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10 **ROBB EVANS & ASSOCIATES LLC**

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 FEDERAL TRADE COMMISSION,  
14 Plaintiff,

15 v.

16 AWS, LLC, a Nevada limited liability  
17 company; ADAMS CONSULTING, LLC, a  
18 California limited liability company; FBA  
DISTRIBUTORS, LLC, a Massachusetts  
19 limited liability company; FBA STORES,  
LLC, a Nevada limited liability company;  
20 GLOBAL MARKETING SERVICES  
L.L.C., a Nevada limited liability company;  
21 INFO PROS, LLC, a Nevada limited liability  
company; ONLINE AUCTION LEARNING  
22 CENTER, INC., a Massachusetts  
corporation; ONLINE AUCTION  
23 LEARNING CENTER, INC., a Nevada  
corporation; CHRISTOPHER F. BOWSER,  
24 individually and as an officer of FBA  
DISTRIBUTORS, LLC, FBA STORES,  
25 LLC, INFO SOLUTIONS, LLC, ONLINE  
AUCTION LEARNING CENTER, INC. and  
26 ONLINE AUCTION LEARNING CENTER,  
INC.; ADAM S. BOWSER, individually and  
27 as an officer of AWS, LLC, FBA  
DISTRIBUTORS, LLC, FBA STORES,  
28 LLC, INFO SOLUTIONS, LLC, ONLINE  
AUCTION LEARNING CENTER, INC. and

Case No. 2:18-cv-00442-JCM-PAL

**NOTICE OF MOTION AND MOTION FOR  
ORDER (1) APPROVING AND  
AUTHORIZING PAYMENT OF  
TEMPORARY RECEIVER'S AND  
PROFESSIONALS' FEES AND EXPENSES  
FROM INCEPTION OF THE  
RECEIVERSHIP THROUGH APRIL 30,  
2018; AND (2) GRANTING RELIEF FROM  
LOCAL RULE 66-5 PERTAINING TO  
NOTICE TO CREDITORS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

1 ONLINE AUCTION LEARNING CENTER,  
2 INC.; JODY L. MARSHALL, individually  
3 and as an officer of INFO PROS, LLC and  
4 INFO SOLUTIONS, LLC; and JEFFERY A.  
5 GOMEZ, a/k/a JEFF ADAMS or JEFF  
6 ADAM, individually and as an officer of  
7 ADAMS CONSULTING, LLC and  
8 GLOBAL MARKETING SERVICES  
9 L.L.C.,  
10 Defendants.

11 PLEASE TAKE NOTICE that Robb Evans & Associates LLC (“Receiver”), the  
12 Temporary Receiver pursuant to the Court’s Temporary Restraining Order filed March 14, 2018  
13 (Doc. 28) and the Stipulated Temporary Restraining Order as to Defendants Adams Consulting,  
14 LLC, Global Marketing Services L.L.C., and Jeffery A. Gomez filed April 18, 2018 (Doc. 57),  
15 hereby moves the Court for an order for the following relief:

16 1. An order approving and authorizing for payment the receivership fees and  
17 expenses incurred from the inception of the receivership estate on March 14, 2018 through April  
18 30, 2018 (“Initial Expense Period”), including payment of the fees of the Receiver, the Receiver’s  
19 members, staff and professionals, and reimbursement of costs, comprised of: (a) Receiver’s fees,  
20 including the Receiver’s members and staff, of \$232,365.90 and Receiver’s costs of \$16,594.65,  
21 for a total of \$248,960.55; (b) legal fees of the Receiver’s lead counsel, Barnes & Thornburg LLP  
22 (“Barnes & Thornburg”) of \$58,100.40 and Barnes & Thornburg’s costs of \$320.96, for a total of  
23 \$58,421.36; and (c) legal fees of the Receiver’s local counsel, Lynch Law Practice, PLLC  
24 (“Lynch”) of \$3,726.00 and Lynch’s costs of \$812.07, for a total of \$4,538.07; and

25 2. An order deeming notice of this motion to be sufficient under Local Civil Rule  
26 66-5 based on the service of the notice of the filing of this motion and the motion on all parties,  
27 and the service of the notice of the filing of the motion on all known non-consumer creditors of  
28 the estate concurrent with the filing of this motion with the Court, but not on the thousands of  
potential consumer creditors of the receivership estate.

This motion is made pursuant to Local Civil Rules 7-2 and 66-5 and is based upon this

1 notice of motion and motion, the separate notice of filing of the motion served concurrently  
2 herewith, the accompanying memorandum of points and authorities and Declarations of Brick  
3 Kane and Gary Owen Caris in support hereof, together with the exhibits accompanying the  
4 declarations, upon the pleadings, files and records of the Court in this case of which the Receiver  
5 requests the Court take judicial notice, including without limitation the Report of Receiver's  
6 Activities From March 16, 2018 Through April 19, 2018 ("Receiver's Report") filed April 20,  
7 2018 (Doc. 58), and such other and further oral and documentary evidence and pleadings as may  
8 be presented by the Receiver in support of this motion.

9  
10 Dated: May 30, 2018

Respectfully submitted,

11  
12 MICHAEL F. LYNCH  
LYNCH LAW PRACTICE, PLLC

13 GARY OWEN CARIS  
14 BARNES & THORNBURG LLP

15 By:           /s/ Gary Owen Caris            
16 GARY OWEN CARIS

17 Attorneys for Temporary Receiver  
18 **ROBB EVANS & ASSOCIATES LLC**

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

This lawsuit was commenced by the Federal Trade Commission (“FTC”) on March 12, 2018 with a Complaint for Permanent Injunction and Other Equitable Relief (Doc. 1) against AWS, LLC (“AWS”), FBA Distributors, LLC (“FBA Distributors”), FBA Stores, LLC (“FBA Stores”), Info Pros, LLC (“Info Pros”), Online Auction Learning Center, Inc., a Massachusetts corporation, Online Auction Learning Center, Inc., a Nevada corporation (both Online Auction Learning Center, Inc. entities referred to as “Online Auction”), Christopher Bowser (“C. Bowser”), Adam Bowser (“A. Bowser”) and Jody Marshall (“Marshall”). (AWS, FBA Distributors, FBA Stores, Info Pros and Online Auction, and each of their subsidiaries, affiliates, successors and assigns, are referred to herein as the “Corporate Defendants.”) Robb Evans & Associates LLC became Temporary Receiver pursuant to the Temporary Restraining Order (“TRO”) filed March 14, 2018 (Doc. 28) over the Corporate Defendants and “any other entity that the Temporary Receiver determines is controlled or owned by any Defendant and (1) conducted any business related to Defendants’ advertising, marketing, distributing, promoting, or selling of business opportunities, (2) commingled or pooled Assets with any Defendant, or (3) otherwise participated in the transfer of Assets stemming from the advertising, marketing, distributing, promoting, or selling of business opportunities.” (TRO, p. 6, Definition J) The Corporate Defendants and entities described in Definition J were deemed to be the “Receivership Entities” under the TRO.

