

ROBB EVANS & ASSOCIATES LLC

Receiver of

The Rodis Law Group, Inc.

America's Law Group

The Financial Group, Inc. dba Tax Relief ASAP

Federal Trade Commission v. Data Medical Capital, Inc, et al.

CASE No. SA-CV-99-1266 AHS (EEx)

Notice of Motion and Motion for Order:

- (1) Approving Report of Temporary Receiver's Activities;**
- (2) Approving and Authorizing Payment of Receiver's Fees and Expenses and Attorneys' Fees and Expenses from Inception Through June 30, 2009;**
- (3) Granting Relief from Local rule 66-7 Pertaining to Notice to Creditors;**

Memorandum of Points and Authorities and Declaration of Gary Owen Caris in Support Thereof;

Declaration of Brick Kane in Support Thereof

Filed August 19, 2009

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ROBB EVANS & ASSOCIATES LLC
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION
11

12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 DATA MEDICAL CAPITAL, INC.,
16 *et al.*,

17 Defendants.
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Case No. 8:99-cv-01266 AHS (EEx)

**NOTICE OF MOTION AND
MOTION FOR ORDER: (1)
APPROVING REPORT OF
TEMPORARY RECEIVER'S
ACTIVITIES; (2) APPROVING
AND AUTHORIZING PAYMENT
OF RECEIVER'S FEES AND
EXPENSES AND ATTORNEYS'
FEES AND EXPENSES FROM
INCEPTION THROUGH JUNE 30,
2009; (3) GRANTING RELIEF
FROM LOCAL RULE 66-7
PERTAINING TO NOTICE TO
CREDITORS; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATION OF GARY OWEN
CARIS IN SUPPORT THEREOF**

**[DECLARATION OF BRICK KANE
IN SUPPORT THEREOF FILED
UNDER SEPARATE COVER]**

DATE: September 21, 2009
TIME: 10:00 a.m.
PLACE: Courtroom 10A

1 PLEASE TAKE NOTICE that on September 21, 2009 commencing at 10:00
2 a.m., or as soon thereafter as the parties may be heard in Courtroom 10A of the
3 above-entitled Court located at 411 West Fourth Street, Santa Ana, California,
4 Robb Evans & Associates LLC, as permanent Receiver (“Receiver”), will and does
5 hereby move the Court for an order:

6 1. Approving the Report of Temporary Receiver’s Activities covering the
7 period of May 27, 2009 through June 12, 2009 filed with the Court on June 16,
8 2009, and confirming all activities of the Receiver as described therein;

9 2. Approving and authorizing payment of the Receiver’s fees and
10 expenses and attorneys’ fees and expenses for the period from the inception of the
11 receivership on May 27, 2009 through June 30, 2009, comprised of fees of the
12 Receiver and its staff of \$151,951.30 and Receiver’s costs of \$9,377.31, and
13 attorneys’ fees of \$34,051.50 and costs of \$350.31 incurred by the Receiver’s
14 counsel, for a total of \$195,730.42; and

15 3. Granting relief from Local Rule 66-7 pertaining to the giving of notice
16 to all creditors of the receivership estate and finding that notice of this Motion is
17 sufficient if the Motion and supporting papers are served on the parties to this
18 action, the Motion and supporting papers but exclusive of voluminous exhibits is
19 posted on the Receiver’s website, and a notice of hearing is served on the known
20 non-investor creditors of the Receivership Entities.

21 PLEASE TAKE FURTHER NOTICE that this Motion is made pursuant to
22 Local Rule 66-7(c) and (f), and is based upon this Notice of Motion and Motion,
23 the accompanying memorandum of points and authorities and declarations of Brick
24 Kane and Gary Owen Caris, upon the pleadings, records and files of this case of
25 which the Receiver requests the Court take judicial notice, the separate Notice of
26 Hearing served concurrently herewith, and upon all other further pleadings, oral and
27 documentary evidence and argument of counsel as may be presented by the
28 Receiver at or before the time of the hearing on the Motion.

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PLEASE TAKE FURTHER NOTICE that a copy of this Motion, exclusive of voluminous exhibits, is posted on the Receiver's website at www.robbevans.com/html/dmedcap.html, where it may be reviewed in its entirety. Copies of this Motion will be provided to any interested party upon receipt of a written request which may be sent to: Robb Evans & Associates LLC, Attn: Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352-1121; Facsimile: (818) 768-8802.

