071-3124  
Telephone: (213) 688-1000  
5 Facsimile: (213) 243-6330

6 Attorneys for Temporary Receiver  
**ROBB EVANS & ASSOCIATES LLC**

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SOUTHERN DIVISION**

11 FEDERAL TRADE COMMISSION,

CASE NO. SACV 12-01561-DOC (JPRx)

12 Plaintiff,

13 v.

**NOTICE OF MOTION AND  
MOTION FOR APPROVAL AND  
PAYMENT OF FEES AND  
EXPENSES OF TEMPORARY  
RECEIVER AND ITS  
PROFESSIONALS INCURRED  
FROM INCEPTION OF THE  
RECEIVERSHIP THROUGH  
AUGUST 31, 2012, AND FOR  
ORDER LIMITING NOTICE  
UNDER LOCAL CIVIL RULE 66-7  
IN CONNECTION THEREWITH;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND  
DECLARATION OF LESLEY  
ANNE HAWES IN SUPPORT  
THEREOF**

14 AMERICAN MORTGAGE  
CONSULTING GROUP, LLC, a  
15 California Limited Liability Company,  
also d.b.a. American Mortgage Group  
16 and American Mortgage Consulting;  
HOME GUARDIAN  
17 MANAGEMENT SOLUTIONS, LLC,  
a California Limited Liability  
18 Company, also d.b.a. Home Guardian  
Solutions; and MARK NAGY  
19 ATALLA, d.b.a Home Guardian  
Solutions, Home G Solutions Firm, and  
20 Home G Solutions Group,

21 Defendants.

**[BRICK KANE DECLARATION  
FILED UNDER SEPARATE COVER]**

22  
23  
24 DATE: January 7, 2013  
TIME: 8:30 a.m.  
25 PLACE: Courtroom 9D

1 PLEASE TAKE NOTICE that on January 7, 2013, commencing at 8:30 a.m.  
2 or as soon thereafter as the parties may be heard in Courtroom 9D of the above-  
3 entitled Court located at 411 West Fourth Street, Santa Ana, California 92701,  
4 Robb Evans & Associates LLC, the Temporary Receiver (“Temporary Receiver”)  
5 of American Mortgage Consulting Group, LLC, Home Guardian Management  
6 Solutions, LLC and their successors, assigns, subsidiaries and affiliates, will and  
7 does hereby move the Court for the following relief:

8 1. An order approving and authorizing payment from the assets of the  
9 receivership estate of the fees and expenses of the Temporary Receiver, its  
10 members and staff, and of the Temporary Receiver’s counsel, McKenna Long &  
11 Aldridge LLP (“McKenna Firm”), incurred from the inception of the case through  
12 October 31, 2012 (the “Initial Expense Period”). During the Initial Expense Period,  
13 the Temporary Receiver, its members and staff have incurred fees in the aggregate  
14 sum of \$37,912.25 and Temporary Receiver’s expenses in the sum of \$1,855.13 in  
15 connection with services rendered to the estate, and the McKenna Firm has incurred  
16 fees of \$2,902.95 and no costs, for total Temporary Receiver’s fees and costs and  
17 attorneys fees and costs of \$42,670.33 for the Initial Expense Period;

18 2. An order limiting notice under Local Civil Rules 66-7(f) and 6-1 and  
19 deeming the Temporary Receiver’s service of notice of this motion and the motion  
20 on the parties to this action through service on their counsel of record, service of  
21 notice of the hearing on the motion on the governmental agencies reflected in the  
22 proof of service thereon and posting of the notice of motion and motion, supporting  
23 memorandum and declarations without time record exhibits on the Temporary  
24 Receiver’s web site for this case to be sufficient and appropriate notice under the  
25 circumstances.

26 This motion is made pursuant to Local Civil Rule 66-7 and is made and  
27 based on this notice of motion and motion, the accompanying memorandum of  
28 points and authorities and the Declaration of Lesley Anne Hawes in support hereof,

1 the separate Declaration of Brick Kane in support hereof, the separate notice of  
2 hearing on the motion, on the pleadings, records and files of the Court in  
3 connection with this action, including without limitation the Report of Temporary  
4 Receiver's Activities September 20, 2012 Through September 26, 2012 filed on  
5 September 27, 2012 (Doc. No. 24) and the Temporary Receiver's Report of  
6 Financial Analysis Dated October 29, 2012 (Doc. No. 35), and on such other oral  
7 and documentary evidence and arguments of counsel as may be presented by the  
8 Temporary Receiver prior to or at the hearing on the motion.

9

10 Dated: December 4, 2012

MCKENNA LONG & ALDRIDGE LLP  
GARY OWEN CARIS  
LESLEY ANNE HAWES

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By: /s/Lesley Anne Hawes

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Lesley Anne Hawes  
Attorneys for Temporary Receiver  
**ROBB EVANS & ASSOCIATES LLC**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Federal Trade Commission (“FTC”) commenced this action against  
4 American Mortgage Consulting Group, LLC (“AMC”), Home Guardian  
5 Management Solutions, LLC (“HGS”) and Mark Nagy Atalla (“Atalla”)  
6 (collectively “Defendants”) by filing a complaint alleging violations of the FTC  
7 Act, the Dodd-Frank Act and various other consumer protection statutes and  
8 regulations. The FTC’s complaint alleges that the Defendants violated, among  
9 other statutes and regulations, Regulation O, Mortgage Assistance Relief Services,  
10 12 C.F.R. Part 1015 in connection with loan modification services offered to  
11 customers of AMC and HGS. On November 21, 2012, the Defendants filed an  
12 answer to the complaint.