Thereafter, the FTC filed an Amended Complaint for Permanent Injunction and Other Equitable Relief on April 10, 2018 (Doc. 50), adding new defendants Adams Consulting, LLC (“Adams Consulting”), Global Marketing Services L.L.C (“Global Marketing”) and Jeffery Gomez (“Gomez”). On April 18, 2018, the Court entered a Stipulated Temporary Restraining Order as to Defendants Adams Consulting, LLC, Global Marketing Services L.L.C, and Jeffery A. Gomez (“Stipulated TRO”) (Doc. 57), adding as new receivership entities Adams Consulting and Global Marketing, along with each of their subsidiaries, affiliates, successors and assigns, and further defining the new receivership entities to include entities the Receiver determines is

1 controlled or owned by any Defendant and conducts business related to Defendants’ business  
2 opportunities enterprise, commingles or pools assets with any Defendant, or transfers assets  
3 stemming from Defendants’ business opportunity enterprise, using the same definition found in  
4 the original TRO (Stipulated TRO, p. 7, Definition J) (“Gomez Receivership Entities”).<sup>1</sup>  
5 (Hereinafter, unless there is a need to differentiate between the two, all receivership entities,  
6 whether named entities or unnamed entities in the underlying lawsuit and whether receivership  
7 entities as a result of the original TRO or Stipulated TRO, will be referred to as the “Receivership  
8 Entities.”)

9 As described in the Receiver’s Report, the Receivership Entities generated revenue from  
10 consumers of at least \$113 million from January 2014 to March 2018, with over one-half of the  
11 gross revenue generated in 2017, by advertising, marketing, distributing and selling online  
12 business opportunities to consumers.

13 Both the TRO and Stipulated TRO have been extended from time to time pursuant to  
14 stipulated orders, while the Plaintiff and Defendants discussed settlement. (See Docs. 37, 49, 63,  
15 66) Section XVIII of the TRO provides that the Receiver shall file its initial request for  
16 compensation no more than 60 days after the date of entry of the TRO, which would be May 14,  
17 2018. Section XIX of the Stipulated TRO similarly provides that the Receiver shall file its initial  
18 request for compensation no more than 60 days after the date of entry of the Stipulated TRO,  
19 which would be June 17, 2018. While there are two different deadlines, there is one unitary  
20 receivership estate and the Receiver has endeavored to submit this initial request for fees as soon  
21 as practicable, once the April billing period was completed for the Receiver and its counsel.

22 As evidenced by the detailed billing records which accompany the Declaration of Brick  
23 Kane in support of the Motion and Exhibits 2 and 3 to the Kane Declaration, the initial period of  
24 this receivership, like the initial period of almost all equity receiverships, was marked by the need  
25 for the Receiver to render extensive services in gaining possession and control of the  
26

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27 <sup>1</sup> Based on the Receiver’s investigation, prior to the entry of the Stipulated TRO, it determined that there were a  
28 number of additional Receivership Entities pursuant to the terms of the TRO, including Global Marketing, among  
other things, Global Marketing had been a one-third owner in FBA Stores.

1 Receivership Entities, including their premises, personal property, and paper and electronic  
 2 documents, developing a thorough understanding of the Receivership Entities' business and  
 3 operations, communicating extensively with the Plaintiff, representatives and employees of the  
 4 Receivership Entities, counsel for the Receivership Entities, the individual defendants, creditors  
 5 and consumers, and preparing an initial report to the Court in order to aid the Court in more fully  
 6 understanding the nature of the Receivership Entities' business operations and report to the Court  
 7 as to the progress of the receivership. This proved even more challenging and time consuming  
 8 given the fact that five different leased premises located in widespread locations across the United  
 9 States needed to be investigated at the outset of the receivership, and the Receiver had to take  
 10 possession and control of three of those premises. The services rendered by the Receiver, its  
 11 members, staff and counsel during this Initial Expense Period have been extensive, necessary and  
 12 appropriate. The services of the Receiver and its counsel are summarized separately below and  
 13 described in the detailed billing records attached as exhibits to the Kane and Caris declarations.

14 **II. SUMMARY OF THE RECEIVER'S SERVICES AND ACTIVITIES**  
 15 **DURING THE INITIAL EXPENSE PERIOD**

16 The Receiver seeks payment of the Receiver's fees and costs summarized in the  
 17 Receivership Administrative Expenses and Fund Balance spreadsheet, by month ("Financial  
 18 Summary"), attached as Exhibit 1 to the Declaration of Brick Kane in support of this Motion,  
 19 together with the detailed billing records of the Receiver, attached to Kane's declaration as  
 20 Exhibits 2 and 3.<sup>2</sup> During the Initial Expense Period, the Receiver has incurred fees for the  
 21 Receiver and its members of \$101,300.40, accounting and senior staff fees of \$129,523.50, and  
 22 support staff fees of \$1,542.00, for total Receiver's fees of \$232,365.90. The Receiver's costs  
 23 during the Initial Expense Period total \$16,594.65 and are detailed in the Financial Summary.

24 The Receiver commenced its work on March 14, 2018 as it began to prepare for entry into  
 25 five different premises believed to be occupied by the Receivership Entities and control of the  
 26 business operations. This preparation included consultation with the FTC and, where necessary,

27 \_\_\_\_\_  
 28 <sup>2</sup> As explained in the Caris declaration, the bills have been redacted where appropriate to preserve confidential,  
 sensitive, tactical, strategic, attorney-client privileged and/or attorney work product information.

1 coordination with law enforcement authorities. Based on information provided by the FTC  
2 regarding the various premises, the Receiver determined how best to staff the initial entry and  
3 control of the various locations. Initial entry and control was simultaneously effected on  
4 March 16, 2018. The Receiver dispatched six persons to the premises in Weymouth,  
5 Massachusetts, which included an upstairs administrative and accounting area and a downstairs  
6 warehouse, two persons to the Logandale, Nevada business location, comprised of two offices  
7 and a warehouse, two persons to the Upland, California office, two persons to the Lindon, Utah  
8 office where coaching operations were conducted, and two persons to the Las Vegas suite. It was  
9 determined that there were no Receivership Entities operating in the Las Vegas suite and the  
10 Receiver did not take possession and control of that location. The Receiver took possession and  
11 control of the leased premises in Weymouth, Massachusetts, Logandale Nevada, and Lindon,  
12 Utah. The Receiver did not take possession and control of the Upland, California location.  
13 Gomez, who was present at the Upland location on the day of entry, contended that Global  
14 Marketing had nothing to do with FBA Stores and that he was in the process of subleasing the  
15 space from FBA Stores. The Receiver had to analyze what personal property and documents in  
16 Upland were property of the receivership estate and what personal property and documents  
17 belonged to Gomez. All of the members and staff who were required to travel to Boston from  
18 Los Angeles or Reno billed only half of their travel time. The members and staff who were  
19 required to travel to Lindon, Utah likewise only billed for half of their travel time.

20 The six members and staff of the Receiver who were deployed to Weymouth,  
21 Massachusetts each were assigned different duties during the initial day's work in taking  
22 possession and control of the business and its accounting operations. All members and staff were  
23 deployed on-site for not more than one or two days during the initial period of the receivership as  
24 required by the needs of the receivership so as to minimize unnecessary expenses.

25 The initial days of the receivership were labor intensive. Paper and electronic  
26 documentation were preserved and analyzed, including Gmail and Google Docs. Steps were  
27 taken to download electronic files. The Receiver reviewed various leases and rental agreements  
28 and communicated with landlords. Employees and staff of the Receivership Entities (including

1 the Receivership Entities' controller) and individual Defendants were interviewed in order to gain  
2 an understanding of the business operations. The Receiver commenced an exhaustive forensic  
3 and financial review based on an analysis of QuickBooks accounting files, the Customer  
4 Relationship Management database ("CRM"), statements from merchant processors, bank  
5 records, and public filings. The Receiver analyzed a myriad of consumer complaints and legal  
6 actions. Early in the receivership, it was necessary to address a number of urgent operational  
7 issues, including the need to cancel pending marketing events scheduled at hotels, and to  
8 communicate with UPS regarding shipments arriving at the Receivership Entities' locations. It  
9 was also necessary for the Receiver to address issues pertaining to payroll, insurance, workers  
10 compensation and a 401(k) plan, and to communicate with third party vendors on each of these  
11 issues.