Dated: August 19, 2009

MCKENNA LONG & ALDRIDGE LLP
Gary Owen Caris
Lesley Anne Hawes

By: /s/ Gary Owen Caris
Gary Owen Caris
Attorneys for Permanent Receiver,
ROBB EVANS & ASSOCIATES
LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Robb Evans & Associates LLC (“Receiver”) was originally appointed as
4 Temporary Receiver over The Rodis Law Group, Inc. (“RLG”), America’s Law
5 Group (“ALG”), The Financial Group, Inc. dba Tax Relief ASAP (“TFG”), and any
6 successors, assigns, affiliates and fictitious business names of the aforementioned
7 entities (collectively, the “Receivership Defendants”) pursuant to the Temporary
8 Restraining Order With Asset Freeze, Appointment of a Temporary Receiver and
9 Other Equitable Relief filed May 27, 2009 (“Temporary Restraining Order”). The
10 Receiver was appointed pursuant to an ex parte application filed by plaintiff Federal
11 Trade Commission (“FTC”) to hold Bryan D’Antonio (“D’Antonio”) in contempt
12 of court for violating a ban on certain telemarketing activities issued against him in
13 connection with his role in the company Data Medical Capital, Inc. The FTC has
14 alleged that Bryan D’Antonio as principal of TFG has organized and operated a
15 telemarketing operation to promote and sell foreclosure prevention and loan
16 modification services to consumers purportedly to be performed by attorneys from
17 RLG and ALG. On June 22, 2009, the Court conducted a hearing on the FTC’s
18 motion for a preliminary injunction and to make the Receiver permanent receiver of
19 the Receivership Defendants. The FTC’s motion was granted, and the Receiver
20 became permanent receiver over the Receivership Defendants pursuant to the
21 Preliminary Injunction Order entered June 26, 2009.

22 The Receiver took possession and control of the Receivership Defendants on
23 May 28, 2009. On June 16, 2009, the Receiver filed with the Court its Report of
24 Temporary Receiver’s Activities covering the period from the inception of the
25 receivership through June 12, 2009 (“Temporary Receiver’s Report”). This Motion
26 seeks in part an order of the Court approving the Temporary Receiver’s Report and
27 confirming the Receiver’s activities described in that report.

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1 In addition, this Motion is the Receiver's first motion for approval and
2 payment of fees and expenses of the Receiver, its members and staff and its
3 attorneys' fees and costs. The Motion seeks approval and payment of fees and
4 expenses for the period from the inception of the receivership on May 27, 2009
5 through June 30, 2009 ("Initial Expense Period"). The Receiver's fees and costs for
6 which approval is requested are set forth in the summary entitled "Receivership
7 Administrative Expenses and Fund Balance by Month" ("Financial Summary")
8 attached to the supporting Declaration of Brick Kane as Exhibit 1. The services
9 rendered by the Receiver and its counsel during the Initial Expense Period are
10 described in more detail hereafter and in the billing records attached to the
11 Declarations of Brick Kane and Gary Owen Caris in support of this Motion.

12 The Receiver also seeks relief from the requirement of Local Civil Rule 66-7
13 that would otherwise require notice of hearing on the Motion to be served on all
14 known creditors of the receivership estate. As set forth in the Temporary
15 Receiver's Report, there are a total of approximately 2,168 consumer clients of
16 RLG and ALG, plus approximately 1,100 consumer clients of TFG. The extent to
17 which the consumer clients are creditors of these entities has not been determined.
18 In addition, there are approximately 20 non-consumer creditors of the Receivership
19 Defendants whom the Receiver has identified to date. The receivership estate,
20 which has limited assets, would incur significant expense in serving a notice of
21 hearing on this Motion on all 2,168 consumer clients of RLG and ALG as well as
22 all 1,100 consumer clients of TFG. The Receiver instead proposes to serve the
23 Motion and all supporting papers on the parties to this action, to serve a notice of
24 hearing on the Motion on the non-consumer creditors, and to post a copy of the
25 Motion, without voluminous exhibits, on the Receiver's website for this
26 receivership at www.robbevans.com/html/dmedcap.html. The Receiver will also
27 provide a copy to any interested party who requests a copy in writing.

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1 **II. SUMMARY OF ACTIVITIES OF TEMPORARY RECEIVER AND**
2 **SERVICES RENDERED BY RECEIVER AND COUNSEL IN THE**
3 **INITIAL EXPENSE PERIOD**

4 The primary activities of the Receiver and its counsel in the Initial Expense
5 Period have focused on the Receiver's gaining possession and control of the
6 business and records of the Receivership Defendants, evaluating those records and
7 the Receivership Defendants' business activities and beginning the Receiver's
8 financial analysis and reconstruction of the financial transactions of these entities.
9 The Receiver also attended depositions conducted by plaintiff FTC in the case and
10 has had to address discovery issues through an ex parte application which resulted
11 in the Court's granting orders requested by the Receiver providing for the terms and
12 conditions of access to the records of the Receivership Defendants and for a
13 protective order to protect attorney-client privileged documents and personal and
14 private consumer information from being publicly disclosed or disseminated.