13 On September 18, 2012, the Court issued its Ex Parte Temporary Restraining  
14 Order with Asset Freeze, Appointment of Temporary Receiver, Expedited  
15 Discovery, and Other Equitable Relief, and Order to Show Cause Why Preliminary  
16 Injunction Should Not Issue (“TRO”). The TRO appointed Robb Evans as  
17 Temporary Receiver of American Mortgage Consulting Group, LLC and Home  
18 Guardian Management Solutions, LLC, and their successors, assigns, affiliates or  
19 subsidiaries, by whatever names they might be known, if the Receiver believes they  
20 are owned or controlled in whole or in part by the Defendants (“Receivership  
21 Defendants”). On September 20, 2012, the Temporary Receiver entered the  
22 Receivership Defendants’ business premises in Newport Beach, California and took  
23 custody of the files and records of the Receivership Defendants.

24 On September 27, 2012, the Temporary Receiver filed his Report of  
25 Temporary Receiver’s Activities covering the period of September 20, 2012  
26 through September 27, 2012 (“Receiver’s Report”) (Doc. No. 24). On October 1,  
27 2012, the Court conducted a hearing on the order to show cause as to why a  
28 preliminary injunction should not issue and granted the FTC’s motion for a

1 preliminary injunction. The Court entered the Preliminary Injunction with Asset  
2 Freeze, Appointment of Temporary Receiver, and Other Equitable Relief on that  
3 date (“Preliminary Injunction”), and amended the Preliminary Injunction on  
4 October 4, 2012 to include the exhibits to the Preliminary Injunction inadvertently  
5 omitted from the order issued October 1, 2012 (Doc. No. 30) (“Amended  
6 Preliminary Injunction”).<sup>1</sup> The Court also required the Temporary Receiver to  
7 provide the Court with a report containing a financial analysis of the Receivership  
8 Defendants within 30 days.

9 At the October 1, 2012 hearing, the Court also addressed information  
10 contained in the Receiver’s Report that defendant Atalla may have violated the  
11 TRO by removing property from a safe deposit box at Bank of America. The Court  
12 set a contempt hearing on October 4, 2012 to address that issue. The FTC and the  
13 Defendants reached a stipulation to resolve the contempt by Atalla. On October 9,  
14 2012, the Court issued an order based on the parties’ stipulation to resolve the  
15 contempt (Doc. No. 33). Pursuant to the Court’s October 9, 2012 order, Atalla was  
16 found to be in contempt of Court and was given an opportunity to pay a sanction of  
17 \$8,000 to the Temporary Receiver on or before October 29, 2012 to resolve the  
18 contempt and set a continued hearing of November 5, 2012 on the contempt  
19 proceedings. Atalla timely delivered the payment of the contempt sanction of  
20 \$8,000 to the Temporary Receiver, and the Court took the November 5, 2012  
21 hearing off-calendar.

22 On October 30, 2012, the Temporary Receiver filed its Temporary  
23 Receiver’s Report of Financial Analysis Dated October 29, 2012 (Doc. No. 35)  
24 (“Financial Report”) and its Temporary Receiver’s Report of Receipt of Fund  
25 Under Contempt Sanction Order (Doc. No. 36) (“Contempt Report”). Pursuant to

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26  
27 <sup>1</sup> The Preliminary Injunction appointed Robb Evans & Associates LLC as  
28 Temporary Receiver over the Receivership Defendants, and the term Temporary  
Receiver as used herein is intended to mean Robb Evans and/or Robb Evans &  
Associates LLC as applicable.

1 the provisions of the Amended Preliminary Injunction which require the Temporary  
2 Receiver to file an application for compensation of the Temporary Receiver and its  
3 professionals within 60 days (Amended Preliminary Injunction, Section XVIII), the  
4 Temporary Receiver files this Motion for approval of fees and expenses of the  
5 Temporary Receiver and its counsel for the period from the inception of the  
6 receivership through October 31, 2012 (“Initial Expense Period”).

7 **II. SUMMARY OF SERVICES AND ACTIVITIES OF RECEIVER AND**  
8 **ITS COUNSEL DURING INITIAL EXPENSE PERIOD**

9 This motion is the Temporary Receiver’s first motion for approval and  
10 payment of the fees and expenses of the Temporary Receiver and its counsel and  
11 covers the period from the inception of the receivership through and including  
12 October 31, 2012 (the “Initial Expense Period”). The motion seeks approval and  
13 payment of the Temporary Receiver’s fees incurred during the Initial Expense  
14 Period of \$37,912.25 and costs of \$1,855.13. The Temporary Receiver’s fees  
15 include the Receiver’s fees of \$27,285.75, senior and accounting staff of \$5,922.00,  
16 IT Management staff of \$4,401.00, and support staff of \$303.50. The motion also  
17 seeks approval and payment of the Temporary Receiver’s attorneys’ fees of  
18 \$2,902.95 incurred to its counsel, McKenna Long & Aldridge LLP (the “McKenna  
19 Firm”). The Temporary Receiver’s and legal fees and costs incurred in the Initial  
20 Expense Period total \$42,670.33. The receipts and disbursements from the estate,  
21 and the fees and expenses of the Temporary Receiver and its counsel incurred in the  
22 Initial Expense Period are summarized in the Receivership Administrative  
23 Expenses and Fund Balance attached as Exhibit 1 to the Declaration of Brick Kane  
24 in support of this Motion.