12 In the early period of the receivership, the Receiver also had to take steps to serve the  
13 TRO, and several extensions of the TRO, on financial institutions, merchant processors and  
14 vendors, and have numerous communications with these various third parties, principally to  
15 freeze and recover assets of the Receivership Entities, as well as to monitor the status of credit  
16 card chargebacks and merchant reserve accounts. As a result of these efforts, during the Initial  
17 Expense Period the Receiver successfully froze approximately \$9.95 million in the Receivership  
18 Entities' bank and merchant accounts, including merchant reserves of \$7.78 million, and over  
19 \$645,000 was turned over to the Receiver from various Receivership Entities' bank accounts.  
20 After the Initial Expense Period (in May 2018), another \$1.3 million has been transferred into the  
21 receivership account from the frozen funds and is being held by the Receiver, and the current  
22 balance on hand is approximately \$1,845,000.

23 The Receiver performed many other administrative tasks during the Initial Expense  
24 Period. It had extensive communications with consumers and disseminated written notice of the  
25 receivership on its website. It set up a new e-mail address for consumer communications, opened  
26 receivership bank accounts, and processed payables.

27 The Receiver spent significant time preparing the exhaustive Receiver's Report, which  
28 was filed on April 20, 2018. The 44-page single-spaced report, plus an additional 44 exhibits



1 encompassing 382 pages, provided a thorough and detailed financial analysis of the Receivership  
2 Entities, including a number of affiliated entities who were not named in the original complaint.  
3 The Receiver's Report also contained a detailed analysis of merchant processing statements,  
4 including refund and chargeback activity and sales information, for four different merchant  
5 processors. It also contained a lengthy section detailing consumer complaints and deceptive  
6 practices.

7 Throughout the Initial Expense Period, the Receiver maintained open lines of  
8 communication with counsel for the FTC, as well as the Defendants and counsel for the  
9 Defendants. Before a settlement in principal was worked out with the original named individual  
10 Defendants and Receivership Entities, counsel for these Defendants and the Defendants  
11 themselves engaged in numerous written and telephonic communications with the Receiver and  
12 its counsel over a variety of issues principally related to the potential restart of limited operations.  
13 Discussions took place concerning whether certain Defendants and Receivership Entities could  
14 conduct workshops, perform customer fulfillment ("pick, pack and ship") activities, and engage  
15 in coaching. The Receiver discussed with Defendants and their counsel a potential post-  
16 receivership business model and expense projections, and analyzed a business plan presented by  
17 A. Bowser. It prepared a pro forma expense statement to provide direction to A. Bowser for  
18 additional detail regarding his business plan and projections.

19 The Receiver also communicated with, coordinated and supervised the return of personal  
20 belongings located at the various business premises belonging to several individual Defendants.  
21 The Receiver communicated with Gomez after his involvement in the Receivership Entities'  
22 operations became clear and met with Gomez and his counsel in order to better understand his  
23 role in the business. Banking documents were requested and obtained from Gomez in order to  
24 assist the Receiver in preparing an accounting reconstruction for Global Marketing.

25 The Receiver also communicated extensively with counsel for the FTC, responding to  
26 information requests and addressing settlement issues and their impact on the receivership.

27 It is very common that the initial stage of an equity receivership case is the most labor-  
28 intensive stage for the receiver. This is particularly true in this case where the Receiver had to

1 staff initial takeover of five potential locations, ultimately securing and taking possession and  
2 control of three locations throughout the Initial Expense Period. It is also common that after the  
3 frenetic first few weeks of the receivership, the amount of time spent by the Receiver eases,  
4 thereby reducing the Receiver's fees incurred. This occurred in the instant receivership, where  
5 initial activity during the first 17-day period of the receivership in March comprises almost 70%  
6 of the Receiver's fees incurred during the Initial Expense Period.

7 **III. SUMMARY OF THE RECEIVER'S COUNSEL'S SERVICES AND**  
8 **ACTIVITIES DURING THE INITIAL EXPENSE PERIOD**

9 The Receiver also seeks payment of its counsel's fees and expenses summarized in the  
10 Financial Summary, Exhibit 1 to the Kane declaration, and set forth in the detailed billing records  
11 of Barnes & Thornburg, attached as Exhibits 1 and 2 to the Caris declaration, and the detailed  
12 billing records of Lynch, attached as Exhibit 3 to the Caris declaration. During the Initial  
13 Expense Period, the Receiver incurred fees to its lead counsel, Barnes & Thornburg, of  
14 \$58,100.40, together with costs of \$320.96. During the Initial Expense Period, the Receiver  
15 incurred fees to its local counsel, Lynch, of \$3,726.00, together with costs of \$812.07.

16 **A. Barnes & Thornburg Services**

17 Lead counsel, Barnes & Thornburg, performed numerous tasks beginning on the first day  
18 of the receivership. It became involved in addressing issues at the Upland, California premises  
19 based on the lack of cooperation from Gomez and his original counsel at the outset of the case. It  
20 had to promptly coordinate the filing of four miscellaneous actions pursuant to 28 U.S.C. § 754 in  
21 the District of Massachusetts, the Eastern District of New York, the District of Utah and the  
22 Central District of California in order for the Receiver to assert jurisdiction over property in those  
23 locations. Almost immediately, Barnes & Thornburg had to address numerous pending lawsuits  
24 and settlement negotiations, and communicate with various attorneys involved in those matters,  
25 asserting the stay of actions provided in the TRO in order to prevent ongoing litigation against the  
26 Receivership Entities. It further analyzed the effect of another regulatory action brought by the  
27 State of Washington's Attorney General, which was not stayed under the TRO, and  
28 communicated with counsel for plaintiff and defendants in that action. Pre-receivership general

1 counsel for the Receivership Entities regularly forwarded numerous litigation matters to the  
2 Receiver's counsel for handling. Receiver's counsel also assisted in the drafting of a notice of the  
3 receivership to consumers.

4 The Receiver's counsel made demand on pre-receivership counsel for Info Pros for  
5 documents, who complied and provided numerous materials as requested. After the Receiver  
6 determined that there were several unnamed entities who were Receivership Entities under  
7 Definition J of the TRO, counsel drafted and sent a letter to the parties notifying them of the  
8 unnamed entities that the Receiver determined to be Receivership Entities, as required under the  
9 TRO.

10 Counsel reviewed an emergency motion for living expenses filed on behalf of certain  
11 individual Defendants. In anticipation of and response to the emergency motion, at the FTC's  
12 request, counsel for the Receiver prepared three declarations for potential use addressing the  
13 individual Defendants' knowledge of and receipt of the TRO. That motion was ultimately  
14 withdrawn.

15 Barnes & Thornburg also engaged in substantial communications with counsel for the  
16 FTC and counsel for the original named Defendants as well as counsel for Gomez and Global  
17 Marketing. Communications were held with each side separately and with both sides together.  
18 Communications with counsel for the original named Defendants addressed a host of issues: the  
19 State of Washington's action; a notice to consumers sent by someone deemed by Defendants to  
20 have been a competitor; what to do with UPS shipments; Defendants' access to financial  
21 information and electronic records; numerous communications regarding a potential restart of  
22 business operations and the form that would take; issues regarding customer fulfillment; a  
23 potential stipulation to vacate the leased premises; the return of personal belongings; and the  
24 impact of personal guaranties on potential settlement. It participated in numerous conference  
25 calls with counsel for the Defendants, the Defendants themselves, and the Receiver on several of  
26 these issues.

