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7 Attorneys for Receiver
ROBB EVANS & ASSOCIATES, LLC

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 vs.

15 MICHAEL BRUCE MONEYSMAKER, a/k/a
 Bruce Money maker, Mike Smith, and Michael
 16 Bruce Millerd, individually, as an officer and
 director of the corporate defendants, and also
 17 doing business as Fortress Secured,

18 DANIEL DE LA CRUZ, individually, as an
 officer and director of the corporate
 19 defendants, and also doing business as Fortress
 Secured,

20 BELFORT CAPITAL VENTURES, INC., a
 21 corporation,

22 DYNAMIC ONLINE SOLUTIONS, LLC, a
 23 limited liability company,

24 HSC LABS, INC., a corporation,

25 RED DUST STUDIOS, INC., a corporation,

26 SEASIDE VENTURES TRUST, individually
 and as an officer and director of the corporate
 27 defendants, and

Case No. 2:11-cv-00461-JCM (RJJ)

**MOTION FOR ORDER APPROVING
 AND AUTHORIZING PAYMENT OF
 RECEIVER'S FEES AND EXPENSES
 FOR THE PERIOD FROM MARCH 29,
 2011 THROUGH MAY 31, 2011; AND (2)
 LIMITING NOTICE UNDER LOCAL
 RULE OF CIVIL PRACTICE 66-5;
 MEMORANDUM OF POINTS AND
 AUTHORITIES; DECLARATION OF
 MATTHEW J. CHRISTIAN, ESQ. IN
 SUPPORT THEREOF**

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28

1 JOHN DOE NO. 1, in his capacity as trustee of
 2 Seaside Ventures Trust,
 3
 4 Defendants.

5 PLEASE TAKE NOTICE that Robb Evans & Associates LLC (“Receiver”), the Court-
 6 appointed Receiver for BELFORT CAPITAL VENTURES, INC., DYNAMIC ONLINE
 7 SOLUTIONS, LLC, and RED DUST STUDIOS, INC., as well as their successors, assigns,
 8 affiliates or subsidiaries (hereinafter collectively referred to as “Receivership Defendants”), will
 9 and does hereby move the Court for an order:

10 1. Approving and authorizing payment from receivership assets of the fees and
 11 expenses of the Receiver for the period from March 29, 2011 through May 31, 2011, comprised
 12 of the following: (a) fees of the Receiver and his staff of \$53,227.83 and Receiver’s costs of
 13 \$2,592.46 (totaling \$55,820.29), (b) fees for asset preservation of \$463.59, and (c) fees and costs
 14 incurred to the Receiver’s counsel, Kolesar & Leatham (“Kolesar Firm”) of \$9,111.12, for a total
 15 of **\$65,395.00**; and

16 2. Limiting notice of this motion that might otherwise be required to be served on all
 17 interested parties and creditors of the estate under LR 66-5 so that notice of the motion is deemed
 18 sufficient if the motion is served on the parties to this action.

19 This Motion is made pursuant to Local Rule of Civil Practice 66-5 and is based upon this
 20 notice of motion and motion, the accompanying memorandum of points and authorities, the
 21 declarations of Matthew J. Christian, Esq. and Brick Kane in support hereof, and upon all other
 22 pleadings and documentary evidence as may be presented to the Court by the Receiver.

23 PLEASE TAKE FURTHER NOTICE that this motion is posted on the Receiver’s
 24 website at www.robbevans.com/html/belfortcv.html.¹ Copies of this Motion will be provided to
 25 any interested party upon receipt of a written request which maybe sent to: Robb Evans &
 26

27
 28 ¹ Due to the voluminous nature of the billing records of the Receiver, his staff and his counsel, which are exhibits to
 the Receiver’s motion, the time records will not be posted on the Receiver’s website.

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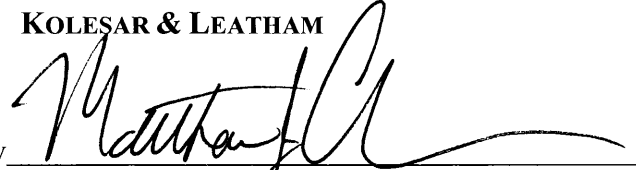
1 Associates LLC, Attn: Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352-1121;
2 Telephone: (818) 768-8100; Facsimile: (818) 768-8802.