25 On September 20, 2012, the Temporary Receiver’s members and staff  
26 entered the Receivership Defendants’ business premises in Newport Beach,  
27 California and took possession and control of the records, documents and property  
28 located there. The Temporary Receiver also went to the three other business

1 locations listed in the TRO and determined those locations were mail drop facilities  
2 and not business locations of the Receivership Defendants.

3 The Temporary Receiver's members and staff determined that there were no  
4 accounting records or accounting systems maintained by the Receivership  
5 Defendants that could be located by the Temporary Receiver. There were no  
6 physical or electronic accounting files at the business premises, and defendant  
7 Atalla advised the Temporary Receiver that there was no accounting system or  
8 payroll processor.

9 The Temporary Receiver's members and staff reviewed the business records  
10 at the premises pertaining to the Receivership Defendants' loan modification  
11 business and attempted to interview Atalla and the seven employees at the premises  
12 when the Temporary Receiver entered the facility. The employees stated they were  
13 independent contractors, and several refused to provide any additional employment  
14 or contact information. Atalla also refused to respond to most questions posed by  
15 the Temporary Receiver and after the Court's October 1, 2012 hearing, provided  
16 the user name and password to allow the Temporary Receiver on-line banking  
17 access and well as other access codes requested by the Temporary Receiver.

18 During the initial period of the receivership covered by the Receiver's  
19 Report, the Temporary Receiver analyzed the sales and processing operations of the  
20 Receivership Defendants, including the documentation presented to customers to  
21 sign up for the loan modification services provided by the Receivership Defendants.  
22 These sales and processing operations are described in detail in the Receiver's  
23 Report. In summary, most of the employees of the Receivership Defendants are  
24 involved in sales, following up on leads and responses to Internet inquiries by  
25 potential customers and taking in applications from customers. Only one employee  
26 was designated to process loan modifications for the Receivership Defendants'  
27 customers.

28

1           The Temporary Receiver's members and staff analyzed the nature of the loan  
2 modification processing performed by the Receivership Defendants. The results of  
3 the analysis and investigation are described in detail in the Receiver's Report. In  
4 summary, the Temporary Receiver found the loan modification records to be  
5 incomplete, including an Excel spreadsheet with a schedule of 72 names, limited  
6 loan and processing information and no contact information for the consumer  
7 customers. The Temporary Receiver was unable to locate a complete database with  
8 customer information. The Temporary Receiver reviewed many customer files  
9 contained in a four-drawer file cabinet as described in the Receiver's Report,  
10 including a random sampling of 10 closed files which the Temporary Receiver  
11 evaluated in detail, as described in the Receiver's Report. The Temporary  
12 Receiver's IT staff also took possession of and preserved electronic records from  
13 the computers at the business premises.

14           The Temporary Receiver attempted to analyze the financial status of the  
15 Receivership Defendants but was hampered in preparing the Receiver's Report by  
16 the lack of accounting records. The Temporary Receiver was only able to locate  
17 and initially freeze approximately \$3,000 in funds as set forth in the Receiver's  
18 Report. However, the funds were subject to provisional credit only by the financial  
19 institutions based on checks still being processed, and the items were rejected and  
20 returned unpaid, resulting in all but approximately \$26 being recovered from the  
21 Receivership Defendants bank accounts.

22           The Temporary Receiver attended the October 1, 2012 hearing on the  
23 Preliminary Injunction and also attended the hearing on October 4, 2012 on Atalla's  
24 contempt of Court. As set forth in the Receiver's Report, the Temporary Receiver  
25 had served Bank of America with the TRO on September 20, 2012 and was advised  
26 that Atalla went to the bank after receiving service of the TRO at the business  
27 premises and was granted access to a personal safe deposit box from which he  
28 removed \$8,000. Pursuant to the Court's October 9, 2012 order approving a



1 stipulation to resolve the contempt, on October 29, 2012, the sum of \$8,000 was  
2 delivered to the Temporary Receiver. Those funds are reflected in the financial  
3 summary attached as Exhibit 1 to the Declaration of Brick Kane.

4 Based on the Court's instructions, the Temporary Receiver also performed  
5 additional investigation into the bank account records of the Receivership  
6 Defendants which the Temporary Receiver obtained from various sources. The  
7 Temporary Receiver analyzed available records for four bank accounts at two  
8 different financial institutions (JP Morgan Chase and Bank of America). Based on  
9 the banking records for those four accounts, the Temporary Receiver estimated the  
10 Receivership Defendants' sales were approximately \$563,000 net of chargebacks  
11 and returns.

12 The Temporary Receiver's analysis of the banking records also included an  
13 analysis of the disposition of the funds from those four bank accounts. The  
14 preparation of this report required a detailed review of banking records for these  
15 four accounts and individual items processed through those accounts through bank  
16 statements and cancelled checks. The Temporary Receiver's financial analysis is  
17 reflected in the Temporary Receiver's Financial Report.

18 During the Initial Expense Period, the Temporary Receiver's counsel  
19 reviewed and analyzed the TRO and Amended Preliminary Injunction. The  
20 Temporary Receiver's counsel reviewed the draft Receiver's Report and assisted  
21 the Temporary Receiver in revising, finalizing and filing the Receiver's Report on  
22 September 27, 2012. In addition, the Temporary Receiver's counsel prepared the  
23 Temporary Receiver's Contempt Report and reviewed, prepared the cover pleading  
24 and filed the Temporary Receiver's Financial Report. Counsel for the Temporary  
25 Receiver has monitored filings and the status of hearings in the case and  
26 communicated with the Temporary Receiver regarding the case.