27 Communications with counsel for Gomez and Global Marketing were also extensive,  
28 many of which addressed information needed by the Receiver and the Receiver's position on

1 various issues that were germane to Gomez’s settlement discussions with the FTC, including  
2 issues pertaining to chargebacks, merchant accounts and Gomez’s personal guaranty under  
3 various merchant processing account agreements. Barnes & Thornburg also participated with the  
4 Receiver in the meeting with Gomez and his counsel.

5 Barnes & Thornburg also had numerous communications with counsel for the FTC.  
6 Counsel discussed language in a draft preliminary injunction, settlement issues that potentially  
7 impacted the receivership estate, and language in a draft stipulated order for permanent  
8 injunction.

9 Barnes & Thornburg also analyzed A. Bowser’s post-receivership business plan and  
10 documents he prepared in connection with that plan. During the Initial Expense Period, counsel  
11 analyzed payroll issues, reviewed five lease agreements, and analyzed various issues that  
12 potentially impacted the scope of receivership estate assets. Counsel also prepared a stipulation  
13 to vacate the leased premises and liquidate personal property and a proposed order approving the  
14 stipulation, which was entered by the Court. Throughout this period, lead counsel also reviewed  
15 all pertinent filed pleadings, including the complaint, TRO, amended complaint, Stipulated TRO,  
16 and stipulations extending both TRO’s. Barnes & Thornburg also reviewed and revised several  
17 drafts of the Receiver’s Report, and coordinated its filing.

18 **B. Lynch Services**

19 Lynch, the Receiver’s local counsel, assisted lead counsel in preparing and obtaining an  
20 order permitting lead counsel to appear *pro hac vice*. Lynch also took steps to expedite obtaining  
21 certified copies of the Complaint and TRO in order for miscellaneous actions to be filed in four  
22 other district courts. Along with lead counsel, Lynch addressed certain difficulties which arose in  
23 connection with the filing of the Receiver’s bond. Throughout the Initial Expense Period, Lynch  
24 monitored the filings in the case.

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1           **IV. THE FEES AND COSTS OF THE RECEIVER AND ITS COUNSEL ARE**  
 2           **REASONABLE AND SHOULD BE PAID AS REQUESTED**

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

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

12          2 Clark, Ralph Ewing, *A Treatise on the Law and Practice of Receivers* § 637, p. 1052 (3rd ed.  
 13          Rev. 1992).

14          The Receiver is an officer of the Court charged with a myriad of duties under the Court's  
 15          TRO and Stipulated TRO, many of which have no relationship to recovery of assets or increasing  
 16          the funds available for distribution to creditors. Because of the nature of the administrative and  
 17          other services required in receiverships, the benefit a receiver confers on receivership property  
 18          cannot be determined based solely on the increase or decrease in the value of property in the  
 19          receiver's possession. As the Court explained in *Securities and Exchange Commission v. Elliott*,  
 20          953 F. 2d 1560, 1577 (11th Cir. 1992):

21            [It is sometimes difficult to ascertain what type of benefits a receiver has  
 22            bestowed on receivership property . . . . [A] benefit to a secured party may take  
 23            more subtle forms than a bare increase in monetary value. Even though a receiver  
 24            may not have increased, or prevented a decrease in, the value of the collateral, if a  
 25            receiver reasonably and diligently discharges his duties, he is entitled to  
 26            compensation. [Citations omitted.]

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

28          The Court has broad discretion in determining the reasonableness of fees to be awarded a

1 receiver. *See In re San Vicente Medical Partners Ltd.*, 962 F. 2d 1402, 1409-1410 (9th Cir. 1992).  
2 The Court may evaluate the time and effort expended by the Receiver with respect to specific  
3 projects and aspects of the administration of the estate, and may look to a number of different  
4 factors under the case law in approving receiver's and counsel's fees. *In re San Vicente Medical*  
5 *Partners Ltd.*, 962 F. 2d at 1409-1410.

6 The Receiver and its professionals have performed extensive and wide-ranging tasks  
7 during the Initial Expense Period. This motion establishes that the Receiver, its members, staff  
8 and professionals rendered reasonable and necessary services for the receivership estate during  
9 this Initial Expense Period that were highly beneficial to the estate. *See Federal Trade*  
10 *Commission v. Capital Acquisitions & Management Corp.*, 2005 U.S. Dist. LEXIS 18504 (N.D.  
11 Ill. August 26, 2005). The Receiver submits the fees are reasonable in light of the services  
12 rendered, and that the fees and expenses requested should be awarded in their entirety. As set  
13 forth in the Kane declaration in support of the Motion, there are sufficient assets in the  
14 receivership estate to allow for payment of all fees and expenses requested. There are presently  
15 funds presently on hand of approximately \$1,845,000, of which approximately \$505,000 may be  
16 subject to a secured lien. In addition, there are approximately \$8.65 million in frozen funds,  
17 although some of the frozen funds may be subject to chargebacks.

18 V. **NOTICE OF THIS MOTION IS SUFFICIENT UNDER THE**  
19 **CIRCUMSTANCES AND SHOULD BE APPROVED**

20 Local Civil Rule 66-5 provides for service of notice of the hearing on various motions by  
21 a receiver concerning the administration of the estate. That rule provides for service of the notice  
22 of hearing on such motions on all creditors of the receivership estate. No hearing has been set on  
23 this Motion and the provisions of Local Civil Rule 66-5 do not specifically apply. The Receiver  
24 has served a notice of filing of the motion on the parties and on all known non-consumer creditors  
25 of the estate to provide them notice and an opportunity to be heard concerning the motion.

26 In this case, there are believed to be an extremely large number of potential consumer  
27 creditors who may have claims against the Receivership Entities arising out of the business  
28 operations of the Receivership Entities prior to the Receiver's appointment, although the precise

1 number, identity and location of such consumer creditors have not been determined by the  
2 Receiver at this time. Given the Receiver's determination that more than \$113 million in revenue  
3 was generated by the Receivership Entities, and given that there are more than 300,000 consumer  
4 names in the CRM, the number of potential consumer creditors is likely in the tens of thousands.  
5 It is not realistically possible or beneficial to the estate and its creditors for the Receiver to  
6 attempt to identify and serve the potential consumer creditors with notice of this motion, and the  
7 expense and burden on the estate of attempting to effectuate such service would drain the estate's  
8 resources and cause undue administrative expense. Notably, both the TRO and Stipulated TRO  
9 only provide for service of fee motions on the parties. (TRO, Section XVIII; Stipulated TRO,  
10 Section XIX).

11 Based on the foregoing, to the extent that Local Rule 66-5 applies to this Motion, the  
12 Receiver seeks an order providing that the notice requirement of that rule shall be deemed  
13 satisfied if notice of the filing of the motion is given by serving copies of all motion papers on the  
14 parties to the action and by serving copies of the notice of filing of the motion on all known non-  
15 consumer creditors. The Receiver submits that such service provides sufficient notice and an  
16 opportunity for hearing to the interested parties and should be approved as adequate. The Court  
17 may issue an administrative order approving this form of notice. *See* F.R. Civ. P. 5(a) and (c)  
18 (authorizing the court to modify service procedures when numerous defendants are involved in  
19 litigation). Bankruptcy cases, statutes and rules provide ample analogous authority for the Court,  
20 as a court of equity supervising a federal receivership, to approve this form of notice. *In re First*  
21 *Alliance Mortgage Co.*, 269 B.R. 428, 442 (C.D. Cal. 2001) (referencing in *dicta* in the court's  
22 recitation of facts the bankruptcy court's order limiting notice issued in that case); 11 U.S.C.  
23 section 102(1)(A) (defining the phrase "after notice and a hearing" to mean "after such notice as  
24 is appropriate in the particular circumstances, and such opportunity for hearing as is appropriate  
25 in the particular circumstances"); 11 U.S.C. section 105(a) and (d) (granting broad equitable  
26 powers to the court to issue orders "necessary or appropriate to carry out the provisions" of Title  
27 11 including "prescribing such limitations and conditions as the court deems appropriate to ensure  
28 the case is handled expeditiously and economically"); and F. R. Bankr. P. 2002(m) (authorizing

1 the court to enter “orders designating the matters in respect to which, the entity to whom, and the  
2 form and manner in which notices shall be sent except as otherwise provided by these rules”).