3 DATED this 29 day of July, 2011.

4 Respectfully submitted,

5 **KOLESAR & LEATHAM**

6
7 By



8 RANDOLPH L. HOWARD, ESQ.

9 Nevada Bar No. 006688

10 rhoward@klnevada.com

11 MATTHEW J. CHRISTIAN, ESQ.

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18 *Attorneys for Receiver*

19 *ROBB EVANS & ASSOCIATES, LLC*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 The Federal Trade Commission (“FTC”) commenced this action against the Receivership
23 Defendants as well as against individual defendants MICHAEL BRUCE MONEYSMAKER,
24 DANIEL DE LA CRUZ, HSC LABS, INC., and SEASIDE VENTURES TRUST (collectively,
25 “Defendants”), who allegedly engaged in deceptive marketing of various products and
26 unauthorized debiting of consumers’ bank accounts. The FTC alleges that the Defendants, since
27 August 2009, have been engaging in a common enterprise in which they charge consumers’ bank
28 accounts without consumers’ knowledge or consent. Defendants allegedly obtain consumers’
bank account information from websites that claim to match consumers with payday lenders.
With this information, Defendants allegedly enroll consumers in a variety of “continuity
programs,” programs for which they charge consumers an initial enrollment fee as well as
recurring fees on a weekly or monthly basis until consumers take an affirmative action to cancel.
Consumers allegedly learn of these charges only when they notice withdrawals from the

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1 checking accounts. Compl. [Doc. 1] at ¶ 16. When consumers attempt to cancel, they are
2 promised a refund. However, Defendants allegedly, on numerous occasions, promise consumers
3 refunds, but never actually do. *Id.* at ¶ 52.

4 The Receiver was initially appointed as the temporary receiver pursuant to a Temporary
5 Restraining Order entered on March 29, 2011. Thereafter, on April 15, 2011, the Receiver was
6 subsequently confirmed as the receiver pursuant to the Court's Preliminary Injunction
7 ("Preliminary Injunction") [Doc. #38].

8 By this motion, the Receiver seeks a Court order approving and authorizing the payment
9 of fees and expenses of the Receiver, the Receiver's staff, and the Receiver's counsel for the
10 two-month period from March 29, 2011 through May 31, 2011 in the total sum of \$65,395.00.

11 In addition to seeking approval and authorization for payment of the Receiver's and
12 counsel's fees and expenses, the Receiver also requests an order limiting notice of the hearing on
13 this motion that might otherwise be required to be served on all interested parties and creditors of
14 the estate under LR 66-5 so that notice of the motion is deemed sufficient if a copy of the motion
15 is served on the parties to this action.

16 **II. THE RECEIVER REQUESTS APPROVAL AND AUTHORIZATION FOR THE**
17 **PAYMENT OF FEES AND EXPENSES OF THE RECEIVER AND THE**
18 **RECEIVER'S COUNSEL FOR THE PERIOD FROM MARCH 29, 2011,**
19 **THROUGH MAY 31, 2011**

20 The Receiver seeks approval and authority for payment of the fees and expenses of the
21 Receiver, the Receiver's staff and the Receiver's counsel. The fees and costs of the Receiver for
22 which approval is requested are set forth in the financial summary entitled "Receivership
23 Administrative Expenses and Fund Balance" attached as **Exhibit A-1** to the Declaration of Brick
24 Kane ("Kane Declaration"), which is filed in support of this Motion and attached hereto as
25 **Exhibit A**. Billing records describing the services rendered by the Receiver, the Receiver's
26 members and staff for the period from the inception of the receivership through May 31, 2011
27 are attached to the Kane Declaration as **Exhibit A-2** (March 2011), **Exhibit A-3** (April 2011),
28 and **Exhibit A-4** (May 2011). The services rendered by the Kolesar Firm are summarized in the
supporting Declaration of Matthew J. Christian ("Christian Declaration") accompanying this

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1 Motion. Detailed time records of the Kolesar Firm are attached as **Exhibit B**. As specified in
2 detail in the exhibits attached hereto, the Receiver has incurred \$65,395.00 in fees and expenses
3 during the Expense Period, comprised of Receiver's fees and expenses of (a) \$55,820.29, (b) fees
4 for asset preservation of \$463.59, and (c) legal fees and costs incurred to the Kolesar Firm as the
5 Receiver's outside counsel in the aggregate amount of \$9,111.12.