15 **Possession and Control of Receivership Defendants**

16 Pursuant to the Temporary Restraining Order, and continuing under the
17 Preliminary Injunction Order, the Receiver has taken custody, control and
18 possession of the Receivership Defendants' premises at 1100 Town and Country
19 Road, Orange, California, along with all paper documents and electronic data, since
20 May 28, 2009. Given that two of the businesses, RLG and ALG, were nominally
21 law firms and attorney-client privilege and related issues might arise, counsel for
22 the Receiver also participated in the initial entry of the businesses and initial review
23 and investigation, including initial witness interviews and review of files and
24 documents at the premises. The business premises of the Receivership Defendants
25 occupied two floors of the office building in Orange, and during the Initial Expense
26 Period, the Receiver took steps to consolidate the business property and records
27 into a single floor, allowing the Receiver to monitor the premises with a single
28 employee and to reduce any potential rental obligation.

1 **Investigation of Business Activities and Financial Transactions**

2 After taking possession of the business premises and records, the Receiver
3 has analyzed the electronic and physical accounting records, bank account
4 information and records, income and expense records and receipts and transfers of
5 funds to and from the Receivership Defendants. The Receiver analyzed extensive
6 e-mail records and communications and reviewed a portion of the client files of
7 RLG and ALG.

8 The Receiver further analyzed the business operations of the Receivership
9 Defendants, including management and control issues, the nature of services
10 rendered and the personnel engaged in rendering services for the consumer
11 customers of RLG and ALG and the results of the services performed by RLG and
12 ALG for the consumer clients in terms of the number of successful loan
13 modifications obtained. The Receiver evaluated consumer complaints, requests for
14 refunds and application of the entities' refund policies based on the "guaranty" of
15 success offered by RLG and ALG. The Receiver also located and reviewed sales
16 and marketing information included in the RLG and ALG business records,
17 including various scripts and instructions to personnel to respond to various routine
18 customer questions and concerns. These services involved review of tens of
19 thousands of documents by various members of the Receiver's office. The
20 Receiver's initial conclusions based on this review are detailed in the Temporary
21 Receiver's Report and the records attached thereto filed on June 16, 2009.

22 The Receiver concluded that RLG and ALG had an aggregate of 2,168
23 consumer customers during the period of their operations as of May 27, 2009. The
24 Temporary Receiver's Report details information on the number of successful and
25 completed loan modifications made by these entities from November 2008 to the
26 commencement of the receivership and addresses the progress made for other
27 clients. The Temporary Receiver's Report also details the representations made to
28 consumers and consumer complaints against the entities. The Receiver filed its

1 Temporary Receiver's Report on June 16, 2009. The Report was prepared and filed
2 with the review and assistance of counsel for the Receiver.

3 **Access to Records and Document Discovery Issues**

4 The records of the Receivership Defendants include physical client files
5 created by RLG and ALG, as well as e-mail communications between various
6 individuals managing the operations of the Receivership Defendants, including
7 Bryan D'Antonio, Ron Rodis, Wayne Farris, and Nadir Qsar. Since shortly after
8 the inception of the receivership, various parties to the litigation requested that the
9 Receiver grant access to the records in the custody of the Receiver and produce
10 documents and records of the Receivership Defendants. Provisions of the
11 Temporary Restraining Order as well as the subsequent Preliminary Injunction
12 provided for records to be made available to plaintiff FTC and other provisions for
13 access to the records by the defendants. The Receiver concluded that two issues
14 complicated the review of records by the parties; namely that some small portion of
15 the voluminous records probably included attorney-client communications that the
16 consumer clients of these entities could claim were privileged from disclosure and
17 that the records also included personal and private information regarding the
18 consumers, such as social security numbers, home addresses and telephone
19 numbers, names and ages of minor children, tax returns and bank records. Further,
20 D'Antonio is not an attorney, raising issues regarding his right to review client files
21 or attorney-client privileged documents under the circumstances.

22 The FTC took the position that none of the records were privileged based on
23 authorities cited in its initial ex parte application to hold D'Antonio in contempt of
24 court and for appointment of a receiver. RLG and ALG contended that records
25 were privileged, and all defendants claimed they were entitled to access to all of the
26 documents forthwith to prepare for the upcoming contempt and permanent
27 injunction hearing which was initially set to commence on July 28, 2009.

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1 Production of the records by the Receiver to multiple parties also raised other
2 practical considerations. Among other things, the Receiver and its counsel had to
3 address the physical copying of electronic records given the size and number of
4 records involved, the cost of creating copies of such records and coordinating the
5 transmission of the records to the parties. The Receiver and its counsel also had to
6 address the review and copying of the physical records at the premises, including
7 coordinating dates and times for on-site supervision of the parties and requiring on-
8 site copy services to be arranged by the parties requesting records.

9 On June 30, 2009, the Receiver through its counsel filed an Ex Parte
10 Application for an order providing instructions to the Receiver regarding the nature
11 and extent of the access to the records to be granted to the parties and for entry of a
12 protective order covering the records produced to protect those records from
13 dissemination or public disclosure. In response to the Ex Parte Application, the
14 Receiver's counsel had discussions with counsel for the various parties regarding
15 additional and alternative provisions for the order for instructions and the protective
16 order and reviewed the responses filed to the Ex Parte Application by the FTC and
17 other parties. The Court granted the Receiver's Ex Parte Application and granted
18 the relief sought with some modification based on the additional terms proposed by
19 the parties and issued a protective order on July 8, 2009.