3 **VI. CONCLUSION**

4 For the foregoing reasons, it is respectfully requested that the Court grant relief as  
5 requested in the motion.

6 Dated: May 30, 2018

7 Respectfully submitted,

8 MICHAEL F. LYNCH  
9 LYNCH LAW PRACTICE, PLLC

10 GARY OWEN CARIS  
11 BARNES & THORNBURG LLP

12 By:           /s/ Gary Owen Caris            
13 GARY OWEN CARIS

14 Attorneys for Temporary Receiver  
15 **ROBB EVANS & ASSOCIATES LLC**

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28 #12459282.v1



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

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 FEDERAL TRADE COMMISSION,  
14  
15 Plaintiff,

16 v.

17 AWS, LLC, a Nevada limited liability  
company; ADAMS CONSULTING, LLC, a  
18 California limited liability company; FBA  
DISTRIBUTORS, LLC, a Massachusetts  
19 limited liability company; FBA STORES,  
LLC, a Nevada limited liability company;  
20 GLOBAL MARKETING SERVICES  
L.L.C., a Nevada limited liability company;  
21 INFO PROS, LLC, a Nevada limited liability  
company; ONLINE AUCTION LEARNING  
22 CENTER, INC., a Massachusetts  
corporation; ONLINE AUCTION  
23 LEARNING CENTER, INC., a Nevada  
corporation; CHRISTOPHER F. BOWSER,  
24 individually and as an officer of FBA  
DISTRIBUTORS, LLC, FBA STORES,  
25 LLC, INFO SOLUTIONS, LLC, ONLINE  
AUCTION LEARNING CENTER, INC. and  
26 ONLINE AUCTION LEARNING CENTER,  
INC.; ADAM S. BOWSER, individually and  
27 as an officer of AWS, LLC, FBA  
DISTRIBUTORS, LLC, FBA STORES,  
28 LLC, INFO SOLUTIONS, LLC, ONLINE  
AUCTION LEARNING CENTER, INC. and

Case No. 2:18-cv-00442-JCM-PAL

**DECLARATION OF BRICK KANE IN  
SUPPORT OF MOTION FOR ORDER (1)  
APPROVING AND AUTHORIZING FOR  
PAYMENT TEMPORARY RECEIVER'S  
AND PROFESSIONALS' FEES AND  
EXPENSES FROM INCEPTION OF THE  
RECEIVERSHIP THROUGH APRIL 30,  
2018; AND (2) GRANTING RELIEF FROM  
LOCAL RULE 66-5 PERTAINING TO  
NOTICE TO CREDITORS**

1 ONLINE AUCTION LEARNING CENTER,  
2 INC.; JODY L. MARSHALL, individually  
3 and as an officer of INFO PROS, LLC and  
4 INFO SOLUTIONS, LLC; and JEFFERY A.  
5 GOMEZ, a/k/a JEFF ADAMS or JEFF  
6 ADAM, individually and as an officer of  
7 ADAMS CONSULTING, LLC and  
8 GLOBAL MARKETING SERVICES  
9 L.L.C.,  
10 Defendants.

11 I, Brick Kane, declare:

12 1. I am the President of Robb Evans & Associates LLC, the Temporary Receiver  
13 appointed in this lawsuit commenced by the Federal Trade Commission (“FTC”) on March 12,  
14 2018 with a Complaint for Permanent Injunction and Other Equitable Relief (Doc. 1) against  
15 AWS, LLC (“AWS”), FBA Distributors, LLC (“FBA Distributors”), FBA Stores, LLC (“FBA  
16 Stores”), Info Pros, LLC (“Info Pros”), Online Auction Learning Center, Inc., a Massachusetts  
17 corporation, Online Auction Learning Center, Inc., a Nevada corporation (both Online Auction  
18 Learning Center, Inc. entities referred to as “Online Auction”), Christopher Bowser (“C.  
19 Bowser”), Adam Bowser (“A. Bowser”) and Jody Marshall (“Marshall”). (AWS, FBA  
20 Distributors, FBA Stores, Infor Pros and Online Auction, and each of their subsidiaries, affiliates,  
21 successors and assigns, are referred to herein as the “Corporate Defendants.”) Robb Evans &  
22 Associates LLC (hereinafter “Receiver”) became Temporary Receiver pursuant to the Temporary  
23 Restraining Order (“TRO”) filed March 14, 2018 (Doc. 28) over the Corporate Defendants and  
24 “any other entity that the Temporary Receiver determines is controlled or owned by any  
25 Defendant and (1) conducted any business related to Defendants’ advertising, marketing,  
26 distributing, promoting, or selling of business opportunities, (2) commingled or pooled Assets  
27 with any Defendant, or (3) otherwise participated in the transfer of Assets stemming from the  
28 advertising, marketing, distributing, promoting, or selling of business opportunities.” (TRO, p. 6,  
Definition J) The Corporate Defendants and entities described in Definition J were deemed to be  
the “Receivership Entities” under the TRO.

1           2.       Thereafter, the FTC filed an Amended Complaint for Permanent Injunction and  
2 Other Equitable Relief on April 10, 2018 (Doc. 50), adding new defendants Adams Consulting,  
3 LLC (“Adams Consulting”), Global Marketing Services L.L.C (“Global Marketing”) and Jeffery  
4 Gomez (“Gomez”). On April 18, 2018, the Court entered a Stipulated Temporary Restraining  
5 Order as to Defendants Adams Consulting, LLC, Global Marketing Services L.L.C, and Jeffery  
6 A. Gomez (“Stipulated TRO”) (Doc. 57), adding as new receivership entities Adams Consulting  
7 and Global Marketing, along with each of their subsidiaries, affiliates, successors and assigns, and  
8 further defining the new receivership entities to include entities the Receiver determines is  
9 controlled or owned by any Defendant and conducts business related to Defendants’ business  
10 opportunity enterprise, commingles or pools assets with any Defendant, or transfers assets  
11 stemming from Defendants’ business opportunity enterprise, using the same definition found in  
12 the original TRO (Stipulated TRO, p. 7, Definition J) (“Gomez Receivership Entities.”) Based on  
13 the Receiver’s investigation, prior to the entry of the Stipulated TRO, it determined that there  
14 were a number of additional Receivership Entities pursuant to the terms of the TRO, including  
15 Global Marketing, because among other things, Global Marketing was a one-third owner in FBA  
16 Stores. (Hereinafter, unless there is a need to differentiate between the two, all receivership  
17 entities, whether named entities or unnamed entities in the underlying lawsuit and whether  
18 receivership entities as a result of the original TRO or Stipulated TRO, will be referred to as the  
19 “Receivership Entities.”)