27  
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1 **III. THE FEES AND EXPENSES OF THE TEMPORARY RECEIVER**  
2 **AND HIS PROFESSIONALS SHOULD BE APPROVED**

3 It is a fundamental tenet of receivership law that expenses of administration  
4 incurred by the receiver, including those of the receiver, his counsel and others  
5 employed by the receiver, constitute priority expenses for which compensation  
6 should be paid from the assets of the receivership. As explained in the leading  
7 treatise *Clark on Receivers*:

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

16 2 Clark, Ralph Ewing, *A Treatise on the Law and Practice of Receivers* § 637, p.  
17 1052 (3<sup>rd</sup> ed. 1992).

18 The motion establishes that the Temporary Receiver, its members, staff and  
19 counsel rendered extensive services during the Initial Expense Period and that the  
20 fees and expenses are reasonable given the nature and extent of the services  
21 rendered. *See Federal Trade Commission v. Capital Acquisitions & Management*  
22 *Corp.*, 2005 U.S. Dist. LEXIS 18504 (N.D. Ill. August 26, 2005). The fees and  
23 expenses of the Temporary Receiver and counsel cover a period in which the  
24 Temporary Receiver's members and staff were required to collect, preserve and  
25 review numerous customer files, business records and financial records. The  
26 services rendered by the Temporary Receiver and counsel include preparation of  
27 the Receiver's Report, the Financial Report and the Contempt Report and include  
28 the Temporary Receiver's attendance at two separate Court hearings, including the

1 hearing on the Preliminary Injunction and the hearing on the contempt against  
2 Atalla. Given the nature and extent of the services rendered by the Temporary  
3 Receiver and its counsel, the fees and expenses incurred are reasonable and should  
4 be approved.

5 **IV. NOTICE OF THIS MOTION IS SUFFICIENT UNDER THE**  
6 **CIRCUMSTANCES AND SHOULD BE APPROVED**

7 Local Civil Rule 66-7(f) provides for service of notice of the hearing on a  
8 motion for approval of fees and expenses of a receiver on all “known” creditors of  
9 the receivership estate. As reported in the Receiver’s Report, the Temporary  
10 Receiver has located no accounting records or electronic accounting files, and the  
11 Temporary Receiver has been unable to locate a complete customer database. The  
12 Excel spreadsheet with loan information contained no consumer contact  
13 information.<sup>2</sup>

14 Given the insolvency of the receivership estate and the lack of reliable and  
15 readily accessible vendor and/or consumer contact information for vendors and  
16 consumers who would qualify as “known” creditors of the Receivership  
17 Defendants, the Temporary Receiver seeks a limited notice order on this Motion by  
18 which notice of the Motion will be deemed sufficient if the Motion and all  
19 supporting papers are served on the parties to the action through their counsel and a  
20 copy of the notice of motion and motion, supporting memorandum and declarations  
21 without time record exhibits is posted on the Temporary Receiver’s web site for  
22 this receivership case. Further, the Temporary Receiver will serve a notice of  
23 hearing on the Motion on various taxing authorities and other governmental  
24 agencies to provide them with notice of the proceeding, although the Temporary  
25 Receiver cannot determine at this time whether those entities are creditors.

26 \_\_\_\_\_  
27 <sup>2</sup> The records of the Receivership Defendants are sufficiently incomplete and  
28 unclear that arguably there are no “known” creditors of the Receivership  
Defendants who could be given notice.

1 The Court's authority, as a court of equity supervising a federal equity  
2 receivership, to issue such an administrative order approving this form of notice is  
3 supported by the provisions of the Federal Rules of Civil Procedure which grant the  
4 Court discretion regarding the notice to be provided of proceedings and by analogy  
5 to bankruptcy proceedings. *See* F.R. Civ. P. 5(a) and (c) (authorizing the court to  
6 modify service procedures when numerous defendants are involved in litigation);  
7 Local Civil Rule 66-8 (receiver to administer receivership estates "as nearly as  
8 possible in accordance with the practice in the administration of estates in  
9 bankruptcy"); *In re First Alliance Mortgage Co.*, 269 B.R. 428, 442 (C.D. Cal.  
10 2001) (referencing in *dicta* in the court's recitation of facts the bankruptcy court's  
11 order limiting notice issued in that case); 11 U.S.C. section 102(1)(A) (defining the  
12 phrase "after notice and a hearing" to mean "after such notice as is appropriate in  
13 the particular circumstances, and such opportunity for hearing as is appropriate in  
14 the particular circumstances"); 11 U.S.C. section 105(a) and (d) (granting broad  
15 equitable powers to the court to issue orders "necessary or appropriate to carry out  
16 the provisions" of title 11 including "prescribing such limitations and conditions as  
17 the court deems appropriate to ensure the case is handled expeditiously and  
18 economically"); and F. R. Bankr. P. 2002(m) (authorizing the court to enter "orders  
19 designating the matters in respect to which, the entity to whom, and the form and  
20 manner in which notices shall be sent except as otherwise provided by these rules").

21 **V. CONCLUSION**

22 For the foregoing reasons, it is respectfully requested that the Court grant  
23 relief as requested in the Motion.

24 Dated: December 4, 2012

MCKENNA LONG & ALDRIDGE LLP  
GARY OWEN CARIS  
LESLEY ANNE HAWES

26 By: /s/Lesley Anne Hawes  
27 Lesley Anne Hawes  
28 Attorneys for Temporary Receiver  
**ROBB EVANS & ASSOCIATES LLC**

**DECLARATION OF LESLEY ANNE HAWES**

I, Lesley Anne Hawes, declare:

1. I am an attorney at law duly admitted to practice before the courts of the State of California and before the United States District Court for the Central District of California and am a member of the firm of McKenna Long & Aldridge LLP (“McKenna Firm”), the attorneys for the Temporary Receiver Robb Evans & Associates LLC (“Temporary Receiver”) in this case. I have personal knowledge of the matters set forth in this declaration, and if I were called upon to testify as to these matters, I could and would competently testify based upon my personal knowledge.