6 **A. Receiver's Services**

7 The Receiver's fees and expenses incurred during the Expense Period total \$55,820.29,
8 of which \$53,227.83 represent fees and \$2,592.46 are comprised of the Receiver's costs. The
9 Receiver's fees incurred during the Expense Period include fees of the Receiver (\$21,223.30),
10 the Receiver's senior staff and accounting staff fees (\$21,949.80), IT Management fees
11 (\$8,723.43), and support staff fees (\$1,331.30). In addition, the Receiver incurred asset
12 preservation expenses (\$463.59).

13 During the Expense Period, the primary activities of the Receiver and his counsel have
14 focused on the Receiver gaining possession and control of the business and records of the
15 Receivership Defendants, evaluating those records and the Defendants' business activities, and
16 beginning the Receiver's financial analysis of these entities. In addition, the Receiver addressed
17 administrative issues regarding the receivership estate. The Receiver's activities during this
18 period are described in part in two documents: (a) Report of Receiver's Activities March 29,
19 2011 through April 11, 2011 filed April 11, 2011 [Doc. #29] and (b) the Receiver's
20 Recommendations Regarding Living Expenses and Related Matters filed on May 5, 2011 [Doc.
21 #48]. The Receiver's Report was prepared by the Receiver, his members and staff and reviewed
22 by the Receiver's counsel.

23 **1. Physical Custody, Control and Possession**

24 Pursuant to the Temporary Restraining Order, and continuing under the Preliminary
25 Injunction, the Receiver took custody, control and possession of the Receivership Defendants'
26 premises located at 8668 Spring Mountain Road, Las Vegas, Nevada, along with all paper
27 documents and electronic data. The Receiver also visited the office address listed at 8550 West
28 Desert Inn Road, Suites 102-381 and found this to be a UPS Store that offers virtual addresses

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1 for clients. The Receiver has taken steps to control and forward the mail addressed to both office
2 locations.

3 **2. Analysis and Investigation of the Structure and Operations of the**
4 **Receivership Defendants**

5 After taking possession of the business premises and records, the Receiver conducted an
6 investigation to determine the ownership and management structure of the Receivership
7 Defendants. The Receiver conducted multiple interviews of the Defendants and others in an
8 effort to ascertain how the business entities operated and to locate documents and other relevant
9 information. The Receiver reviewed and analyzed business and financial records, electronic and
10 physical accounting records, bank account information and records, income and expense records
11 and receipts, merchant processors' statements, transfers of funds to and from the Receivership
12 Defendants, e-mails, mail, and other documents.

13 The Receiver investigated the membership programs sold by the Receivership
14 Defendants and the methods used to market those programs. The Receiver reviewed and
15 analyzed written complaints from consumers regarding the Receivership Defendants'
16 membership programs. Through interviews with Defendants and employees of the Receivership
17 Defendants and after review of hundreds of e-mails, the Receiver determined that the
18 Receivership Defendants operated with affiliated entities which were all part of a common
19 enterprise operating in conjunction and cooperation with one another.

20 The Receiver analyzed the Receivership Defendants' merchant bank account statements
21 regarding information on program sales, ACH return, and refunds provided by the Receivership
22 Defendants. In addition, the Receiver located the Receivership Defendants' bank accounts and
23 approximately \$34,000.00 has been turned over to the Receiver.

24 The Receiver also investigated other assets of the Receivership Defendants such as a
25 deposit of a retainer at the law firm of McDermott Will & Emery in California of approximately
26 \$41,000.00. The Receiver also took steps to recover a \$100,000.00 deposit for a luxury yacht.
27 However, the Receiver learned this was a non-refundable deposit and does not anticipate any
28 recovery. The Receiver has also located and is in the process of evaluating the potential for

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1 liquidating other various assets such as multiple real properties located in California and Chile.²

2 **B. Activities of Receiver’s Counsel**

3 The Receiver is represented by Randolph Howard and Matthew Christian of the Kolesar
4 Firm. Mr. Howard prepared for and attended the hearing on the FTC’s motion for preliminary
5 injunction. The Kolesar Firm assisted the Receiver in the preparation and filing of the
6 Receiver’s Report and the Receiver’s Recommendation. With regard to the latter, the Kolesar
7 Firm reviewed and analyzed the various positions of the parties, as relayed through various
8 filings.