20           3.       I have been one of the members of Robb Evans & Associates LLC primarily  
21 responsible for the supervision, management and administration of the receivership estate, the  
22 Receiver’s taking possession and control of the business and operations of the Receivership  
23 Entities, the review and investigation of the business and operations of the Receivership Entities,  
24 and the Receiver’s exercise of the other powers and duties set forth in the TRO and Stipulated  
25 TRO. I participated in taking possession and control of the headquarters for the Receivership  
26 Entities in Weymouth, Massachusetts. I have been involved in the Receiver’s review and detailed  
27 analysis of the Receivership Entities’ financial records and other business records and files. I was  
28 personally involved in the preparation and review of the Report of Receiver’s Activities for the

1 Period From March 16, 2018 Through April 19, 2018 (“Receiver’s Report”) filed April 20, 2018  
2 (Doc. 58). I have personal knowledge of the matters set forth in this declaration, and if I were  
3 called upon to testify as to these matters I could and would competently testify thereto based on  
4 my personal knowledge.

5 4. As described in the Receiver’s Report, the Receivership Entities generated revenue  
6 from consumers of at least \$113 million from January 2014 to March 2018, with over one-half of  
7 the gross revenue generated in 2017, by advertising, marketing, distributing and selling online  
8 business opportunities to consumers.

9 5. The initial period of this receivership, like the initial period of almost all equity  
10 receiverships, was marked by the need for the Receiver to render extensive services in gaining  
11 possession and control of the Receivership Entities, including their premises, personal property,  
12 and paper and electronic documents, developing a thorough understanding of the Receivership  
13 Entities’ business and operations, communicating extensively with the Plaintiff, representatives  
14 and employees of the Receivership Entities, counsel for the Receivership Entities, the individual  
15 defendants, creditors and consumers, and preparing an initial report to the Court in order to aid  
16 the Court in more fully understanding the nature of the Receivership Entities’ business operations  
17 and report to the Court as to the progress of the receivership. This proved even more challenging  
18 and time consuming given the fact that five different leased premises located in widespread  
19 locations across the United States needed to be investigated at the outset of the receivership, and  
20 the Receiver had to take possession and control of three of those premises.

21 6. The Receiver seeks payment of the Receiver’s fees and costs summarized in the  
22 Receivership Administrative Expenses and Fund Balance spreadsheet, by month (“Financial  
23 Summary”), attached as Exhibit 1 hereto. The detailed billing records of the Receiver are  
24 attached as Exhibits 2 and 3. During the Initial Expense Period, the Receiver has incurred fees  
25 for the Receiver and its members of \$101,300.40, accounting and senior staff fees of  
26 \$129,523.50, and support staff fees of \$1,542.00, for total Receiver’s fees of \$232,365.90. The  
27 Receiver’s costs during the Initial Expense Period total \$16,594.65 and are detailed in the  
28 Financial Summary.

1           7.       The Receiver commenced its work on March 14, 2018 as it began to prepare for  
2 entry into five different premises believed to be occupied by the Receivership Entities and control  
3 of the business operations. This preparation included consultation with the FTC and, where  
4 necessary, coordination with law enforcement authorities. Based on information provided by the  
5 FTC regarding the various premises, the Receiver determined how best to staff the initial entry  
6 and control of the various locations. Initial entry and control was simultaneously effected on  
7 March 16, 2018. The Receiver dispatched six persons to the premises in Weymouth,  
8 Massachusetts, which included an upstairs administrative and accounting area and a downstairs  
9 warehouse, two persons to the Logandale, Nevada business location, comprised of two offices  
10 and a warehouse, two persons to the Upland, California office, two persons to the Lindon, Utah  
11 office where coaching operations were conducted, and two persons to the Las Vegas suite. It was  
12 determined that there were no Receivership Entities operating in the Las Vegas suite and the  
13 Receiver did not take possession and control of that location. The Receiver took possession and  
14 control of the leased premises in Weymouth, Massachusetts, Logandale Nevada, and Lindon,  
15 Utah. The Receiver did not take possession and control of the Upland, California location.  
16 Gomez, who was present at the Upland location on the day of entry, contended that Global  
17 Marketing had nothing to do with FBA Stores and that he was in the process of subleasing the  
18 space from FBA Stores. The Receiver had to analyze what personal property and documents in  
19 Upland were property of the receivership estate and what personal property and documents  
20 belonged to Gomez. All of the members and staff who were required to travel to Boston from  
21 Los Angeles or Reno billed only half of their travel time. The members and staff who were  
22 required to travel to Lindon, Utah likewise only billed for half of their travel time.

23           8.       I supervised and participated in the entry into the Weymouth, Massachusetts  
24 premises of the Receivership Entities, which were the headquarters of their operations. The six  
25 members and staff of the Receiver who were deployed to Weymouth, Massachusetts each were  
26 assigned different duties during the initial day's work in taking possession and control of the  
27 business and accounting operations. All members and staff were deployed on-site in each of the  
28 locations for not more than one or two days during the initial period of the receivership as

1 required by the needs of the receivership so as to minimize unnecessary expenses.

2 9. The initial days of the receivership were labor intensive. Paper and electronic  
3 documentation were preserved and analyzed, including Gmail and Google Docs. Steps were  
4 taken to download electronic files. The Receiver reviewed various leases and rental agreements  
5 and communicated with landlords. Employees and staff of the Receivership Entities, including  
6 the Receivership Entities' controller and individual Defendants, were interviewed in order to gain  
7 an understanding of the business operations. The Receiver commenced an exhaustive forensic  
8 and financial review based on an analysis of QuickBooks accounting files, the Customer  
9 Relationship Management database ("CRM"), statements from merchant processors, bank  
10 records, and public filings. The Receiver analyzed a myriad of consumer complaints and legal  
11 actions. Early in the receivership, it was necessary to address a number of urgent operational  
12 issues, including the need to cancel pending marketing events scheduled at hotels, and to  
13 communicate with UPS regarding shipments arriving at the Receivership Entities' locations. It  
14 was also necessary for the Receiver to address issues pertaining to payroll, insurance, workers  
15 compensation and a 401(k) plan, and to communicate with third party vendors on each of these  
16 issues.

17 10. In the early period of the receivership, the Receiver also had to take steps to serve  
18 the TRO, and several extensions of the TRO, on financial institutions, merchant processors and  
19 vendors, and have numerous communications with these various third parties, principally to  
20 freeze and recover assets of the Receivership Entities, as well as to monitor the status of credit  
21 card chargebacks and merchant reserve accounts. As a result of these efforts, during the Initial  
22 Expense Period the Receiver successfully froze approximately \$9.95 million in the Receivership  
23 Entities' bank and merchant accounts, including merchant reserves of \$7.78 million, and over  
24 \$645,000 was turned over to the Receiver from various Receivership Entities' bank accounts.  
25 After the Initial Expense Period (in May 2018), another \$1.3 million has been transferred into the  
26 receivership account from the frozen funds and is being held by the Receiver, and the current  
27 balance on hand is approximately \$1,845,000. There may be a lien on these funds to secure a  
28 debt in favor of Bank of America. The debt which may be secured by these funds is

1 approximately \$505,000 as of April, 2018.

2 11. The Receiver performed many other administrative tasks during the Initial  
3 Expense Period. It had extensive communications with consumers and disseminated written  
4 notice of the receivership on its website. It set up a new e-mail address for consumer  
5 communications, opened receivership bank accounts, and processed payables.

6 12. The Receiver spent significant time preparing the exhaustive Receiver's Report,  
7 which was filed on April 20, 2018. The 44-page single-spaced report, plus an additional 44  
8 exhibits encompassing 382 pages, provided a thorough and detailed financial analysis of the  
9 Receivership Entities, including a number of affiliated entities who were not named in the  
10 original complaint. The Receiver's Report also contained a detailed analysis of merchant  
11 processing statements, including refund and chargeback activity and sales information, for four  
12 different merchant processors. It also contained a lengthy section detailing consumer complaints  
13 and deceptive practices.