20 After the Court's July 8, 2009 orders were issued on the Receiver's Ex Parte
21 Application, the Receiver and counsel have responded to the parties regarding
22 requests for records, including coordinating the production of electronic records and
23 on-site access to the records of the Receivership Defendants.

24 **Attendance at Depositions and Hearings**

25 Prior to the hearing on the FTC's motion for a preliminary injunction
26 scheduled on July 24, 2009, the FTC noticed depositions of D'Antonio, Ronald
27 Rodis and Nicholas Chavarela. A deputy to the Receiver attended certain of the
28 depositions, and both the Receiver's deputy and counsel for the Receiver attended

1 the deposition of D'Antonio, with counsel asking certain limited questions
2 concerning financial records of the Receivership Defendants that indicated
3 approximately \$900,000 was transferred from the Receivership Defendants to
4 personal accounts of D'Antonio. D'Antonio asserted the Fifth Amendment and
5 refused to provide substantive responses at the deposition.

6 **Consumer/Client Issues**

7 During the Initial Expense Period, both the Receiver and its counsel have
8 addressed issues regarding the consumer clients of RLG and ALG. The Receiver
9 has posted information on its website concerning the Court's Temporary
10 Restraining Order and the Preliminary Injunction and provided consumers
11 references to the FTC web site and the contact information for HOPE NOW, the
12 organization providing free services to assist consumers seeking foreclosure relief
13 and loan modification assistance. The Receiver's staff has responded to numerous
14 consumer inquiries regarding their files and addressed issues with counsel for RLG
15 concerning attempts to communicate with and service RLG's former clients.

16 **Receiver's Other Administrative Services**

17 During the Initial Expense Period, the Receiver has performed other
18 administrative services in connection with the administration of the receivership
19 estate. The Receiver has addressed the termination of employees of the
20 Receivership Defendants and related payroll and other issues. The Receiver has
21 notified financial institutions of the receivership and served copies of the
22 Temporary Restraining Order and Preliminary Injunction on the financial
23 institutions where receivership assets may be located.

24 Based on these extensive services and activities of the Receiver and its
25 counsel, the Receiver seeks approval of the Temporary Receiver's Report and
26 confirmation of the activities described therein. The Receiver further seeks
27 approval and authorization for payment of the Receiver's and counsel's fees and
28 expenses incurred in the Initial Expense Period, consisting of fees of the Receiver

1 and its staff of \$151,951.30 and Receiver's costs of \$9,377.31, and attorneys' fees
2 of \$34,051.50 and costs of \$350.31 incurred by the Receiver's counsel, for a total
3 of \$195,730.42. The Receiver contends that the fees and expenses incurred are
4 reasonable and appropriate under the circumstances and based on the services
5 performed.

6 **III. THE RECEIVER REQUESTS THAT THIS MOTION BE**
7 **GRANTED WITHOUT REQUIRING THE RECEIVER TO**
8 **GIVE WRITTEN NOTICE TO ALL CREDITORS**

9 The Receiver requests that this Motion be granted without requiring the
10 Receiver to give written notice of the hearing on the Motion to all known creditors
11 pursuant to Local Rule 66-7. Local Rule 66-7 applies to the following: (a)
12 petitions for payment of dividends to creditors; (b) petitions for confirmation of
13 sales of real property and personal property; (c) reports of the Receiver; (d)
14 applications for instructions concerning administration of the estate; (e) applications
15 for discharge of the Receiver; and (f) applications for fees and expenses of the
16 Receiver, the attorney for the Receiver and any other person appointed to aid the
17 Receiver (collectively referred to as "Rule 66-7 Motions"). The Receiver seeks an
18 order for limited notice of the hearing on this Motion by which the Receiver would
19 be authorized to serve the Motion on the parties and serve notice of the hearing on
20 the Motion on all known non-consumer creditors (approximately 20 creditors) and
21 to post the Motion on the Receiver's web site for the case. The Receiver would
22 also provide a complete copy of the Motion to any interested consumer who
23 requested a copy in writing.

24 Local Rule 66-7 requires that all "known" creditors of the Receivership
25 Defendants receive notice by mail of the hearing on all Rule 66-7 Motions. In this
26 case, there are approximately 3,268 potential consumer creditors in this case based
27 on the number of consumers whom the Receiver has determined engaged RLG,
28 ALG and TFG to perform services in this case. If the Receiver were required to

1 give notice to all consumer creditors, such a requirement would be burdensome,
2 time-consuming and expensive for the receivership estate, causing the estate to
3 incur substantial photocopying and postage costs.