9 The Kolesar Firm also has assisted in locating and obtaining assets by issuing multiple
10 subpoenas. Moreover, counsel has spearheaded efforts to collect the \$100,000 Defendants paid
11 as a deposit for the aforementioned luxury yacht. The Kolesar Firm has otherwise assisted the
12 Receiver in the administration of the receivership estate by analyzing and advising on various
13 issues.

14 The Receiver submits that its fees and costs and those of its professionals are reasonable
15 and should be approved and authorized for payment in their entirety.

16 **III. THE RECEIVER REQUESTS RELIEF FROM NOTICE REQUIREMENTS OF**
17 **LR 66-5**

18 The Receiver requests that this Motion be granted without requiring the Receiver to give
19 notice to all creditors and interested parties under LR 66-5. That rule provides that “[u]nless the
20 court otherwise orders, the receiver shall give all interested parties and creditors at least ten (10)
21 days’ notice of the time and place of hearings of: . . . (d) All applications for fees of the receiver,
22 or of any attorney, accountant, or investigator.” Although LR 66-5 suggests a hearing on the fee
23 application may be required, other local rules indicate motions generally are determined without
24 a hearing and that setting a hearing on a motion is discretionary with the Court. For example, LR
25 7-2 does not provide for a hearing on motions, and LR 78-2 states that “[a]ll motions may, in the
26 court’s discretion, be considered and decided with or without a hearing.”

27 _____
28 ² Again, the Receiver has reported the results of its investigation in Doc. #29.

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1 The Receiver will provide notice of this motion to the parties by serving a copy of the motion on
2 all parties or their counsel. The Receiver will also post this motion (without voluminous time
3 records) on the Receiver’s website for the case at <http://www.robbevans.com/html/belfortcv.html>

4 In addition, copies of this Motion will be provided to any interested party upon receipt of
5 a written request. However, the Receiver requests that he be relieved from the duty under LR
6 66-5 to notify all interested parties and creditors in the estate.

7 There are numerous potential interested parties and creditors of the receivership estate.
8 There were thousands of consumers who did business with one or more of the Receivership
9 Entities. There are also numerous potential non-consumer creditors of the Receivership
10 Defendants. Although it is unclear if all of the consumers are creditors of the estate, they are
11 potential creditors in the estate, and under LR 66-5 may be considered “interested parties” who
12 should be served with notice of the hearing on this Motion. If the Receiver is required to give
13 notice to all of these persons, such a requirement would be burdensome, time-consuming and
14 expensive for the receivership estate, forcing the estate to incur substantial photocopying and
15 postage costs. It is reasonable to consider this motion based on the modified notice procedure set
16 forth herein. There is ample authority for the Court to approve procedures limiting the scope and
17 method of notice. LR 66-5 provides that the Receiver shall give all parties and creditors at least
18 ten (10) days’ notice of the hearing “unless the court otherwise orders.” This Court, as a court of
19 equity supervising the receivership estate, may make appropriate administrative orders
20 governing the receivership, including limitations on and changes in notice and other procedures.
21 See F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service procedures when numerous
22 defendants are involved in litigation).

23 Pursuant to LR 66-10, a receiver is directed to administer receivership estates “as nearly
24 as may be in accordance with the practice in the administration of estates in Chapter 11
25 bankruptcy cases.” Orders limiting notice when the Bankruptcy Code or Rules would otherwise
26 require notice to all creditors are routinely granted in bankruptcy cases to promote the
27 expeditious and economical administration of bankruptcy estates. See *In re First Alliance*
28 *Mortgage Co.*, 269 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the court’s recitation

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1 of facts the bankruptcy court’s order limiting notice issued in that case); 11 U.S.C. § 102(1)(A)
2 (defining the phrase “after notice and a hearing” to mean “after such notice as is appropriate in
3 the particular circumstances, and such opportunity for hearing as is appropriate in the particular
4 circumstances”); 11.U.S.C. § 105(a) and (s) (granting broad equitable powers to the court to
5 issue orders “necessary or appropriate to carry out the provisions” of title 11 including
6 “prescribing such limitations and conditions as the court deems appropriate to ensure the case is
7 handled expeditiously and economically”); and F.R.Bankr.P. 2002(m) (authorizing the court to
8 enter “orders designating the matters in respect to which, the entity to whom, and the form and
9 manner in which notices shall be sent except as otherwise provided by these rules”).