14 13. Throughout the Initial Expense Period, the Receiver maintained open lines of  
15 communication with counsel for the FTC, as well as the Defendants and counsel for the  
16 Defendants. Before a settlement in principal was worked out with the original named individual  
17 Defendants and Receivership Entities, counsel for these Defendants and the Defendants  
18 themselves engaged in numerous written and telephonic communications with the Receiver and  
19 its counsel over a variety of issues principally related to the potential restart of limited operations.  
20 I participated in discussions concerning whether certain Defendants and Receivership Entities  
21 could conduct workshops, perform customer fulfillment ("pick, pack and ship") activities, and  
22 engage in coaching. I participated in discussions with Defendants and their counsel about a  
23 potential post-receivership business model and expense projections, and analyzed a business plan  
24 presented by A. Bowser. The Receiver prepared a pro forma expense statement to provide  
25 direction to A. Bowser for additional detail regarding his business plan and projections.

26 14. The Receiver also communicated with, coordinated and supervised the return of  
27 personal belongings located at the various business premises belonging to several individual  
28 Defendants. The Receiver communicated with Gomez after his involvement in the Receivership

1 Entities' operations became clear and met with Gomez and his counsel in order to better  
2 understand his role in the business. Banking documents were requested and obtained from  
3 Gomez in order to assist the Receiver in preparing an accounting reconstruction for Global  
4 Marketing.

5 15. The Receiver also communicated extensively with counsel for the FTC,  
6 responding to information requests and addressing settlement issues and their impact on the  
7 receivership.

8 16. It is very common that the initial stage of an equity receivership case is the most  
9 labor-intensive stage for the receiver. This is particularly true in this case where the Receiver had  
10 to staff initial takeover of five potential locations, ultimately securing and taking possession and  
11 control of three locations throughout the Initial Expense Period. It is also common that after the  
12 extremely active first few weeks of the receivership, the amount of time spent by the Receiver  
13 eases, thereby reducing the Receiver's fees incurred. This occurred in this matter, where initial  
14 activity during the first 17-day period of the receivership in March comprises almost 70% of the  
15 Receiver's fees incurred during the Initial Expense Period.

16 17. The billing rates charged by the Receiver in this case reflected in the billing  
17 records filed in support of the Motion for the Receiver, the Receiver's members and staff are  
18 discounted at 10% from the rates charged by the Receiver's firm in private sector cases as of the  
19 time of the Receiver's appointment in 2018. The Receiver does not raise these rates during the  
20 receivership case.

21 18. As a member of Robb Evans & Associates LLC, I am familiar with the methods  
22 and procedures used by the Receiver and its staff and employees to record the time spent  
23 rendering services to receivership estates over which Robb Evans & Associates LLC have been  
24 appointed. The records attached hereto as Exhibits 2 and 3 are regularly prepared by the  
25 members, staff and employees of the Receiver at or about the time of the services rendered and  
26 each of whom has a business duty to accurately record the information regarding their services set  
27 forth in these records. The records are reviewed by the Receiver's accounting staff and  
28 summarized in the Receiver's Financial Summary, Exhibit 1 attached hereto. As explained in the



1 accompanying Declaration of Gary Owen Caris, the Receiver's time records and the records of its  
2 professionals have been redacted where appropriate to preserve descriptions containing  
3 confidential, tactical, strategic, attorney-client privileged and/or attorney work-product  
4 information. Based upon my experience with Robb Evans & Associates LLC, I believe the  
5 Receiver's methods and procedures for recording and accounting for time and services for the  
6 receivership estates over which Robb Evans and Robb Evans & Associates LLC have been  
7 appointed are reliable and accurate.

8 19. In this case, there are believed to be an extremely large number of potential  
9 consumer creditors who may have claims against the Receivership Entities arising out of the  
10 operations of the Receivership Entities prior to the Receiver's appointment, although the precise  
11 number, identity and location of such consumer creditors have not been determined by the  
12 Receiver at this time. Given the Receiver's determination that more than \$113 million in revenue  
13 was generated by the Receivership Entities, and given that there are more than 300,000 consumer  
14 names in the CRM, the number of potential consumer creditors is likely in the tens of thousands.  
15 It is not realistically possible or beneficial to the estate and its creditors for the Receiver to  
16 attempt to identify and serve the potential consumer creditors with notice of this motion, and the  
17 expense and burden on the estate of attempting to effectuate such service would drain the estate's  
18 resources and cause undue administrative expense.

19 I declare under penalty of perjury that the foregoing is true and correct and that this  
20 declaration was executed on May 29, 2018 at Sun Valley, California.

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23 BRICK KANE

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9 Attorneys for Temporary Receiver  
10 **ROBB EVANS & ASSOCIATES LLC**

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 FEDERAL TRADE COMMISSION,  
14 Plaintiff,

Case No. 2:18-cv-00442-JCM-PAL

15 v.

**DECLARATION OF GARY OWEN CARIS  
IN SUPPORT OF MOTION FOR ORDER  
(1) APPROVING AND AUTHORIZING  
FOR PAYMENT TEMPORARY  
RECEIVER’S AND PROFESSIONALS’  
FEES AND EXPENSES FROM INCEPTION  
OF THE RECEIVERSHIP THROUGH  
APRIL 30, 2018; AND (2) GRANTING  
RELIEF FROM LOCAL RULE 66-5  
PERTAINING TO NOTICE TO  
CREDITORS**

16 AWS, LLC, a Nevada limited liability  
17 company; ADAMS CONSULTING, LLC, a  
California limited liability company; FBA  
18 DISTRIBUTORS, LLC, a Massachusetts  
limited liability company; FBA STORES,  
19 LLC, a Nevada limited liability company;  
GLOBAL MARKETING SERVICES  
20 L.L.C., a Nevada limited liability company;  
INFO PROS, LLC, a Nevada limited liability  
21 company; ONLINE AUCTION LEARNING  
CENTER, INC., a Massachusetts  
22 corporation; ONLINE AUCTION  
LEARNING CENTER, INC., a Nevada  
23 corporation; CHRISTOPHER F. BOWSER,  
individually and as an officer of FBA  
24 DISTRIBUTORS, LLC, FBA STORES,  
LLC, INFO SOLUTIONS, LLC, ONLINE  
25 AUCTION LEARNING CENTER, INC. and  
ONLINE AUCTION LEARNING CENTER,  
26 INC.; ADAM S. BOWSER, individually and  
as an officer of AWS, LLC, FBA  
27 DISTRIBUTORS, LLC, FBA STORES,  
LLC, INFO SOLUTIONS, LLC, ONLINE  
28 AUCTION LEARNING CENTER, INC. and

1 ONLINE AUCTION LEARNING CENTER,  
2 INC.; JODY L. MARSHALL, individually  
3 and as an officer of INFO PROS, LLC and  
4 INFO SOLUTIONS, LLC; and JEFFERY A.  
5 GOMEZ, a/k/a JEFF ADAMS or JEFF  
6 ADAM, individually and as an officer of  
7 ADAMS CONSULTING, LLC and  
8 GLOBAL MARKETING SERVICES  
9 L.L.C.,  
10  
11 Defendants.

12 I, Gary Owen Caris, declare:

13 1. I am an attorney at law duly licensed to practice before all courts of the State of  
14 California and the United States District Court for the Central District of California and I am a  
15 partner in the firm of Barnes & Thornburg LLP (“Barnes & Thornburg”). I have been admitted to  
16 appear *pro hac vice* in this action (Doc 40). Since the inception of the receivership estate, I have  
17 been the attorney primarily responsible for representing the Temporary Receiver, Robb Evans &  
18 Associates LLP (“Receiver”), in this matter and I am its lead counsel. I have personal knowledge  
19 of the matters set forth in this declaration, and if I were called upon to testify as to these matters I  
20 could and would competently testify thereto.