2. I am the attorney who has been primarily responsible for the representation of the Temporary Receiver in this case. The Temporary Receiver has incurred legal fees in the sum of \$2,902,95 in connection with the services rendered to the Temporary Receiver by the McKenna Firm from the inception of the receivership through and including October 31, 2012 comprising the Initial Expense Period. True and correct copies of the McKenna Firm’s redacted billing statements for the period from the inception of the receivership through October 31, 2012 are attached hereto collectively as Exhibit 1. The time records, as well as the time records of the Temporary Receiver and its staff, have been redacted by my firm where appropriate to preserve descriptions containing confidential, tactical, strategic, attorney-client privileged and/or attorney work-product information.

3. The TRO appointed Robb Evans as Temporary Receiver of American Mortgage Consulting Group, LLC and Home Guardian Management Solutions, LLC, and their successors, assigns, affiliates or subsidiaries, by whatever names they might be known, if the Receiver believes they are owned or controlled in whole or in part by the Defendants (“Receivership Defendants”), imposed an asset freeze on the assets of the individual defendant Mark Nagy Atalla (“Atalla”), and set a hearing on the application for a preliminary injunction by plaintiff Federal

1 Trade Commission (“FTC”) for October 1, 2012. The subsequent Preliminary  
2 Injunction appointed Robb Evans & Associates LLC as Temporary Receiver, and  
3 the term Temporary Receiver as used herein is intended to refer to Robb Evans  
4 and/or Robb Evans & Associates LLC as applicable.

5 4. During the Initial Expense Period, the McKenna Firm reviewed and  
6 analyzed the TRO and Amended Preliminary Injunction. I reviewed the draft  
7 Receiver’s Report and assisted the Temporary Receiver in revising, finalizing and  
8 filing the Receiver’s Report on September 27, 2012. In addition, I prepared the  
9 Temporary Receiver’s Contempt Report and reviewed, prepared the cover pleading  
10 and filed the Temporary Receiver’s Financial Report. The McKenna Firm has  
11 monitored filings and the status of hearings in the case and communicated with the  
12 Temporary Receiver regarding the case.

13 5. I am familiar with the billing practices and procedures of the McKenna  
14 Firm and the attorneys, paralegals and other professionals whose services are billed  
15 by the McKenna Firm to its clients. The billing statements are prepared in the  
16 ordinary course of business by the McKenna Firm’s accounting department from  
17 time records regularly input and updated by attorneys, paralegals and other  
18 professionals rendering services to clients. The draft “pro-formas” that are  
19 generated from the time entries are reviewed by the billing partner for the specific  
20 client matter, and final billing statements are sent to the clients. Based on my more  
21 than six years as an attorney with the McKenna Firm, I find that the billing  
22 statements accurately reflect the time entries regularly made by professionals at the  
23 McKenna Firm and the services rendered and expenses incurred in connection with  
24 the McKenna Firm’s representation of its clients.

25 6. I have practiced law in the State of California for over 25 years and  
26 have specialized in the representation of federal equity receivers in civil  
27 enforcement actions filed by the Federal Trade Commission and the Securities and  
28 Exchange Commission for more than 10 years. I am familiar with the billing rates

1 charged by attorneys in the Southern California area and believe the rates charged  
2 by the McKenna Firm in this matter and the fees and expenses requested for the  
3 Initial Expense Period are fair and reasonable given the nature of the services  
4 rendered, the time expended, the expertise of the attorneys and others performing  
5 services in this matter, the rates charged by other firms and attorneys in the  
6 Southern California area and other factors. The billing rates charged by my firm in  
7 this case are discounted by 10% from the regular rates charged to general firm  
8 clients by the attorneys who are performing services on this file.

9 I declare under penalty of perjury that the foregoing is true and correct and  
10 that this declaration was executed on December 4, 2012 at Los Angeles, California.

11  
12 /s/ Lesley Anne Hawes  
13 LESLEY ANNE HAWES  
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5 Facsimile: (213) 243-6330

6 Attorneys for Temporary Receiver  
**ROBB EVANS & ASSOCIATES LLC**

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SOUTHERN DIVISION**

11 FEDERAL TRADE COMMISSION,  
12 Plaintiff,

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14 AMERICAN MORTGAGE  
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15 California Limited Liability Company,  
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16 and American Mortgage Consulting;  
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17 MANAGEMENT SOLUTIONS, LLC,  
a California Limited Liability  
18 Company, also d.b.a. Home Guardian  
Solutions; and MARK NAGY  
19 ATALLA, d.b.a Home Guardian  
Solutions, Home G Solutions Firm, and  
20 Home G Solutions Group,

21 Defendants.

CASE NO. SACV 12-01561-DOC (JPRx)

**DECLARATION OF BRICK KANE  
IN SUPPORT OF MOTION FOR  
APPROVAL AND PAYMENT OF  
FEES AND EXPENSES OF  
TEMPORARY RECEIVER AND  
ITS PROFESSIONALS INCURRED  
FROM INCEPTION OF THE  
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ORDER LIMITING NOTICE  
UNDER LOCAL CIVIL RULE 66-7  
IN CONNECTION THEREWITH**

DATE: January 7, 2013  
TIME: 8:30 a.m.  
PLACE: Courtroom 9D

22  
23  
24 I, Brick Kane, declare:

25 1. I am the President and Chief Operating Officer of Robb Evans &  
26 Associates LLC, the Temporary Receiver (“Temporary Receiver”) of American  
27 Mortgage Consulting Group, LLC, Home Guardian Management Solutions, LLC  
28 and their successors, assigns, subsidiaries and affiliates (“Receivership



1 Defendants”). If called upon to testify as to the facts set forth in this declaration, I  
2 could and would testify competently thereto as the facts are personally known to me  
3 to be true.