10 **IV. CONCLUSION**

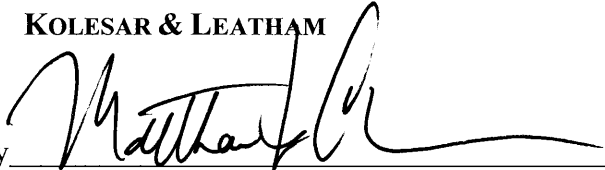
11 For the foregoing reasons, the Receiver respectfully requests that the Court grant this
12 motion and issue an order: (1) approving and authorizing payment of the fees and costs of the
13 Receiver and its professionals incurred for the period from the inception of the receivership
14 through May 31, 2011, and (2) limiting notice of the hearing on this motion that might otherwise
15 be required to be served on all known creditors of the estate under LR 66-5 so that notice of the
16 motion is deemed sufficient if a copy of the motion is served on the parties to this action, if the
17 Receiver posts this motion on the Receiver’s website
18 at <http://www.robbevans.com/html/belfortcv.html>, and if copies of this motion are provided to
19 any interested party upon receipt of a written request.

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1 WHEREFORE, the Receiver respectfully requests that the Court grant relief as set forth
2 herein.

3 DATED this 29 day of July, 2011.

4 KOLESAR & LEATHAM

5
6 By 

7 RANDOLPH L. HOWARD, ESQ.

8 Nevada Bar No. 006688

9 rhoward@klnevada.com

10 MATTHEW J. CHRISTIAN, ESQ.

11 Nevada Bar No. 008024

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15 Telephone (702) 362-7800

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17 *Attorneys for Receiver*

18 *ROBB EVANS & ASSOCIATES, LLC*

19 **DECLARATION OF MATTHEW J. CHRISTIAN**

20 I, MATTHEW J. CHRISTIAN, declare:

21 1. I am an attorney at law duly admitted to practice in the State of Nevada and
22 before the United States District Court, District of Nevada. I am a partner in the firm of Kolesar
23 & Leatham ("Kolesar Firm"), the attorneys for Robb Evans & Associates LLC ("Receiver"), the
24 Court-appointed Receiver in this case. I have primary responsibility for the representation of the
25 Receiver in this matter. If called upon to testify as to the facts set forth in this declaration, I
26 could and would testify competently thereto as the facts are true and within my personal
27 knowledge.

28 2. This declaration is filed in support of the Receiver's first motion for approval and
payment of fees and expenses and covers the period from the inception of the receivership
through May 31, 2011 (the "Expense Period"). The Kolesar Firm is primarily responsible for
assisting the Receiver in filing the Receiver's reports and pleadings, issuing and serving
subpoenas, to assist in the recovery of assets, and to otherwise assist the Receiver as needed.

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1 The amounts incurred to the Kolesar Firm for these services during the Expense Period were
2 necessary and reasonable.

3 3. This motion seeks approval and payment of total attorneys' fees and costs of
4 \$9,111.12. This sum is comprised of fees of \$8,490.75 and costs of \$620.37. Attached hereto as
5 **Exhibit B** are the detailed time records of the Kolesar Firm for the Expense Period. The time
6 records, as well as the time records for the Receiver and his staff and accountants, have been
7 redacted where appropriate to preserve descriptions containing confidential, tactical, strategic,
8 attorney-client privileged and/or attorney work-product information.

9 4. During this Expense Period, my partner, Randolph Howard, prepared for and
10 appeared at the hearing on the FTC's motion for preliminary injunction conducted on April 15,
11 2011. My firm also assisted the Receiver in the preparation and filing of the Receiver's Report
12 and the Receiver's Recommendation as to Living Expenses and Related Matters [Doc. #29 and
13 Doc. #48]. My firm also assisted the Receiver in the administration of the receivership estate by
14 issuing subpoenas to various financial institutions.

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

26 6. I have eight years' experience as a business and commercial litigator. My partner
27 Randolph Howard has practiced for more than 30 years and has also specialized in representing
28 receivers in federal equity receiverships. I believe my firm's rates and the amount incurred by

1 the Receiver for the services rendered during the Expense Period are reasonable and appropriate
2 based on the nature of the services rendered, the quality and amount of services provided, the
3 complexity of the issues involved and other factors under the circumstances.

4 I declare under penalty of perjury that the foregoing is true and correct and that this
5 declaration was executed this 29 day of July, at Las Vegas, Nevada.

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