21 2. Attached hereto as Exhibits 1 and 2 are copies of the billing records for the  
22 attorneys and paralegals at Barnes & Thornburg who performed work on this matter during the  
23 period from the inception of the receivership through April 30, 2018 (“Initial Expense Period”).  
24 During the Initial Expense Period, the Receiver has incurred attorneys’ fees to Barnes &  
25 Thornburg of \$58,100.40 and costs of \$320.96, for a total of \$58,421.36. Attached hereto as  
26 Exhibit 3 are copies of the billing records for local counsel Lynch Law Practice, PLLC (“Lynch”)  
27 on this matter during the Initial Expense Period. During the Initial Expense Period, the Receiver  
28 has incurred attorneys’ fees to Lynch of \$3,726.00 and costs of \$812.07, for a total of \$4,538.07.  
All of the billing records itemize and detail the hours spent and the work performed by those  
attorneys and paralegals rendering services on this matter. The time records attached hereto as  
Exhibits 1, 2 and 3, as well as the time records for the Receiver, its members and staff, have been  
redacted by me where appropriate to preserve descriptions containing confidential, sensitive,

1 tactical, strategic, attorney-client privileged and/or work-product information.

2 3. Lead counsel, Barnes & Thornburg, performed numerous tasks beginning on the  
3 first day of the receivership. I became involved in addressing issues at the Upland, California  
4 premises based on the lack of cooperation from Jeffery A. Gomez (“Gomez”) and his original  
5 counsel at the outset of the case. Barnes & Thornburg had to promptly coordinate the filing of  
6 four miscellaneous actions pursuant to 28 U.S.C. § 754 in the District of Massachusetts, the  
7 Eastern District of New York, the District of Utah and the Central District of California in order  
8 for the Receiver to assert jurisdiction over property in those locations. Almost immediately, I  
9 began to address numerous pending lawsuits and settlement negotiations, and communicate with  
10 various attorneys involved in those matters, asserting the stay of actions provided in the  
11 Temporary Restraining Order (“TRO”) in order to prevent ongoing litigation against the  
12 Receivership Entities. I further analyzed the effect of another regulatory action brought by the  
13 State of Washington’s Attorney General, which was not stayed under the TRO, and I  
14 communicated with counsel for plaintiff and defendants in that action. Pre-receivership general  
15 counsel for the Receivership Entities regularly forwarded numerous litigation matters to me for  
16 handling. I also assisted in the drafting of a notice of the receivership to consumers.

17 4. I made demand on pre-receivership counsel for Info Pros for documents, who  
18 complied and provided numerous materials as requested. After the Receiver determined that  
19 there were several unnamed entities who were Receivership Entities under Definition J of the  
20 TRO, I drafted and sent a letter to the parties notifying them of the unnamed entities that the  
21 Receiver determined to be Receivership Entities as required under the TRO.

22 5. I also reviewed an emergency motion for living expenses filed on behalf of certain  
23 individual Defendants. In anticipation of and response to the emergency motion, at the FTC’s  
24 request, in consultation with the Receiver’s members, I prepared three declarations for potential  
25 use addressing the individual Defendants’ knowledge of and receipt of the TRO. That motion  
26 was ultimately withdrawn.

27 6. Barnes & Thornburg also engaged in substantial communications with counsel for  
28 the FTC and counsel for the original named Defendants as well as counsel for Gomez and Global

1 Marketing. Communications were held both separately and together with counsel for the FTC  
2 and the Defendants. Communications with counsel for the original named Defendants addressed  
3 a host of issues: the State of Washington's action; a notice to consumers sent by someone deemed  
4 by Defendants to have been a competitor; what to do with UPS shipments; Defendants' access to  
5 financial information and electronic records; numerous communications regarding a potential  
6 restart of business operations and the form that would take; issues regarding customer fulfillment;  
7 a potential stipulation to vacate the leased premises; the return of personal belongings; and the  
8 impact of personal guaranties on potential settlement. I participated in numerous conference calls  
9 with counsel for the Defendants, the Defendants themselves, and the Receiver on several of these  
10 issues.

11 7. Communications with counsel for Gomez and Global Marketing were also  
12 extensive, many of which addressed information needed by the Receiver and the Receiver's  
13 position on various issues that were germane to Gomez's settlement discussions with the FTC,  
14 including issues pertaining to chargebacks, merchant accounts and Gomez's personal guaranty  
15 under various merchant processing account agreements. Barnes & Thornburg also participated  
16 with the Receiver in the meeting with Gomez and his counsel.

17 8. I also had numerous communications with counsel for the FTC. I discussed  
18 language in a draft preliminary injunction, settlement issues that potentially impacted the  
19 receivership estate, and language in a draft stipulated order for permanent injunction.

20 9. I also analyzed A. Bowser's post-receivership business plan and documents he  
21 prepared in connection with that plan. During the Initial Expense Period, I analyzed payroll  
22 issues, reviewed five lease agreements, and analyzed various issues that potentially impacted the  
23 scope of receivership estate assets. I also prepared a stipulation to vacate the leased premises and  
24 liquidate personal property and a proposed order approving the stipulation, which was entered by  
25 the Court. Throughout this period, I also reviewed all pertinent filed pleadings, including the  
26 complaint, TRO, amended complaint, Stipulated TRO, and stipulations extending both TRO's. I  
27 also reviewed and revised several drafts of the Receiver's Report, and coordinated its filing.

28 10. Lynch, the Receiver's local counsel, assisted lead counsel in preparing and

1 obtaining an order permitting lead counsel to appear *pro hac vice*. Lynch also took steps to  
2 expedite obtaining certified copies of the Complaint and TRO in order for miscellaneous actions  
3 to be filed in four other district courts. Along with me, Lynch addressed certain difficulties which  
4 arose in connection with the filing of the Receiver's bond. Throughout the Initial Expense  
5 Period, Lynch monitored the filings in the case.

6 11. As a partner at Barnes & Thornburg, I am familiar with the methods and  
7 procedures used to create, record and maintain billing records for the clients of the firm. The  
8 billing summaries attached hereto as Exhibits 1 and 2 are prepared from computerized time  
9 records prepared contemporaneously with the services rendered by each attorney and paralegal  
10 billing time to the matter. These computerized records are prepared in the ordinary course of  
11 business by the attorneys and paralegals employed by the firm who have a business duty to  
12 accurately record their time spent and services rendered on the matters on which they perform  
13 work. The time records are transferred into computerized billing programs that generate monthly  
14 invoices under the supervision of the accounting department of the firm. Based upon my  
15 experience with Barnes & Thornburg, I believe the methods and procedures for recording and  
16 accounting for time and services for the clients of Barnes & Thornburg are reliable and accurate.

17 12. The fees charged by Barnes & Thornburg and Lynch on this matter reflect a 10%  
18 discount off of the standard hourly billing rates charged by the firms in 2018 for lawyers and  
19 paralegals who worked on this matter.

20 13. I have more than 39 years' experience as a business and commercial litigator and  
21 also have extensive experience as a bankruptcy attorney representing creditors in Chapter 11 and  
22 Chapter 7 bankruptcy cases. For more than seventeen years, I have also specialized in  
23 representing receivers in federal equity receiverships. I believe the rates and the amounts  
24 incurred by the Receiver to Barnes & Thornburg for the services rendered during the period  
25 covered by the motion are reasonable and appropriate based on the nature of the services  
26 rendered, the quality and amount of services provided, the complexity of the issues involved and  
27 other factors under the circumstances.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 30, 2018 at Los Angeles, California.

/s/ Gary Owen Caris  
GARY OWEN CARIS

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