4 The Receiver seeks an order providing that the notice requirement for the
5 hearing on this Motion shall be deemed satisfied if copies of this Motion are served
6 on all parties to this action and on all parties who request a copy of the Motion in
7 writing directed to: Robb Evans & Associates LLC, Attn: Cherrie Eustaquio,
8 11450 Sheldon Street, Sun Valley, CA 91352-1121; Telephone: (818) 768-8100;
9 Facsimile: (818) 768-8802. In addition, the Receiver will serve a notice of hearing
10 on the motion on all known non-investor creditors. The Receiver will post a copy
11 of this Motion, exclusive of voluminous exhibits, on the Receiver's website for this
12 case at www.robbevans.com/html/dmedcap.html, allowing all interested parties an
13 opportunity to review the Motion and to submit a written request for service
14 thereof. This procedure for limited notice is reasonable in light of the large number
15 of potential creditors, and provides adequate notice while allowing for efficient,
16 cost-effective administration of the receivership estate.

17 There is ample authority for approval of the scope and method of limited
18 notice as set forth above. Local Rule 66-7 provides that the provisions of Local
19 Rule 6-1 apply to notice of Rule 66-7 Motions. Local Rule 6-1 in turn provides for
20 the filing and service of written notices of motion "unless otherwise provided by
21 rule or ordered by the Court." This Court, as a court of equity supervising the
22 receivership estate, may make appropriate administrative orders governing the
23 receivership, including limitations on and changes in notice and other procedures.
24 See F.R.Civ.P. 5(a) and (c) (authorizing the court to modify service procedures
25 when numerous defendants are involved in litigation). Pursuant to Local Rules 66-
26 8, a receiver is directed to administer receivership estates "as nearly as possible in
27 accordance with the practice in the administration of estates in bankruptcy." Orders
28 limiting notice when the Bankruptcy Code or Rules would otherwise require notice

1 to all creditors are routinely granted in bankruptcy cases to promote the expeditious
2 and economical administration of bankruptcy estates. See In re First Alliance
3 Mortgage Co., 269 B.R. 428, 442 (C.D. Cal. 2001) (referencing in dicta in the
4 court's recitation of facts the bankruptcy court's order limiting notice issued in that
5 case); 11 U.S.C. § 102(1)(A) (defining the phrase "after notice and a hearing" to
6 mean "after such notice as is appropriate in the particular circumstances, and such
7 opportunity for hearing as is appropriate in the particular circumstances");
8 11.U.S.C. § 105(a) and (s) (granting broad equitable powers to the court to issue
9 orders "necessary or appropriate to carry out the provisions" of Title 11 including
10 "prescribing such limitations and conditions as the court deems appropriate to
11 ensure the case is handled expeditiously and economically"); and F.R.Bankr.P.
12 2002(m) (authorizing the court to enter "orders designating the matters in respect to
13 which, the entity to whom, and the form and manner in which notices shall be sent
14 except as otherwise provided by these rules").

15 **IV. CONCLUSION**

16 For the reasons set forth herein, the Receiver respectfully requests that the
17 Court grant relief as requested in the Motion.

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19 Dated: August 19, 2009

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

20
21
22 By: /s/ Gary Owen Caris

Gary Owen Caris
Attorneys for Temporary Receiver
ROBB EVANS & ASSOCIATES
LLC

1 certain transfers of funds from the Receivership Defendants to accounts of Bryan
2 D'Antonio.

3 4. The production of records and access to receivership records requested
4 by the parties required counsel for the Receiver to evaluate and propose a strategy
5 to address attorney-client privilege issues that the consumer clients of the
6 Receivership Defendants may hold as well as privacy issues given the personal
7 financial and other information contained in certain of the documents. Production
8 of the records by the Receiver to multiple parties also raised other practical
9 considerations. Among other things, my firm along with the Receiver had to
10 address the physical copying of electronic records given the size and number of
11 records involved, the cost of creating copies of such records and coordinating the
12 transmission of the records to the parties. The McKenna Firm also assisted the
13 Receiver in addressing the review and copying of the physical records at the
14 premises, including coordinating dates and times for on-site supervision of the
15 parties and requiring on-site copy services to be arranged by the parties requesting
16 records.

17 5. On June 30, 2009, the McKenna Firm on behalf of the Receiver filed
18 an Ex Parte Application for an order providing instructions to the Receiver
19 regarding the nature and extent of the access to the records to be granted to the
20 parties and for entry of a protective order covering the records produced to protect
21 those records from dissemination or public disclosure. In response to the Ex Parte
22 Application, I had a number of discussions with counsel for the various parties
23 regarding additional and alternative provisions for the order for instructions and the
24 protective order and reviewed the responses filed to the Ex Parte Application by the
25 FTC and other parties. The Court granted the Receiver's Ex Parte Application and
26 granted the relief sought with some modification based on the additional terms
27 proposed by the parties and issued a protective order on July 8, 2009.