4 2. I am one of the members of the Temporary Receiver who has been  
5 primarily responsible for the supervision of the receivership in this case. I have  
6 personally participated in the entry into the premises of the Receivership  
7 Defendants’ business on September 20, 2012 after the Temporary Receiver’s  
8 appointment, in the meetings with Atalla and the employees that date, in the review  
9 of business and banking records of the Receivership Defendants and in the  
10 preparation of the reports filed by the Temporary Receiver in this case. I also  
11 personally attended the two hearings conducted by the Court in this case on  
12 October 1, 2012 and October 4, 2012.

13 3. On September 18, 2012, the Court issued its Ex Parte Temporary  
14 Restraining Order with Asset Freeze, Appointment of Temporary Receiver,  
15 Expedited Discovery, and Other Equitable Relief, and Order to Show Cause Why  
16 Preliminary Injunction Should Not Issue (“TRO”). The TRO appointed Robb  
17 Evans as Temporary Receiver of American Mortgage Consulting Group, LLC and  
18 Home Guardian Management Solutions, LLC, and their successors, assigns,  
19 affiliates or subsidiaries, by whatever names they might be known, if the Receiver  
20 believes they are owned or controlled in whole or in part by the Defendants, and the  
21 Preliminary Injunction, discussed below, appointed Robb Evans & Associates LLC  
22 as the Temporary Receiver over the Receivership Defendants, and the term  
23 Temporary Receiver as used herein is intended to mean Robb Evans and/or Robb  
24 Evans & Associates LLC as applicable.

25 4. On September 20, 2012, the Temporary Receiver entered the  
26 Receivership Defendants’ business premises in Newport Beach, California and took  
27 custody of the files and records of the Receivership Defendants. On September 27,  
28 2012, the Temporary Receiver filed his Report of Temporary Receiver’s Activities

1 covering the period of September 20, 2012 through September 27, 2012  
2 (“Receiver’s Report”) (Doc. No. 24).

3 5. On October 1, 2012, the Court conducted a hearing on the order to  
4 show cause as to why a preliminary injunction should not issue and granted the  
5 FTC’s motion for a preliminary injunction. The Court entered the Preliminary  
6 Injunction with Asset Freeze, Appointment of Temporary Receiver, and Other  
7 Equitable Relief on that date (“Preliminary Injunction”), and amended the  
8 Preliminary Injunction on October 4, 2012 to include the exhibits to the Preliminary  
9 Injunction inadvertently omitted from the order issued October 1, 2012 (Doc.  
10 No. 30) (“Amended Preliminary Injunction”). The Court also required the  
11 Temporary Receiver to provide the Court with a report containing a financial  
12 analysis of the Receivership Defendants within 30 days.

13 6. At the October 1, 2012 hearing, the Court also addressed information  
14 contained in the Receiver’s Report that defendant Atalla may have violated the  
15 TRO by removing property from a safe deposit box at Bank of America. The Court  
16 set a contempt hearing on October 4, 2012 to address that issue. The FTC and the  
17 Defendants reached a stipulation to resolve the contempt by Atalla. On October 9,  
18 2012, the Court issued an order based on the parties’ stipulation to resolve the  
19 contempt. Pursuant to the Court’s October 9, 2012 order, Atalla was found to be in  
20 contempt of Court and was given an opportunity to pay a sanction of \$8,000 to the  
21 Temporary Receiver on or before October 29, 2012 to resolve the contempt and set  
22 a continued hearing of November 5, 2012 on the contempt proceedings. Atalla  
23 timely delivered the payment of the contempt sanction of \$8,000 to the Temporary  
24 Receiver, and the Court took the November 5, 2012 hearing off-calendar.

25 7. On October 30, 2012, the Temporary Receiver filed its Temporary  
26 Receiver’s Report of Financial Analysis Dated October 29, 2012 (“Financial  
27 Report”) and its Temporary Receiver’s Report of Receipt of Fund Under Contempt  
28 Sanction Order (“Contempt Report”).

1           8.     This declaration is filed in support of the Temporary Receiver’s first  
2 motion for approval and payment of the fees and expenses of the Temporary  
3 Receiver and its counsel and covers the period from the inception of the  
4 receivership through and including October 31, 2012 (the “Initial Expense Period”).  
5 The motion seeks approval and payment of the Temporary Receiver’s fees incurred  
6 during the period Initial Expense Period of \$37,912.25 and costs of \$1,855.13. The  
7 Temporary Receiver’s fees include the Receiver’s fees of \$27,285.75, senior and  
8 accounting staff of \$5,922.00, IT Management staff of \$4,401.00, and support staff  
9 of \$303.50. The motion also seeks approval and payment of the Temporary  
10 Receiver’s attorneys’ fees of \$2,902.95 incurred to its counsel, McKenna Long &  
11 Aldridge LLP (the “McKenna Firm”). The Temporary Receiver’s and legal fees  
12 and costs incurred in the Initial Expense Period total \$42,670.33. The receipts and  
13 disbursements from the estate, and the fees and expenses of the Temporary  
14 Receiver and his counsel incurred in the Initial Expense Period are summarized in  
15 the Receivership Administrative Expenses and Fund Balance attached hereto as  
16 Exhibit 1. Attached hereto collectively as Exhibit 2 are copies of the Temporary  
17 Receiver’s redacted time records for services rendered during the Initial Expense  
18 Period.

19           9.     On September 20, 2012, the Temporary Receiver entered the  
20 Receivership Defendants’ business premises in Newport Beach, California and took  
21 possession and control of the records, documents and property located there. The  
22 Temporary Receiver’s representatives also went to the three other business  
23 locations listed in the TRO and determined those locations were mail drop facilities  
24 and not business locations of the Receivership Defendants.

25           10.    The Temporary Receiver’s members and staff determined that there  
26 were no accounting records or accounting systems maintained by the Receivership  
27 Defendants that could be located by the Receiver. There were no physical or  
28

1 electronic accounting files at the business premises, and defendant Atalla advised  
2 the Temporary Receiver that there was no accounting system or payroll processor.

3 11. The Temporary Receiver's members and staff reviewed the business  
4 records at the premises pertaining to the Receivership Defendants' loan  
5 modification business and attempted to interview Atalla and the seven employees at  
6 the premises when the Temporary Receiver entered the facility. The employees  
7 stated they were independent contractors, and several refused to provide any  
8 additional employment or contact information. Atalla also refused to respond to  
9 most questions posed by the Temporary Receiver and after the Court's October 1,  
10 2012 hearing, provided the user name and password to allow the Temporary  
11 Receiver on-line banking access and well as other access codes requested by the  
12 Temporary Receiver.

13 12. During the initial period of the receivership covered by the Receiver's  
14 Report, the Temporary Receiver analyzed the sales and processing operations of the  
15 Receivership Defendants, including the documentation presented to customers to  
16 sign up for the loan modification services provided by the Receivership Defendants.  
17 These sales and processing operations are described in detail in the Receiver's  
18 Report. In summary, most of the employees of the Receivership Defendants are  
19 involved in sales, following up on leads and responses to Internet inquiries by  
20 potential customers and taking in applications from customers. Only one employee  
21 was designated to process loan modifications for the Receivership Defendants'  
22 customers.

23 13. The Temporary Receiver's members and staff analyzed the nature of  
24 the loan modification processing performed by the Receivership Defendants. The  
25 results of the analysis and investigation are described in detail in the Receiver's  
26 Report. In summary, the Temporary Receiver found the loan modification records  
27 to be incomplete, including an Excel spreadsheet with a schedule of 72 names,  
28 limited loan and processing information and no contact information for the

1 consumer customers. The Temporary Receiver was unable to locate a complete  
2 database with customer information. The Temporary Receiver reviewed many  
3 customer files contained in a four-drawer file cabinet as described in the Receiver's  
4 Report, including a random sampling of 10 closed files which the Temporary  
5 Receiver evaluated in detail, as described in the Receiver's Report. The Temporary  
6 Receiver's IT staff also took possession of and preserved electronic records from  
7 the computers at the business premises.

8 14. The Temporary Receiver attempted to analyze the financial status of  
9 the Receivership Defendants but was hampered in preparing the Receiver's Report  
10 by the lack of accounting records. The Temporary Receiver was only able to locate  
11 and freeze approximately \$3,000 in funds as set forth in the Receiver's Report.  
12 However, the funds were subject to provisional credit only by the financial  
13 institutions based on checks still being processed, and the items were rejected and  
14 returned unpaid, resulting in all but approximately \$26 being recovered from the  
15 Receivership Defendants bank accounts.

16 15. I attended the October 1, 2012 hearing on the Preliminary Injunction  
17 and also attended the hearing on October 4, 2012 on Atalla's contempt of Court.  
18 As set forth in the Receiver's Report, the Temporary Receiver had served Bank of  
19 America with the TRO on September 20, 2012 and was advised that Atalla went to  
20 the bank after receiving service of the TRO at the business premises and was  
21 granted access to a personal safe deposit box from which he removed \$8,000.  
22 Pursuant to the Court's October 9, 2012 order approving a stipulation to resolve the  
23 contempt, on October 29, 2012, the sum of \$8,000 was delivered to the Temporary  
24 Receiver. Those funds are reflected in the financial summary attached hereto as  
25 Exhibit 1.

26 16. Based on the Court's instructions, the Temporary Receiver also  
27 performed additional investigation into the bank accounts of the Receivership  
28 Defendants which the Temporary Receiver obtained from various sources. The

1 Temporary Receiver analyzed available records for four bank accounts at two  
2 different financial institutions (JP Morgan Chase and Bank of America). Based on  
3 the banking records for those four accounts, the Temporary Receiver estimated the  
4 Receivership Defendants' sales were approximately \$563,000 net of chargebacks  
5 and returns.

6 17. The Temporary Receiver's analysis of the banking records also  
7 included an analysis of the disposition of the funds from those four bank accounts.  
8 The preparation of this report required a detailed review of banking records for  
9 these four accounts and individual items processed through those accounts through  
10 bank statements and cancelled checks. The Temporary Receiver's financial  
11 analysis is reflected in the Temporary Receiver's Financial Report.