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1 6. After the Court's July 8, 2009 orders were issued on the Receiver's Ex
2 Parte Application, the McKenna Firm along with Receiver has responded to the
3 parties regarding requests for records, including coordinating the production of
4 electronic records and on-site access to the records of the Receivership Defendants.
5 My firm has also assisted the Receiver in responding to inquiries from consumers
6 regarding the status of the Receivership Defendants and the matters that were
7 previously handled by the Receivership Defendants, including addressing issues
8 with counsel for RLG concerning attempts to communicate with and service RLG's
9 former clients.

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

23 8. I have more than 29 years' experience as a business and commercial
24 litigator and also have extensive experience as a bankruptcy attorney representing
25 creditors in Chapter 11 and Chapter 7 bankruptcy cases. For ten years I have also
26 specialized in representing receivers in federal equity receiverships. I am familiar
27 with the billing rates and practices of firms in the Los Angeles area providing
28 comparable services, and I believe my firm's rates and the amount incurred by the

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

5 I declare under penalty of perjury that the foregoing is true and correct and
6 that this declaration was executed on this 19th day of August 2009 at Los Angeles,
7 California.

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/s/ Gary Owen Caris

GARY OWEN CARIS

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Telephone: (213) 688-1000
5 Facsimile: (213) 243-6330

6 Attorneys for Permanent Receiver
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION
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12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 DATA MEDICAL CAPITAL, INC.,
16 *et al.*,

17 Defendants.
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Case No. 8:99-cv-01266 AHS (EEx)

**DECLARATION OF BRICK KANE
IN SUPPORT OF MOTION FOR
ORDER: (1) APPROVING REPORT
OF TEMPORARY RECEIVER'S
ACTIVITIES; (2) APPROVING
AND AUTHORIZING PAYMENT
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FEES AND EXPENSES FROM
INCEPTION THROUGH JUNE 30,
2009; (3) GRANTING RELIEF
FROM LOCAL RULE 66-7
PERTAINING TO NOTICE TO
CREDITORS**

DATE: September 21, 2009

TIME: 10:00 a.m.

PLACE: Courtroom 10A
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24 I, Brick Kane, declare:

25 1. I am a principal of Robb Evans & Associates LLC, the entity
26 appointed by this Court as permanent receiver of The Rodis Law Group, Inc.
27 ("RLG"), America's Law Group ("ALG") and The Financial Group, Inc. dba Tax
28

1 Relief ASAP (“TFG”) and any successors, assigns, affiliates and fictitious business
2 names of the aforementioned entities (collectively, the “Receivership Defendants”)
3 in connection with the above referenced matter. I have personal knowledge of the
4 matters set forth in this declaration or have gained knowledge of these matters
5 based upon my supervision of other members and staff of Robb Evans &
6 Associates LLC involved in the day to day management of this receivership estate.
7 If called upon to testify as to these matters, I could and would competently testify
8 thereto.

9 2. Robb Evans & Associates LLC (“Receiver”) was originally appointed
10 as Temporary Receiver over the Receivership Defendants pursuant to the
11 Temporary Restraining Order With Asset Freeze, Appointment of a Temporary
12 Receiver and Other Equitable Relief filed May 27, 2009 (“Temporary Restraining
13 Order”). The Receiver was appointed pursuant to an ex parte application filed by
14 plaintiff Federal Trade Commission (“FTC”) to hold Bryan D’Antonio
15 (“D’Antonio”) in contempt of court for violating a ban on certain telemarketing
16 activities issued against him in connection with his role in the company Data
17 Medical Capital, Inc. The FTC alleged that Bryan D’Antonio as principal of TFG
18 has organized and operated a telemarketing operation to promote and sell
19 foreclosure prevention and loan modification services to consumers purportedly to
20 be performed by attorneys from RLG and ALG. On June 24, 2009, the Court
21 conducted a hearing on the FTC’s motion for a preliminary injunction and to make
22 the Receiver permanent receiver of the Receivership Defendants. The FTC’s
23 motion was granted, and the Receiver became permanent receiver over the
24 Receivership Defendants pursuant to the Preliminary Injunction Order entered June
25 26, 2009.

26 3. The Receiver took possession and control of the Receivership
27 Defendants on May 28, 2009, and I personally participated in the entry and seizure
28 of the assets and records of the Receivership Entities on that date. I also

1 participated in the review and analysis of the electronic records, physical files,
2 business records and accounting records concerning the Receivership Entities on
3 that date and several days following the initial entry. I was one of the members of
4 the Receiver who participated in the preparation of the Report of Temporary
5 Receiver's Activities covering the period from the inception of the receivership
6 through June 12, 2009 ("Temporary Receiver's Report") that was filed with the
7 Court on June 16, 2009.