12 18. As reported in the Receiver's Report, the Temporary Receiver has  
13 located no accounting records or electronic accounting files, and the Temporary  
14 Receiver has been unable to locate a complete customer database. The Excel  
15 spreadsheet with loan information contained no consumer contact information.  
16 Given the insolvency of the receivership estate and the lack of reliable and readily  
17 accessible vendor and/or consumer contact information for vendors and consumers  
18 who would qualify as "known" creditors of the Receivership Defendants, the  
19 Temporary Receiver seeks a limited notice order on the motion by which notice of  
20 the motion will be deemed sufficient if a copy of the motion and all supporting  
21 pleadings is served on the parties to the action through their counsel and a copy of  
22 the motion, the supporting memorandum and the declarations, exclusive of billing  
23 records, is posted on the Temporary Receiver's web site for this receivership case.  
24 Further, the Temporary Receiver will serve a notice of hearing on the Motion on  
25 various taxing authorities and other governmental agencies to provide them with  
26 notice of the proceeding, although the Temporary Receiver cannot determine at this  
27 time whether those entities are creditors.

28

1           19. As a member of Robb Evans & Associates LLC, I am familiar with the  
2 methods and procedures used by the Temporary Receiver and its staff and  
3 employees to record the time spent rendering services to receivership estates over  
4 which the Receiver has been appointed. The records attached hereto as Exhibit 2  
5 are regularly prepared by the members, staff and employees of the Temporary  
6 Receiver at or about the time of the services rendered and each of whom has a  
7 business duty to accurately record the information regarding their services set forth  
8 in these records. The records are reviewed by the Temporary Receiver's  
9 accounting staff and summarized in the Receivership Administrative Expenses and  
10 Fund Balance attached hereto as Exhibit 1. As explained in the accompanying  
11 Declaration of Lesley Anne Hawes, the Temporary Receiver's time records have  
12 been redacted where appropriate to preserve descriptions containing confidential,  
13 tactical, strategic, attorney-client privileged and/or attorney work-product  
14 information. Based upon my experience with Robb Evans & Associates LLC, I  
15 believe the Temporary Receiver's methods and procedures for recording and  
16 accounting for time and services for the receivership estates over which it has been  
17 appointed are reliable and accurate.

18           I declare under penalty of perjury that the foregoing is true and correct and  
19 that this declaration was executed this 4 day of December 2012 at Sun Valley,  
20 California.

21  
22   
23 \_\_\_\_\_  
24 BRICK KANE  
25  
26  
27  
28

# **Exhibit 1**



## ROBB EVANS &amp; ASSOCIATES LLC

Temporary Receiver of American Mortgage Consulting Group, LLC, Home Guardian Management Solutions, LLC, et al.

**Administrative Expenses and Fund Balance**

From Inception (September 18, 2012) to October 31, 2012

	<u>Sep 12</u>	<u>Oct 12</u>	<u>TOTAL</u>
<b>Funds Transferred In</b>			
<b>Wells Fargo</b>			
American Mortgage *5804	0.00	0.32	0.32
Freedom Mortgage *5697	0.00	26.00	26.00
<b>Total Wells Fargo</b>	<u>0.00</u>	<u>26.32</u>	<u>26.32</u>
Cash-Mark Nagy Atalla	0.00	8,000.00	8,000.00
<b>Total Funds Transferred In</b>	<u>0.00</u>	<u>8,026.32</u>	<u>8,026.32</u>
<b>Expense</b>			
<b>Receiver's Fees &amp; Costs</b>			
<b>Receiver's Fees</b>			
<b>Receiver</b>			
A. Jen	4,221.00	3,075.30	7,296.30
B. Kane	6,180.75	4,974.75	11,155.50
K. Johnson	8,833.95	0.00	8,833.95
<b>Total Receiver</b>	<u>19,235.70</u>	<u>8,050.05</u>	<u>27,285.75</u>
<b>Senior and Accounting Staff</b>			
N. Wolf	0.00	162.00	162.00
C. Callahan	2,745.00	0.00	2,745.00
L. Lee	2,140.65	874.35	3,015.00
<b>Total Senior and Accounting Staff</b>	<u>4,885.65</u>	<u>1,036.35</u>	<u>5,922.00</u>
<b>IT Management</b>			
E. Roop	4,401.00	0.00	4,401.00
<b>Total IT Management</b>	<u>4,401.00</u>	<u>0.00</u>	<u>4,401.00</u>
Support Staff	196.50	107.00	303.50
<b>Total Receiver's Fees</b>	<u>28,718.85</u>	<u>9,193.40</u>	<u>37,912.25</u>
<b>Receiver's Costs</b>			
Asset/Credit Searches	53.00	3.20	56.20
Supplies/Telephone	25.67	0.00	25.67
Lock/Locksmith	159.00	0.00	159.00
Travel Expense	1,183.30	(8.20)	1,175.10
Miscellaneous Expenses	141.95	297.21	439.16
<b>Total Receiver's Costs</b>	<u>1,562.92</u>	<u>292.21</u>	<u>1,855.13</u>

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## ROBB EVANS &amp; ASSOCIATES LLC

Temporary Receiver of American Mortgage Consulting Group, LLC, Home Guardian Management Solutions, LLC, et al.

**Administrative Expenses and Fund Balance**

	<u>Sep 12</u>	<u>Oct 12</u>	<u>TOTAL</u>
Legal Fees & Costs			
McKenna Long & Aldridge	<u>1,908.90</u>	<u>994.05</u>	<u>2,902.95</u>
Total Legal Fees & Costs	<u>1,908.90</u>	<u>994.05</u>	<u>2,902.95</u>
Total Receiver's Fees & Costs	<u>32,190.67</u>	<u>10,479.66</u>	<u>42,670.33</u>
Total Expense	<u>32,190.67</u>	<u>10,479.66</u>	<u>42,670.33</u>
Deficit	<u>(32,190.67)</u>	<u>(2,453.34)</u>	<u>(34,644.01)</u>