8 4. In addition to approving the Temporary Receiver's Report, by this
9 motion, the Receiver seeks an order approving and authorizing payment of the
10 Receiver's fees and expenses, as well as the fees and expenses of the Receiver's
11 staff and counsel for the period from the inception of the receivership on May 27,
12 2009 through June 30, 2009 ("Initial Expense Period"). The fees and costs for
13 which approval is requested are set forth in the summary which my office has
14 prepared entitled "Receivership Administrative Expenses and Fund Balance by
15 Month" ("Financial Summary") attached hereto as Exhibit 1. The fees and costs
16 are further detailed in Exhibit 2 hereto, which consists of the billing records of the
17 Receiver's members and staff for the Initial Expense Period, redacted by the
18 Receiver's counsel as explained in the Declaration of Gary Owen Caris in support
19 of the Motion. The Receiver has incurred \$151,951.30 and \$9,377.31 in expenses,
20 during the Initial Expense Period for the Receiver's fees and expenses and those of
21 its staff, and has incurred legal fees of \$34,051.50 and costs of \$350.31 for services
22 rendered by the Receiver's counsel, McKenna Long & Aldridge LLP ("McKenna
23 Firm") during the Initial Expense Period, for an aggregate total of Receiver's and
24 counsel's fees and expenses of \$195,730.42 for the period.

25 5. The primary activities of the Receiver and its counsel in the Initial
26 Expense Period have focused on the Receiver's gaining possession and control of
27 the business and records of the Receivership Defendants, evaluating those records
28 and the Receivership Defendants' business activities and beginning the Receiver's

1 financial analysis and reconstruction of the financial transactions of these entities.
2 The Receiver also attended depositions conducted by plaintiff FTC in the case and
3 has had to address discovery issues through an ex parte application which resulted
4 in the Court's granting orders requested by the Receiver providing for the terms and
5 conditions of access to the records of the Receivership Defendants and for a
6 protective order to protect attorney-client privileged documents and personal and
7 private consumer information from being publicly disclosed or disseminated.

8 6. Pursuant to the Temporary Restraining Order, and continuing under
9 the Preliminary Injunction Order, the Receiver has taken custody, control and
10 possession of the Receivership Defendants' premises at 1100 Town and Country
11 Road, Orange, California, along with all paper documents and electronic data, since
12 May 28, 2009. The business premises of the Receivership Defendants occupied
13 two floors of the office building in Orange, and during the Initial Expense Period,
14 the Receiver took steps to consolidate the business property and records into a
15 single floor, allowing the Receiver to monitor the premises with a single employee
16 and to reduce any potential rental obligation. The initial entry involved the
17 Receiver's inspecting and securing the premises and the business records at the
18 location as well as interviewing witnesses, and reviewing financial and other
19 records.

20 7. After taking possession of and securing the business premises and
21 records, the Receiver has analyzed the electronic and physical accounting records,
22 bank account information and records, income and expense records and receipts
23 and transfers of funds to and from the Receivership Defendants. The Receiver
24 analyzed extensive e-mail records and communications and reviewed a portion of
25 the client files of RLG and ALG.

26 8. The Receiver further analyzed the business operations of the
27 Receivership Defendants, including management and control issues, the nature of
28 services rendered and the personnel engaged in rendering services for the consumer

1 customers of RLG and ALG and the results of the services performed by RLG and
2 ALG for the consumer clients in terms of the number of successful loan
3 modifications obtained. The Receiver evaluated consumer complaints, requests for
4 refunds and application of the entities' refund policies based on the "guaranty" of
5 success offered by RLG and ALG. The Receiver also located and reviewed sales
6 and marketing information included in the RLG and ALG business records,
7 including various scripts and instructions to personnel to respond to various routine
8 customer questions and concerns. These services involved review of tens of
9 thousands of documents by various members of the Receiver's office. The
10 Receiver's initial conclusions based on this review are detailed in the Temporary
11 Receiver's Report and the records attached thereto filed on June 16, 2009.

12 9. The Receiver concluded that RLG and ALG had an aggregate of 2,168
13 consumer customers during the period of their operations as of May 27, 2009. The
14 Temporary Receiver's Report details information on the number of successful and
15 completed loan modifications made by these entities from November 2008 to the
16 commencement of the receivership and addresses the progress made for other
17 clients. The Temporary Receiver's Report also details the representations made to
18 consumers and consumer complaints against the entities. The Receiver filed its
19 Temporary Receiver's Report on June 16, 2009.

20 10. The records of the Receivership Defendants include physical client
21 files created by RLG and ALG, as well as e-mail communications between various
22 individuals managing the operations of the Receivership Defendants, including
23 Bryan D'Antonio, Ron Rodis, Wayne Farris, and Nadir Qsar. Since shortly after
24 the inception of the receivership, various parties to the litigation requested that the
25 Receiver grant access to the records in the custody of the Receiver and produce
26 documents and records of the Receivership Defendants. Provisions of the
27 Temporary Restraining Order as well as the subsequent Preliminary Injunction
28 provided for records to be made available to plaintiff FTC and other provisions for

1 access to the records by the defendants. The Receiver concluded that two issues
2 complicated the review of records by the parties; namely that some small portion of
3 the voluminous records probably included attorney-client communications that the
4 consumer clients of these entities could claim were privileged from disclosure and
5 that the records also included personal and private information regarding the
6 consumers, such as social security numbers, home addresses and telephone
7 numbers, names and ages of minor children, tax returns and bank records. Further,
8 D'Antonio is not an attorney, raising issues regarding his right to review client files
9 or attorney-client privileged documents under the circumstances.

10 11. The FTC took the position that none of the records were privileged
11 based on authorities cited in its initial ex parte application to hold D'Antonio in
12 contempt of court and for appointment of a receiver. RLG and ALG contended that
13 records were privileged, and all defendants claimed they were entitled to access to
14 all of the documents forthwith to prepare for the upcoming contempt and permanent
15 injunction hearing which was initially set to commence on July 28, 2009.

16 12. Production of the records by the Receiver to multiple parties also
17 raised other practical considerations. Among other things, the Receiver and its
18 counsel had to address the physical copying of electronic records given the size and
19 number of records involved, the cost of creating copies of such records and
20 coordinating the transmission of the records to the parties. The Receiver and its
21 counsel also had to address the review and copying of the physical records at the
22 premises, including coordinating dates and times for on-site supervision of the
23 parties and requiring on-site copy services to be arranged by the parties requesting
24 records.

25 13. The Receiver through its counsel filed an Ex Parte Application for an
26 order providing instructions to the Receiver regarding the nature and extent of the
27 access to the records to be granted to the parties and for entry of a protective order
28 covering the records produced to protect those records from dissemination or public

1 disclosure, and the relief sought with some modifications was granted by the Court
2 by orders issued on July 8, 2009. After the Court's July 8, 2009 orders were issued
3 on the Receiver's Ex Parte Application, the Receiver and counsel have responded to
4 the parties regarding requests for records, including coordinating the production of
5 electronic records and on-site access to the records of the Receivership Defendants.

6 14. Prior to the hearing on the FTC's motion for a preliminary injunction
7 scheduled on July 24, 2009, the FTC noticed depositions of D'Antonio, Ronald
8 Rodis and Nicholas Chavarela. I attended certain of the depositions, including the
9 deposition of Bryan D'Antonio

10 15. During the Initial Expense Period, both the Receiver and its counsel
11 have addressed issues regarding the consumer clients of RLG and ALG. The
12 Receiver has posted information on its website concerning the Court's Temporary
13 Restraining Order and the Preliminary Injunction and provided consumers
14 references to the FTC web site and the contact information for HOPE NOW, the
15 organization providing free services to assist consumers seeking foreclosure relief
16 and loan modification assistance. The Receiver's staff has responded to numerous
17 consumer inquiries regarding their files and addressed issues with counsel for RLG
18 concerning attempts to communicate with and service RLG's former clients.

19 16. During the Initial Expense Period, the Receiver's members and staff
20 have performed other administrative services in connection with the administration
21 of the receivership estate. The Receiver's members and staff have addressed the
22 termination of employees of the Receivership Defendants and related payroll and
23 other issues. The Receiver's staff has notified financial institutions of the
24 receivership and served copies of the Temporary Restraining Order and Preliminary
25 Injunction on the financial institutions where receivership assets may be located.

26 17. As a member of Robb Evans & Associates LLC, I am familiar with the
27 methods and procedures used by the Receiver and its staff and employees to record
28 the time spent rendering services to receivership estates over which the Receiver

1 has been appointed. The records attached hereto as Exhibit 2 are regularly prepared
2 by the members, staff and employees of the Receiver at or about the time of the
3 services rendered and each of whom has a business duty to accurately record the
4 information regarding their services set forth in these records. The records are
5 reviewed by the Receiver's accounting staff and summarized in the Receivership
6 Collection, Expenses and Fund Balance by Month, attached hereto as Exhibit 1.
7 Based upon my experience with Robb Evans & Associates LLC, I believe the
8 Receiver's methods and procedures for recording and accounting for time and
9 services for the receivership estates over which it has been appointed are reliable
10 and accurate.

11 18. The Receiver seeks an order for limited notice of the hearing on this
12 Motion by which the Receiver would be authorized to serve the Motion on the
13 parties and serve notice of the hearing on the Motion on all known non-consumer
14 creditors (approximately 20 creditors) and to post the Motion on the Receiver's web
15 site for the case. The Receiver would also provide a complete copy of the Motion
16 to any interested consumer who requested a copy in writing. In this case, there are
17 approximately 3,268 potential consumer creditors in this case based on the number
18 of consumers whom the Receiver has determined engaged RLG, ALG and TFG to
19 perform services in this case. If the Receiver were required to give notice to all
20 consumer creditors, such a requirement would be burdensome, time-consuming and
21 expensive for the receivership estate, causing the estate to incur substantial
22 photocopying and postage costs.

23 I declare under penalty of perjury that the foregoing is true and correct and
24 that this declaration was executed on August 18, 2009, at Sun Valley, California.

25
26 
27 _____
28 BRICK KANE